

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-0087-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, LLC,

Relief Defendants.

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**THE RECEIVER'S TENTH INTERIM REPORT**

Receivership Information and Activity from May 1, 2011 through November 30, 2011.

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## INTRODUCTION

Burton W. Wiand, the Court-appointed Receiver for the Receivership Entities as defined herein, hereby files this Tenth Interim Report (the “**Report**”) to inform the Court, the investors, and others interested in this Receivership, of activities from May 1, 2011 through November 30, 2011 as well as the proposed course of action.<sup>1</sup> As of the date of filing this Report, the Court has appointed Burton W. Wiand as Receiver over the following entities and trust:

- a) Defendants Scoop Capital, LLC (“**Scoop Capital**”) and Scoop Management, Inc. (“**Scoop Management**”) (which, along with Arthur Nadel, are collectively referred to as “**Defendants**”);
- b) Relief Defendants Scoop Real Estate, L.P. (“**Scoop Real Estate**”); Valhalla Investment Partners, L.P. (“**Valhalla Investment Partners**”); Victory IRA Fund, Ltd. (“**Victory IRA Fund**”); Victory Fund, Ltd. (“**Victory Fund**”); Viking IRA Fund, LLC (“**Viking IRA Fund**”); and Viking Fund LLC (“**Viking Fund**”) (collectively referred to as the “**Hedge Funds**”);
- c) Relief Defendants Valhalla Management, Inc. (“**Valhalla Management**”), and Viking Management, LLC (“**Viking Management**”) (which, along with Scoop Capital and Scoop Management, are collectively referred to as the “**Investment Managers**”); and
- d) Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; Marguerite J. Nadel Revocable Trust UAD 8/2/07; Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; and Traders Investment Club.

The foregoing entities and trust are collectively referred to as the “**Receivership Entities.**”

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<sup>1</sup> Unless otherwise indicated, the information reported herein reflects the information in the Receiver’s possession as of November 30, 2011.

The Receiver was appointed on January 21, 2009. By January 26, 2009, the Receiver established an informational website, [www.nadelreceivership.com](http://www.nadelreceivership.com). The Receiver has updated this website periodically and continues to update it with the Receiver's most significant actions to date; important court filings in this proceeding; and other items that might be of interest to the public. This Report, as well as all previous and subsequent reports, will be posted on the Receiver's website.

### **Overview of Significant Activities During this Reporting Period**

During the time covered by this Interim Report, the Receiver and his Professionals engaged in the following significant activities:

- Continued to pursue litigation for (1) the recovery of false profits from investors (i.e., from "Profiteers"); (2) the recovery of distributions from Receivership Entities to Neil Moody, Donald and Joyce Rowe, and certain of their affiliated entities; (3) the recovery of other distributions, such as commissions, from other individuals and/or entities; and (4) the recovery of certain charitable contributions made with scheme proceeds;
- Reached **14** settlements for a total sum of **\$1,838,631.76**. As of November 30, 2011, the Receiver has reached agreements to settle with **135** Profiteers for a total amount of **\$19,523,449.53** (plus additional non-cash assets);
- Engaged in intensive settlement negotiations with Goldman Sachs Execution & Clearing, L.P. ("GSEC"), which culminated in a settlement between the Receiver and GSEC after the end of this reporting period. The settlement provides, among other things, that GSEC will pay \$9,850,000 to the Receiver and contemplates the entry of an order barring any claims against GSEC;
- Maintained Receivership funds in appropriate accounts and certificates of deposit ("CDs"). As of December 13, 2011 the total funds in all Receivership accounts, including CDs, are approximately **\$21,971,348.48**;
- Sold a condominium located at 774 North Jefferson Avenue in Sarasota, Florida for \$55,000, resulting in net proceeds to the Receivership of approximately \$48,347.79 after payment of commissions and other expenses associated with the sale.

- Sold a condominium in Oberlin, Ohio for \$100,000, resulting in net proceeds to the Receivership of \$98,383.30 after payment of expenses associated with the sale;
- Conveyed a building located at 599 North Lime Avenue, Sarasota, Florida which had no equity and the remaining business assets of A Victorian Garden Florist, LLC which had no realizable value in exchange for the release of all claims against the Receivership, including a claim of over \$1,160,000 against the Receivership estate and the elimination of over \$600,000 in debt obligations;
- Continued to operate ongoing businesses, and where possible, enhance the value of those businesses resulting in the generation of more than \$351,787.93 in gross business income;
- Generated \$165,619.16 in interest/dividend income; \$359,665.48 in business asset liquidation income; \$2,424,777.56 in third-party litigation income; and \$595,271.29 in other income;
- Worked on recovering assets in the possession of Neil Moody;
- Continued to pursue the Receiver’s malpractice action against Holland & Knight, LLP; the complaint seeks to recover as much as possible of the approximately \$168 million of out-of-pocket losses suffered by investors; and
- Continued work on the claims process, including the preparation of the Receiver’s 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 was filed on December 7, 2011 and includes the Receiver’s recommended determination and priority of each of the 504 claims submitted.

The above activities are discussed in more detail in the pertinent sections of this Interim Report.

## **BACKGROUND**

### **I. Procedure and Chronology.**

Defendant Arthur Nadel (“**Nadel**”) was the Hedge Funds’ principal investment advisor and an officer and director of Scoop Management and sole managing member of

Scoop Capital. On or about January 14, 2009, Nadel fled Sarasota County and disappeared for nearly two weeks.

On January 21, 2009, the Commission filed a complaint in this Court charging the Defendants with violations of federal securities laws (the “**Commission Proceeding**”). In this Proceeding, the Commission alleged that Nadel used the Investment Managers to defraud investors in the Hedge Funds from at least January 2008 forward by “massively” overstating investment returns and the value of fund assets to investors in these funds and issuing false account statements to investors. The Commission also asserted that Nadel misappropriated investor funds by transferring \$1.25 million from Viking IRA Fund and Valhalla Investment Partners to secret bank accounts. The Court found the Commission demonstrated a *prima facie* case that the Defendants committed multiple violations of federal securities laws.

On April 6, 2009, Nadel filed his answer and affirmative defenses, in which he denied nearly every allegation in the Complaint and set forth two affirmative defenses. (Doc. 104.) Nadel also purported to set forth a “Counterclaim,” which the Court struck on the Receiver’s motion. (Docs. 111, 112.) On August 17, 2010, the Commission moved the Court to approve a consent judgment against Nadel and filed Nadel’s consent to the same. (Doc. 457.) On August 18, 2010, the Court entered a Judgment of Permanent Injunction and Other Relief against Nadel (“**Judgment**”). (Doc. 460.) The Judgment permanently enjoins Nadel from further violations of the antifraud provisions of the federal securities laws and orders Nadel to pay disgorgement of ill-gotten gains with prejudgment interest and a civil penalty in amounts to be determined by the Court upon the Commission’s motion.

On January 21, 2009, the same day the Commission filed its complaint, the Court entered an order appointing Burton W. Wiand as Receiver for the Investment Managers and Hedge Funds (the “**Order Appointing Receiver**”). (See generally Order Appointing Receiver (Doc. 8).) Between January 27, 2009, and August 9, 2010, on the Receiver’s motions, the Court entered orders expanding the scope of receivership to include additional entities as follows:

January 27, 2009 (Doc. 17)	Venice Jet Center, LLC Tradewind, LLC
February 11, 2009 (Doc. 44)	Laurel Mountain Preserve, LLC Laurel Preserve, LLC Marguerite J. Nadel Revocable Trust UAD 8/2/07 Laurel Mountain Preserve Homeowner Association, Inc.
March 9, 2009 (Doc. 68)	Guy-Nadel Foundation, Inc.
March 17, 2009 (Doc. 81)	Lime Avenue Enterprises, LLC A Victorian Garden Florist, LLC
July 15, 2009 (Doc. 153)	Viking Oil & Gas, LLC
August 10, 2009 (Doc. 172)	Home Front Homes, LLC
August 9, 2010 (Doc. 454)	Traders Investment Club

On June 3, 2009, January 19, 2010, and September 23, 2010, the Court entered orders Reappointing Receiver. (Docs. 140, 316, 493.) The January 21, 2009, June 3, 2009, January 19, 2010, and September 23, 2010 Orders will be referred to collectively as the “**Orders Appointing Receiver.**” Pursuant to the Orders Appointing Receiver, the Receiver has the duty and authority to: “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever

actions are necessary for the protection of the investors.” (Orders Appointing Receiver at 1-2.)

On January 27, 2009, Nadel surrendered to the FBI in Tampa, Florida. Nadel was arrested and charged with two counts of securities fraud and wire fraud based on the fraudulent investment scheme discussed herein. Nadel was transferred to the Metropolitan Correctional Center in New York, New York to await trial in the United States District Court for the Southern District of New York. *U.S. v. Nadel*, Case No. 8:09-mj-01039 M.D. Fla. (Docs. 5, 6).

On April 28, 2009, Nadel was indicted on six counts of securities fraud, one count of mail fraud, and eight counts of wire fraud. On February 24, 2010, Nadel pled guilty to all counts in the indictment. On October 21, 2010, Nadel was sentenced to 14 years in prison and assigned to the Butner Federal Correctional Complex near Raleigh, North Carolina.

## **II. The Receiver’s Role and Responsibilities.**

For a discussion of the Receiver’s role and responsibilities, please refer to the Ninth Interim Report and earlier Interim Reports.

## **III. Overview of Findings To Date.**

The Receiver has discovered that from 1999 through 2008, approximately \$330 million was raised from approximately 687 investors on behalf of one or more of the Hedge Funds by Nadel and his entities, Scoop Management and Scoop Capital; by the rest of the Fund Managers; and by the Moodys through the offer and sale of securities in the form of interests in Hedge Funds as part of a single, continuous Ponzi scheme. As discussed in prior Interim Reports, Nadel grossly overstated the trading results of the Hedge Funds. Despite

significantly lower, and typically negative yields (*i.e.*, trading losses), Nadel, the Moodys, and the Fund Managers falsely communicated to investors and potential investors, through monthly “statements,” Hedge Funds’ “Executive Summaries,” and other methods, that investments were generating positive returns and yielding between 10.97% and 55.12% per year. For most years, they falsely represented the investments were generating returns between 20% and 30%.

To perpetuate and perpetrate this scheme, Nadel caused the Hedge Funds to pay investors “trading gains” as reflected on their false monthly statements. The funds used to pay these trading gains were not generated from trading activities; rather they were generated from new or existing investors. Nadel further caused the Hedge Funds to pay tens of millions of dollars in fees. Those fees were based on grossly inflated returns, and thus, were improperly and wrongfully paid. The negative cash flow of the Hedge Funds made the eventual collapse of Nadel’s scheme inevitable.

As mentioned above, on February 24, 2010, Nadel pled guilty to all counts in the indictment relating to this scheme and on October 21, 2010, was sentenced to 14 years in prison. For a more detailed overview of the Receiver’s findings to date, please refer to the Ninth Interim Report. While these conclusions may change as the receipt and review of pertinent documents is completed, the Receiver does not believe any changes would be material.

## **ACTIONS TAKEN BY THE RECEIVER**

Since his appointment on January 21, 2009, the Receiver has taken a number of steps to fulfill his mandates under the Order Appointing Receiver, described in Section II, above. For additional efforts of the Receiver, please refer to prior Interim Reports.

### **IV. Securing the Receivership Estate.**

#### **A. Taking Possession of Defendants' Headquarters.**

On the day of his appointment, the Receiver took possession of the Receivership Entities' offices at 1618 Main Street, Sarasota, FL 34236 (the "Office"). Nadel used the Office as the headquarters for administering his control of the Investment Managers, Hedge Funds, and other Receivership Entities. Among other things, the Receiver ended the Office's lease and sold the office furniture and other items for \$3,500.00.

The Receiver removed documents, several servers, and other computer-related equipment from the premises that were used by Nadel and the entities he controlled. The Receiver retained experienced forensic information technology experts with the firm E-Hounds, Inc. ("E-Hounds"), to assist in securing and analyzing the electronic data on the computers. E-Hounds personnel have possession of the equipment, have secured the data, and are well underway in their forensic analysis.

#### **B. Securing Receivership Funds.**

At the outset of the Receivership, approximately \$556,758.33 in cash and cash equivalents in financial accounts titled in the name of the Hedge Funds and Investment Managers were identified and frozen pursuant to the Nadel TRO and the Preliminary Injunction. In addition, the Receivership recovered approximately \$629,750.47 in additional

cash and cash equivalents from financial accounts titled in the name of other Receivership Entities at the time those entities were brought into receivership. Thus, total cash at the inception of the Receivership and as the Receivership was expanded to include each additional Receivership Entity was approximately \$1,186,508.80.<sup>2</sup>

During the time covered by this Interim Report, Receivership funds were held at (1) Northern Trust Bank, N.A. in four CDs with a yield of 1.25%;<sup>3</sup> (2) Bay Cities Bank in six CDs, a non-interest bearing operating account, and a variable interest rate money market account; and (3) Whitney Bank in a variable rate money market account. As of December 13, 2011, the total funds in all Receivership accounts, including CDs, are approximately \$21,971,348.48. The Receiver continues to review the appropriate action to take with respect to Receivership funds in light of the current state of the economy and financial institutions. If appropriate and in the best interests of the Receivership, he will move the funds into other interest-bearing accounts and/or revenue-generating investments.

### **C. Locating Additional Funds.**

One of the Receiver's highest priorities is to locate and recover any additional funds that were in Nadel or the Receivership Entities custody at the time of the scheme. The Receiver has retained a forensic accounting firm to assist in tracing funds. As discussed in

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<sup>2</sup> This amount does not include any sum for non-cash or non-cash equivalent assets the Receiver has recovered. For a discussion of these assets, please refer to Section V, below.

<sup>3</sup> These CDs were liquidated on July 15, 2011, and the funds were deposited in the Receiver's Whitney Bank money market account.

Section V below, the Receiver's investigation revealed that significant sums were used to purchase or fund other entities.

### **1. Recovery of Tax Refunds**

The Receiver has sought to obtain tax refunds owed to certain insiders based upon taxes paid in prior years on nonexistent trading profits, periodic taxes paid on anticipated income that was never earned, and/or overpayment of taxes as a result of loss of investment. As a result of these efforts, the Receiver has recovered a total sum of \$1,394,214.12 in tax refunds from Form 1045 Applications for Tentative Refund ("**Form 1045**") for carryback losses on behalf Chris Moody, Neil Moody, and Sharon Moody. The Receiver also submitted a Form 1045 for Marguerite Nadel, but has not received any tax refund for her yet. The Receiver intends to file a Form 1045 on behalf of Arthur Nadel seeking the return of approximately \$1,183,525.00. The Receiver also recovered two tax refund checks totaling \$1,261,359.33 from Mrs. Nadel as a result of improperly filed documents with the IRS on behalf of a Receivership Entity. Including these two refund checks, the total amount the Receiver has recovered from federal tax refunds to insiders is **\$2,655,573.45**. For more detailed information regarding the Receiver's efforts to recover these tax refunds, please refer to the Ninth Interim Report.

The Receiver will continue to diligently investigate the existence of any additional funds and will inform the Court and investors if any are located.

### **D. Receivership Accounting Report.**

Attached as **Exhibit A** to this Interim Report is a cash accounting report showing the amount of money on hand as of May 1, 2011 less operating expenses plus revenue through

August 31, 2011. Attached as **Exhibit B** to this Interim Report is a cash accounting report showing the amount of money on hand as of September 1, 2011 less operating expenses plus revenue through November 30, 2011. These cash accounting reports do not reflect non-cash or cash-equivalent assets. Thus, the value of all property discussed in Section V below is not included in the accounting reports. From May 1, 2011, through November 30, 2011, the Receiver received \$351,787.93 in business income from ongoing operations of some Receivership Entities;<sup>4</sup> \$165,619.16 in interest/dividend income; \$359,665.48 in business asset liquidation; \$2,424,777.56 in third-party litigation income; and \$595,271.29 in other income.<sup>5</sup> (Exs. A and B.).

Since the inception of the Receivership through November 30, 2011, the Receiver received \$3,949,854.26 in business income from ongoing operations of some Receivership Entities; \$2,066,501.32 in cash and securities; \$630,586.43 in interest/dividend income; \$3,404,976.23 in business asset liquidation; \$120,000.00 in personal asset liquidation; \$17,192,212.47 in third-party litigation income; and \$3,721,725.10 in other income.<sup>6</sup>

#### **E. Obtaining Information from Third Parties.**

Since obtaining control of the Receivership Entities, the Receiver and his professionals have had discussions – including continuing discussions – with a significant

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<sup>4</sup> As discussed in Section V.A below, much of the entities' business income is derived from rental payments.

<sup>5</sup> The “other income” includes: \$591,663.85 from the sale of jewelry, \$3,594.01 received from an IRS refund check for the Venice Jet Center, and \$13.43 received from a Goldman Sachs account in the name of Carlin Equities.

<sup>6</sup> The income numbers provided in this and the foregoing paragraph are gross figures and do not include any offset for business operations costs or any other expenses.

number of people associated with Nadel and/or the Receivership Entities. Further, on September 9, 2010, the Receiver deposed Peg Nadel and on February 4, 2011, the Receiver deposed Joyce Rowe.

The Receiver and his professionals have also reviewed documents located in the Office; documents obtained from the accountant for several Receivership Entities; information stored on the Receivership Entities' computer network; documents obtained from other businesses controlled by Nadel; documents obtained from financial institutions and other third parties, including Donald H. Rowe ("**Rowe**") and lawyers and others who assisted Nadel's businesses with their transactions; and information available in the public record.

**V. Asset Analysis and Recovery.**

**A. Expansion of Receivership to Include Additional Entities.**

As a result of the review of these records and of the discussions noted above, the Receiver sought and successfully obtained the expansion of the Receivership to include: Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; and Traders Investment Club. Along with Summer Place Development Corporation, these

entities will hereinafter be referred to collectively as the “**Additional Entities.**”<sup>7</sup> The Receiver’s investigation revealed that the Additional Entities were purchased and/or funded with money derived from Nadel’s fraudulent investment scheme.

The following discussion of the Additional Entities includes a description of assets the Receiver has acquired as a result of the businesses’ inclusion in the Receivership; known encumbrances related to those assets; and actions taken by the Receiver with respect to those assets. Where possible the Receiver has included estimated values of these assets. However, given the state of the U.S. economy at the time of this Report and the possibility for additional information not yet uncovered by the Receiver, it is important to note that any such estimations, valuations or appraisals are subject to change. Due to the poor state of the real estate markets, the estimates provided may differ markedly from the actual amounts realized upon the selling of any real property.

#### **1. Venice Jet Center, LLC.**

Venice Jet Center, LLC (“**VJC**”), is a Florida limited liability company formed in April 2006. Nadel was its managing member and registered agent, and its principal address was the Office. The assets of VJC were purchased with proceeds of Nadel’s scheme, and over time additional proceeds of the scheme were transferred to VJC.

On January 27, 2009, the Court expanded the Receivership to include VJC. VJC was a fully operating fixed-base operator that included a flight school, fueling service, hangar rentals, and a café. On January 20, 2010, the Court approved the sale of the VJC’s assets and

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<sup>7</sup> The Receiver gained control of Summer Place Development Corporation by virtue of Scoop Capital’s ownership interest in that entity. However, for various reasons, a formal order expanding the Receivership to include this entity has not been sought.

an agreement with Northern Trust (Motion, Doc. 254; Order, Doc. 321.) In pertinent part, VJC's assets were sold to Tristate Aviation Group of Florida LLC for (1) \$300,000 cash at closing; (2) a \$250,000 unsecured promissory note payable over a term of three years; (3) resolution of a \$1,960,169 loan with Northern Trust; and (4) assumption of prosecution of the Part 16 Complaint subject to an offset of the note obligations to the Receiver for up to \$50,000 for expenses and costs actually incurred in connection with efforts to resolve all disputes with the City of Venice, including the Part 16 Complaint. For more information, please refer to prior Interim Reports.

## **2. Tradewind, LLC.**

Tradewind, LLC ("**Tradewind**") was formed in Delaware in January 2004 and registered for the first time in Florida in March 2008. Nadel was Tradewind's managing member and registered agent, and its principal address was the Office. Tradewind owned and controlled five planes and one helicopter and owns 31 hangars at the Newnan-Coweta County Airport in Georgia (the "**Georgia Hangars**"). The Receiver's investigation revealed that Tradewind was funded with money from Nadel's scheme. Tradewind is a fully operating business with potential to generate assets for the Receivership estate.

On January 27, 2009, the Court expanded the Receivership to include Tradewind. Since the Receiver's appointment as Receiver of Tradewind, he has taken control of it and is continuing to operate the business. Tradewind collects approximately \$20,000 in monthly rent and incurs varying monthly expenses, which include land rent, loan payments, and various utilities. The Receiver is entertaining offers to purchase this business or any of its assets.

The Receiver has possession and control of the Georgia Hangars, which have one known encumbrance: a loan with the Bank of Coweta with a remaining balance of approximately \$891,628.04 (as of November 25, 2011) and monthly payments of \$8,055. There is also monthly rent of \$3,079.89 due to the Newnan Coweta Aviation Authority. The Receiver has been making these monthly payments as he believes they are in the best interest of the Receivership. The Receiver has received offers to purchase the Georgia Hangars. The offers, however, were below what the Receiver believes to be the fair market value of the Hangars.

The Receiver also acquired possession and control of the five planes and helicopter. The Receiver sold four of these aircraft for a total of \$301,500 and returned the remaining two in exchange for cancellation of outstanding debts on those aircraft. For more information regarding the various aircraft and their respective Court-approved dispositions, please refer to prior Interim Reports.

**3. Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; and Laurel Mountain Preserve Homeowners Association, Inc.**

Laurel Mountain Preserve, LLC (“**Laurel Mountain**”), was formed in Florida in December 2003. Nadel was Laurel Mountain’s manager and member, and its principal address was the Office. Laurel Mountain was “withdrawn” as a limited liability company in January 2006.

Laurel Preserve, LLC (“**Laurel Preserve**”), was formed as a North Carolina limited liability company in February 2006. Nadel was Laurel Preserve’s registered agent and manager, and its principal address was the Office. The Laurel Mountain Preserve Homeowners Association, Inc. (the “**HOA**”), is a North Carolina non-profit corporation

formed in March 2006. Nadel was the HOA's registered agent, and its principal address was the Fairview, North Carolina home. Documentation reviewed and information obtained by the Receiver shows that Laurel Preserve holds title to approximately 420 acres near Asheville, North Carolina in Buncombe and McDowell counties, intended for development of home-sites (the "**Laurel Mountain Property**").

On February 11, 2009, the Court expanded the Receivership to include Laurel Mountain, Laurel Preserve, and the HOA. Since the Receiver's appointment as Receiver of these entities, he has taken control of them and is working on marketing for sale the Laurel Mountain Property. This property currently does not generate any income. The Laurel Mountain Property encompasses 29 lots, including 23 estate-sized and 6 cottage-sized lots. There is also a cabin home on this property that, according to the Buncombe County Property Appraiser, is valued at \$319,800. The Laurel Mountain Property's infrastructure is fully developed: infrastructure and utilities are currently in place and are fully functional.

The Laurel Mountain Property has two known encumbrances. The first encumbrance is a \$360,157.37 loan from BB&T Bank. The second encumbrance is a \$1,900,000 interest only loan from Wachovia Bank. There is a monthly payment of \$5,149.66 due on this latter loan and the Receiver presently is not making the loan payments.

At the time the Receiver recovered the Laurel Mountain Property it also had a third encumbrance. The third encumbrance was an easement of approximately 169 acres of the Laurel Mountain Property, which was granted to a land conservancy in 2005 (the "**Easement**"). The Receiver instituted an ancillary civil proceeding against the Carolina Mountain Land Conservancy ("the **Conservancy**") to extinguish the Easement on December

1, 2009. *Burton W. Wiand, as Receiver v. Carolina Mountain Land Conservancy*, M.D. Fla. Case No. 8:09-cv-2443-T-27TBM (“**Conservancy Action**”). On April 1, 2011, the Receiver filed a motion to approve a settlement with the Conservancy. (Doc. 614.) In pertinent part, the settlement provided that the Receiver dismiss the Conservancy Action in consideration of the Conservancy (1) returning the unused donations in the amount of \$10,115 and (2) agreeing to obtain an order vacating the Easement. The Court granted this motion in its entirety on April 4, 2011 (Doc. 615) and an order vacating the Easement was entered on May 24, 2011 (Conservancy Action Doc. 28).

For more information regarding the Laurel Mountain Property, please visit <http://www.laurelmountainpreserve.com>. Parties interested in purchasing this property should contact the Receiver directly.

#### **4. Marguerite J. Nadel Revocable Trust UAD 8/2/2007.**

The Marguerite J. Nadel Revocable Trust Under Agreement Dated 8/2/2007 (the “**Trust**”) was created on August 2, 2007. The Receiver’s investigation revealed that the Trust was funded entirely with proceeds of Nadel’s scheme through (1) a transfer of \$500,000 from Scoop Management in August 2007 and (2) a transfer of \$150,000 from Scoop Capital on the day before Nadel fled. On February 11, 2009, the Court expanded the Receivership to include the Trust. The Receiver took control of the Trust’s bank account and used the funds for Receivership costs and expenses.

#### **5. Guy-Nadel Foundation, Inc.**

The Guy-Nadel Foundation, Inc. (the “**Foundation**”), is a Florida non-profit corporation Nadel formed in December 2003 for “charitable, educational and scientific

purposes.” The Foundation was funded with proceeds of Nadel’s scheme. On March 9, 2009, the Court expanded the Receivership to include the Foundation. Since the Receiver’s appointment as Receiver of the Foundation, he has taken control of it and is working on marketing the real property owned by the Foundation.

The Receiver has discovered that from 2000 through 2008, the Foundation made a total of approximately \$2,484,589 in contributions from scheme proceeds to various non-profit organizations and charities. The Receiver has focused his attention on the charitable organizations that received the most contributions. As discussed in Section V.E.4, the Receiver sought to obtain tolling agreements from all charitable organizations so he could contemplate the appropriate action to take regarding these significant disbursements. Three charities did not provide such agreements, thus the Receiver had no recourse but to initiate actions against them. Further, one of the tolling agreements expired and the charity refused to extend the agreement. Accordingly, the Receiver had no choice but to initiate an action against this charity as well. (*See* discussion of litigation at Section V.E.4 below.)

The Receiver has pursued settlement negotiations with the charitable organizations with tolling agreements with little success. The Receiver has mediated with two such organizations and was unable to reach an accord. At this time, the Receiver plans to proceed with filing complaints against these organizations.

#### North Carolina Parcels

The Receiver has possession and control of approximately eight lots that are essentially adjacent to each other and to the Laurel Mountain Property. The lots appear to have been purchased by Laurel Mountain and the Nadels as part of the same general

transaction in which Laurel Mountain purchased the Laurel Mountain Property. In December 2003 and December 2004, Laurel Mountain and Nadel and his wife deeded these lots to the Foundation. The Receiver is currently marketing this property with the Laurel Mountain Property. Parties interested in purchasing this property should contact the Receiver directly.

#### Thomasville, Georgia Parcels

Additionally, the Receiver has possession and control of two small parcels of unimproved land in Thomasville, Georgia (this land is separate from the Thomasville Property discussed in Section V.B.1, below) owned by the Foundation. According to the Thomas County Board of Tax Assessors, the first lot (located on North Stevens Street) has a 2010 tax valuation of \$34,745, and the second lot (located on Church Street) has a 2010 tax valuation of \$4,276. Parties interested in purchasing these parcels should contact the Receiver directly.

#### **6. Lime Avenue Enterprises, LLC, and A Victorian Garden Florist, LLC.**

Lime Avenue Enterprises, LLC (“**Lime**”) was formed in Florida in August 2006. Nadel was a managing member of Lime. Lime owned a building located at 599 North Lime Avenue, Sarasota, Florida 34237 (the “**Lime Building**”). Lime purchased the Lime Building in August 2006. Public records and other information reviewed by the Receiver indicate that Lime was formed by Nadel and Mrs. Nadel (who also was a manager of Lime) for the purpose of purchasing the Lime Building. The Lime Building houses a flower shop, which was owned by A Victorian Garden Florist, LLC (the “**Florist**”), which was formed in Florida

in April 2005. The Receiver's investigation revealed that Lime and the Florist were funded with proceeds from Nadel's scheme.

On March 17, 2009, the Court expanded the Receivership to include Lime and the Florist. The Receiver had possession and control of the Lime Building. The Lime Building had one known encumbrance: a mortgage owed to the individuals who sold the building to Lime (Ron Carter and James Neal) on which the balance was approximately \$600,000. The Receiver also took control of the business and determined that ownership of the Florist was not in the best interest of the Receivership. The Florist did not have sufficient revenue to cover its expenses.

Neither the Lime Building nor the Florist was generating any income for the Receivership. Further, it appeared that the market value of the Lime Building was less than the amount of its encumbrance. Accordingly, the Receiver determined that it was in the best interests of the Receivership estate to convey the Lime Building and the Florist's remaining business assets to Messrs. Carter and Neal ("**Carter and Neal**") in exchange for the release of all claims against the Receivership estate. In short, the Receiver believed that this conveyance was in the best interests of the Receivership because: (1) the Receiver does not believe there was any equity in this property; (2) the remaining business assets of the Florist had no realizable value; (3) the conveyance would eliminate over \$600,000 in debt obligations and a claim of over \$1,160,000 against the Receivership estate; and (4) it would save the Receivership the ongoing costs of maintaining the Lime Building.

On May 25, 2011, the Receiver filed his motion to convey the Lime Building and the Florist's remaining business assets to Carter and Neal (Doc. 631). The Court granted the Receiver's motion in its entirety on May 26, 2011 (Doc. 633).

The Receiver also took possession and control of two vans owned by Lime: a 1999 Ford van and a 2003 Dodge van. The Receiver sold these vans for \$500 and \$2,000, respectively.

#### **7. Viking Oil & Gas, LLC.**

Viking Oil & Gas, LLC ("**Viking Oil**") is a Florida limited liability company formed in January 2006 by the Moodys to make personal investments in an oil and gas venture. Its principal address was the Office. The Receiver's investigation revealed that Viking Oil was funded with proceeds from Nadel's scheme. The funds invested in Viking Oil were used to purchase an investment interest in Quest Energy Management Group, Inc. ("**Quest EMG**"). Between February 2006 and April 2007, through Viking Oil, the Moodys invested \$4 million to fund a working interest in Quest EMG.

As discussed in Section V.C.4, below, the Receiver also has possession of a promissory note from Quest EMG and two individuals to Valhalla Investment Partners in the amount of \$1,100,000. On July 15, 2009, the Court expanded the Receivership to include Viking Oil. Since the Receiver's appointment as Receiver of this entity, he has taken control of it and is determining the most prudent course of action to take with respect to the working interest in Quest EMG. An examination of this venture has caused the Receiver to question the viability and value of this investment. The Receiver hired a forensic accountant, Otto L. Wheeler, CPA/ABV, to assist with further examination of Quest EMG and the

Receivership's interest therein. Mr. Wheeler identified various issues that were the subject of further inquiry. While pursuing those issues, the parties had reached an agreement to resolve this matter, however Quest failed to make the required settlement payment timely and so the agreement expired on its own terms. The Receiver has made a demand for repayment of the loan and Quest has failed to meet that demand. The Receiver will therefore proceed with collection efforts.

#### **8. Home Front Homes, LLC.**

Home Front Homes, LLC (“**Home Front Homes**”), is a Florida limited liability company that was formed in 2006. Nadel was the sole managing member of Home Front Homes, and Scoop Capital owned a majority membership interest in it. Home Front Homes was engaged in the business of manufacturing, marketing, and selling energy-efficient homes. Home Front Homes was an operating business until September 2009. On August 10, 2009, the Court expanded the Receivership to include Home Front Homes. (Doc. 170.)

On January 6, 2010, the Court granted the Receiver's motion to sell certain of Home Front Homes' assets and approve an agreement with M&I Bank in its entirety. (*See* Jan. 6, 2010, Order, Doc. 293; Motion, Doc. 291.) In salient part, (1) South American Development Corporation (“SADC”) agreed to purchase certain assets for \$250,000, with \$150,000 to be paid at closing and a zero interest promissory note secured by the assets due December 18, 2010 for the \$100,000 balance and (2) M&I agreed to waive over \$3,000,000 in debt obligations and forego any deficiency claims against the Receivership estate in exchange for 65% of the cash and note proceeds after \$12,000 has first been paid to the Receiver for

expenses incurred. As a result of this agreement, the Receiver realized over \$95,000 from the sale of Home Front Homes' assets and alleviated over \$3,000,000 of debt obligations.<sup>8</sup>

After the sale of certain of Home Front Homes' assets, Home Front Homes continued to own a parcel of real property located at 512 Paul Morris Drive, Englewood, Florida 34223, Lot 81 of the Morris Industrial Park. The Receiver determined that it was in the best interests of the Receivership to convey this property to William Bishop, as Trustee of the William F. Bishop Revocable Trust in exchange for the release of all claims against the Receivership estate. For more information regarding Home Front Homes and related litigation, please refer to prior Interim Reports.

#### **9. Summer Place Development Corporation.**

Summer Place Development Corporation ("**Summer Place**") is a Florida company that was formed in 2005. The Receiver has not sought a formal order expanding the Receivership to include Summer Place. However, Nadel purchased 50% of the holdings in Summer Place with a \$200,000 investment in Home Front Homes and payment of \$50,000 to the co-managing member's investment company. Nadel became a managing member of Summer Place, and Scoop Capital owns a fifty-percent interest in Summer Place. By virtue of this fifty-percent interest, the Receiver has not assumed full control over Summer Place but is working with the other managing member and fifty-percent owner in directing the operation of Summer Place for the benefit of the Receivership estate.

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<sup>8</sup> The Receiver sold, or otherwise disposed of several assets that were not included in the asset purchase agreement discussed above for a total amount of \$7,600. These assets included a pick-up truck, two small free standing storage structures, and a telephone system.

Summer Place is an operating business and owns a 6-acre parcel in Bradenton, Florida. The owners originally intended to build thirty affordable home sites on this property. However, due to the decline in the market for affordable housing, no development has taken place. Taxes on the property are approximately \$3,000 a year. The Receiver intends to sell Scoop Capital's equity interest in this entity in a manner most beneficial to the Receivership estate. Parties interested in marketing or purchasing Scoop Capital's interest in this business should contact the Receiver directly.

#### **10. Traders Investment Club.**

Traders was a Florida partnership formed in December 1998 to operate as a purported "investment club." Nadel controlled Traders and purported to buy and sell securities on its behalf in an effort to generate trading profits. Records in the Receiver's possession show that Traders was in existence until December 2005. During its existence, Traders had approximately 35 different investors many of whom were also simultaneously investors in the Hedge Funds. Aside from raising money for Traders from investors, the Receiver's investigation revealed that Nadel funded Traders with unlawful transfers from the Hedge Funds.

Nadel purported to close Traders in 2005 by distributing supposed "principal and trading gains" directly to investors or to the Hedge Funds as purported "roll-overs" into the pertinent investors' Hedge Fund "accounts." Further, representations Nadel made to Traders' investors regarding investment performance were grossly overstated. Because of the commingling of funds between Traders and the Receivership Entities and the fraud perpetrated by Nadel through his control of all of these entities, the Receiver sought the

expansion of the Receivership to include Traders. (*See* Motion to Expand Receivership to Include Traders, Aug. 9, 2010, Doc. 453.) On August 9, 2010, the Court expanded the Receivership to include Traders (Doc. 454).

**B. Recovery of Real Property.**

In addition to the assets discussed in conjunction with the expansion of the Receivership in Section V.A, the Receiver has also recovered a number of other assets, most of which continue to be valued, assessed, and otherwise analyzed for liquidation, disposition, or other action. Again, given the state of the U.S. economy at the time of submission of this Report, the Receiver emphasizes that any estimates, appraisals, or valuations are subject to change because of market forces. In particular, due to the poor state of the real estate markets, the estimates provided in this section may be significantly different from the amounts realized upon selling such real property.

**1. Thomasville, Georgia.**

The Receiver obtained possession and control of approximately 14 acres in Thomasville, Georgia (the “**Thomasville Property**”) which encompassed 45 lots, 44 of which were undeveloped. The Thomasville Property was purchased on January 5, 2007 for \$285,000 with proceeds from Nadel’s scheme. The Thomasville Property was heavily encumbered with debt in excess of \$759,000 owed to Thomasville National Bank (“**TNB**”) as of February 23, 2010.

The Receiver was able to sell the Thomasville Property for \$725,000 which he believed fairly represented the market value of the property. Because the purchase price was insufficient to satisfy the outstanding liens on the property, the Receiver reached an

agreement with TNB wherein TNB agreed to accept the purchase price less commissions in exchange for the full settlement of all amounts owed under the loans and the waiver of all claims against the Receivership estate. On February 26, 2010, the Court approved the sale of the Thomasville Property and Agreement with TNB as provided in the motion submitted by the Receiver. (Motion, Doc. 350; Order, Doc. 352.) The Receiver believes that the disposition of the property as described above was in the best interests of the Receivership. For more information regarding the Thomasville Property and the terms of its sale, please refer to prior Interim Reports.

## **2. Grady County, Georgia.**

The Receiver was in possession of approximately 33 acres of undeveloped land owned by Scoop Capital in Grady County, Georgia (the “**Grady Property**”). According to Grady County public records, the land value of the Grady Property in 2010 was \$151,125. On April 25, 2011, the Receiver filed an unopposed motion to approve the sale of the Grady Property (Doc. 619). The Court granted the motion in its entirety on April 25, 2011 (Doc. 620). In pertinent part, the Order approved the sale of the Grady Property for \$135,000. The purchaser provided the Receiver with \$1,000 in earnest money and paid the balance of the purchase price at closing, which occurred on May 3, 2011. The Receivership estate netted approximately \$123,717.84 from the sale of the property after payment of commissions and other expenses associated with the sale. The Receiver believes that this sale was in the best interest of the Receivership and that the purchase price represents the fair market value for the Grady Property.

### 3. **Graham, North Carolina.**

The Receiver has possession and control of a building located at 841 South Main Street, Graham, North Carolina 27253 (the “**Rite-Aid Building**”). This building was purchased for \$5,310,000 and is currently being leased to a Rite-Aid Pharmacy for \$33,073.08 per month. The Rite-Aid Building has one known encumbrance: a \$2,655,000 interest-only loan with Wachovia Bank, which matured in June 2009. The Receiver paid interest on this loan through October 2009. He currently is not making any payments on this loan. The Receiver has received interest in the purchase of the Rite-Aid Building. Parties interested in purchasing the Rite-Aid Building should contact:

Jim Hamilton, Director  
Holliday Fenoglio Fowler, L.P.  
3414 Peachtree Road NE, Suite 736  
Atlanta, GA 30326  
Telephone: (404) 942-2212  
Fax: (404) 942-2181  
Email: [jhamilton@hfflp.com](mailto:jhamilton@hfflp.com)

### 4. **Raleigh, North Carolina.**

The Receiver has possession and control of a building located at 4905 Waters Edge, Raleigh, North Carolina 27060 (the “**Waters Edge Building**”). This building was purchased for \$1,900,000 and was leased to Electronic Data Systems (“**EDS**”), a technology services provider, for \$29,688.54 per month. EDS’ lease term ended January 2010 and EDS did not renew its lease. The Receiver is working on reletting this property. The Waters Edge Building has no known encumbrances. Parties interested in purchasing or leasing the Waters Edge Building should contact the Receiver directly.

## 5. **Tupelo, Mississippi.**

The Receiver had possession and control of a building located at 2433 West Main Street, Tupelo, Mississippi 38801 (the “**Starbucks Building**”). This building was purchased for \$941,000 and was being leased to Starbucks (Store #8809) for \$6,279.19 per month. The Starbucks Building had no known encumbrances. On February 18, 2011, the Receiver filed an unopposed motion to approve the sale of the Starbucks Building (Doc. 599). The Court granted the motion in its entirety on February 22, 2011 (Doc. 601). In pertinent part, the Order approved the sale of the Starbucks Building for an all-cash offer of \$715,000. The purchaser provided the Receiver with \$25,000 in earnest money and paid the balance of the purchase price at closing, which occurred on February 24, 2011. The Receivership estate netted approximately \$651,216 from the sale of the property after payment of commissions and other expenses associated with the sale. The Receiver believes that this sale was in the best interest of the Receivership and that the purchase price represented the fair market value for the Starbucks Building.

## 6. **Newnan, Georgia.**

The Receiver had possession and control of a gas station located at 5 McCollum Station, Newnan, Georgia 30265 (the “**Newnan Property**”). This property was purchased on January 20, 2006 for \$2,450,000 and had no encumbrances. The Newnan Property consists of approximately two acres of land and a 3,500 square-foot building.

The sale of the Newnan Property was completed on August 5, 2010. In total, the Receivership received proceeds of \$1,750,000 from the sale of the Newnan Property. Prior to the sale of this property, the Receiver received opinions from real estate professionals in

the area that the property was valued between \$1.2 million and \$1.4 million. For more information regarding the sale of the Newnan Property, please refer to prior Interim Reports.

**7. Fairview, North Carolina.**

On March 30, 2009, the Court granted the Receiver's motion (Doc. 98) for possession of property located in Fairview, North Carolina (the "**Fairview Property**"). (Doc. 100.) Nadel and his wife purchased the Fairview Property for \$335,000 on June 14, 2004. The Fairview Property was a secondary residence of the Nadels and is located in the mountains of North Carolina. The Fairview Property has one known encumbrance: a loan with BB&T Bank on which there is a remaining principal balance of approximately \$248,941.73. The Receiver received two offers for the purchase of the Fairview Property. One offer was below what the Receiver believed to be the fair market value of the property. The Receiver negotiated with the other prospective buyer; however, the buyer was unable to obtain financing. The Receiver retained \$2,000 from funds put in escrow by this prospective buyer. Parties interested in purchasing the Fairview Property should contact:

*The Armour Team*  
Mike and Nona Armour  
Keller Williams Professionals  
86 Asheland Avenue  
Asheville, NC 28801  
Mike Armour: (828) 771-2342  
Nona Armour: (828) 771-2336  
<http://armourteam.homesandland.com>, listing ID #13704540

**8. Sarasota, Florida (Fruitville Road).**

On July 8, 2009, the Court granted the Receiver's motion (Doc. 146) for possession of property located at 15576 Fruitville Road in Sarasota, Florida (the "**Fruitville Property**"). (Doc. 148.) To purchase the property, Nadel paid a \$5,000 deposit on March 5, 2003, and

\$201,163.93 at closing. The Fruitville Property is residential property that was purchased in the names of Nadel and Mrs. Nadel, was deeded to their trusts, and was rented to third parties. Presently, the tenant pays a monthly rent of \$500. The Fruitville Property has one known encumbrance: a loan with Northern Trust on which there is a remaining principal balance of approximately \$173,929.23.

Parties interested in purchasing the Fruitville Property should contact:

Sharon Chiodi  
Sotheby's International Realty  
50 Central Avenue, Suite 110  
Sarasota, Florida  
Phone: (941) 364-4000  
Fax: (941) 364-9494  
Email: [sharon.chiodi@sothebyrealty.com](mailto:sharon.chiodi@sothebyrealty.com)

## **9. Oberlin, Ohio.**

The Receiver had title to a condominium in Oberlin, Ohio (the “**Oberlin Property**”). The Oberlin Property was purchased on or about September 23, 2003, with the funds of Intex Trading Corp. (“**Intex**”)<sup>9</sup> and was originally titled in Nadel’s name. There were no known encumbrances on the Oberlin Property. On September 2, 2011, the Receiver filed an unopposed motion to approve the sale of the Oberlin Property (Doc. 650). The Court granted the motion in its entirety on September 6, 2011 (Doc. 651). In pertinent part, the Order approved the sale of the Oberlin Property for \$100,000 less pro-rated real estate taxes for 2011 up to the date of the closing. The purchaser provided the Receiver with \$1,000 in

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<sup>9</sup> Nadel created Intex and at all times was its sole director and officer. Intex was the General Partner of Scoop Investments, Ltd., which is the predecessor of Victory Fund. On November 27, 2002, Scoop Investments, Ltd. was renamed Victory Fund, Ltd. On December 20, 2002, Intex was replaced by Receivership Entity, Scoop Capital, as Victory Fund’s general partner.

earnest money and paid the balance of the purchase price at closing, which occurred on September 12, 2011. The Receivership estate netted approximately \$98,383.30 from the sale of the property after payment of pro-rated real estate taxes. The Receiver believes this sale was in the best interest of the Receivership and that the purchase price represented the fair market value of the Oberlin Property.

**10. Sarasota, Florida (La Bellasara).**

On January 28, 2010, the Court granted the Receiver's motion (Doc. 324) for possession of property located at 464 Golden Gate Point, Unit 703, Sarasota, Florida (the "**Bellasara Property**"). (Doc. 327.) The Bellasara Property is a residential condominium unit in a building called La Bellasara. (Doc. 100.) On or about May 23, 2006, Neil Moody as Trustee of the Neil V. Moody Revocable Trust dated February 9, 1995 purchased the Bellasara Property for \$2,160,000. The Bellasara Property was Neil Moody's primary Florida residence. The Bellasara Property has two known encumbrances: a primary mortgage loan from MSC Mortgage, LLC in the amount of \$956,000 and a home equity line of credit from Wells Fargo Bank N.A. with an initial balance of \$880,000, both of which were obtained by Neil Moody on or about the date of the closing of the purchase of the Bellasara Property. The Bellasara Property is currently subject to a foreclosure proceeding in the Twelfth Circuit in and for Sarasota County, Florida. The Receiver has notified all parties in the pending foreclosure to effectively stop the proceeding and has undertaken to market the property and negotiate with the lenders in an effort to generate money for the Receivership estate. Parties interested in purchasing the Bellasara Property should contact:

Sharon Chiodi  
Sotheby's International Realty

50 Central Avenue, Suite 110  
Sarasota, Florida  
Phone: (941) 364-4000  
Fax: (941) 364-9494  
Email: [sharon.chiodi@sothebyrealty.com](mailto:sharon.chiodi@sothebyrealty.com)

**11. Evergreen, Colorado.**

The Receiver has possession and control of property located at 30393 Upper Bear Creek Road, Evergreen, Colorado (“**Evergreen Property**”). The Evergreen Property is a residential property that was used by Neil and Sharon Moody. The property was purchased in 1988 for \$290,000. The Evergreen Property has one known encumbrance: a loan with Wells Fargo on which there is a remaining balance of approximately \$387,778.56 as of May 2011. Parties interested in purchasing the Evergreen Property should contact:

Yvette Putt  
Fuller Sotheby’s International Realty  
32156 Castle Court, Suite 201  
Evergreen, Colorado  
Phone: (303) 674-3200  
Fax: (303) 526-0828  
Email: [yputt@fullerproperties.com](mailto:yputt@fullerproperties.com)

**12. Tazewell, Tennessee.**

The Receiver has possession and control of property located at 780 Woodlake Blvd., Tazewell, Tennessee (“**Tazewell Property**”). The Tazewell Property is an undeveloped lot in a golf community that the Receiver obtained through a settlement with Profiteers. The property was purchased in 2007 for \$60,000. The Tazewell Property has no known encumbrances. Parties interested in purchasing the Tazewell Property should contact:

Debbie K. Snyder  
2178 Highway 25E, Suite 4  
Tazewell, TN 37879

Phone: (423) 626-5820  
Fax: (423) 626-6020  
Email: [dsnyder@lakesiderealty-tn.com](mailto:dsnyder@lakesiderealty-tn.com)

**13. Sarasota, Florida (Jefferson Avenue).**

The Receiver had possession and control of a condominium located at 774 North Jefferson Avenue in Sarasota, Florida (“**Jefferson Avenue Property**”). The Jefferson Avenue Property is a residential property that was used by an employee of the Florist. The employee had executed a promissory note payable to Mrs. Nadel for \$126,556.24 which was secured by a mortgage on the property. The employee defaulted on the note. The Receiver obtained the property through a foreclosure and judicial sale as a result of the default.

The Sarasota County Property Appraiser assessed the fair market value of the Jefferson Avenue Property at \$51,700 in 2010. On May 18, 2011, the Receiver filed an unopposed motion to approve the sale of the Jefferson Avenue Property (Doc. 629). The Court granted the motion on the same day (Doc. 630). In pertinent part, the Order approved the sale of the Jefferson Avenue Property for an offer of \$55,000. The purchaser provided the Receiver with \$5,000 in earnest money and paid the balance of the purchase price at closing, which occurred on May 31, 2011. The Receivership estate netted approximately \$48,347.79 from the sale of the property after payment of commissions and other expenses associated with the sale. The Receiver believes that this sale was in the best interest of the Receivership and that the purchase price represents the fair market value for the Jefferson Avenue Property.

**C. Recovery of Vehicles and Other Items.**

**1. Vehicles.**

The Receiver took control of seven vehicles. Three of the vehicles were surrendered to respective leasing companies without penalty and without the lessor retaining any claim to Receivership assets. The remaining four vehicles were sold for a total of \$32,175. For more information regarding these vehicles and their disposition, please refer to prior Interim Reports.

**2. Condominium Note and Mortgage.**

On April 30, 2009, the Court granted the Receiver exclusive interest in a note and mortgage for the Jefferson Avenue Property. (Doc. 116.) The condominium's owner, an employee of the florist (*see* Section V.A.6 above), had executed a promissory note payable to Mrs. Nadel for \$126,556.24. The note was secured by a mortgage held by Mrs. Nadel. On February 9, 2009, Mrs. Nadel assigned the note and mortgage to Nadel's former criminal defense attorneys, who subsequently assigned the note and mortgage to the Receiver, per the Court's order. The condominium's owner was in default, and the Receiver initiated foreclosure proceedings. A summary judgment hearing was held on June 18, 2010 and an order of foreclosure was entered the same day. A judicial sale of the property was held on October 12, 2010. (*See* Section V.B.13 above for a discussion of the disposition of the condominium).

The Receiver filed a Motion for Deficiency Judgment on October 26, 2010. After a hearing on the motion, on February 2, 2011, the Court entered a Deficiency Judgment against

the former owner in the amount of \$99,963.37. The Receiver recorded this judgment and is taking appropriate steps to attempt to collect on it.

### **3. Bonds.com Assets.**

The Receiver's investigation revealed that proceeds of the scheme were used to fund a number of assets related to Bonds.com, Inc. ("**Bonds.com**"). Bonds.com is a registered securities broker dealer established in 2007. Bonds.com developed and operates an online trading platform for the sale of fragmented lots of fixed income securities. Through the course of the Receivership, the Receiver has obtained control of interests and related rights in Bonds.com, including promissory notes and shares of stock.

#### Promissory Notes

The Receiver has five (5) promissory notes from Bonds.com in the total amount outstanding of \$1,840,636. The notes are as follows:

- 1) A term note issued to Valhalla Investment Partners with a principal amount due of \$100,000. The principal amount of this note when the Receiver took possession of it was \$400,000. Through the course of the Receivership the Receiver has received three payments on this note totaling \$332,875, which included \$300,000 of principal and \$32,875 of accrued interest;
- 2) A convertible note in the amount of \$203,800 also issued to Valhalla Investment Partners, convertible to 849,167 shares of Bonds.com stock;
- 3) A convertible note issued to Chris Moody in the amount of \$1,236,836, convertible to 5,153,483 shares of Bonds.com stock;

- 4) A convertible note issued to Chris Moody in the amount of \$50,000, convertible to 208,333 shares of Bonds.com stock; and
- 5) A convertible note issued to Neil Moody in the amount of \$250,000, convertible to 1,041,667 shares of Bonds.com stock.

The term note accrues interest at 9% and the convertible notes accrue interest at 10%. The notes are in part secured by the domain name [www.bonds.com](http://www.bonds.com). With the exception of the term note, the rest of the promissory notes are convertible to Bonds.com shares of stock at the Receiver's option. No payments have been made on the convertible notes.

In October 2010, senior management from the company met with the Receiver to discuss its current financial condition. Senior management asked the Receiver (and other noteholders) to consent to the restructuring of Bonds.com's debt obligations to allow Bonds.com to raise much-needed capital to continue its business operations. The success of Bonds.com would be of significant benefit to the Receivership Estate. Accordingly, on October 18, 2010, the Receiver filed a Motion for Leave to Agree to Restructuring Transactions with Bonds.com (Doc. 499). The Court granted the motion on October 19, 2010 (Doc. 500). In pertinent part, the Receiver agreed to a three-year extension on the above promissory notes. Although the Receiver agreed to the three-year extension, he was given the right to demand payment on these notes beginning on April 22, 2012, with the then-outstanding and accrued interest payable in full 90 days from the date of demand. The Receiver further agreed to a modification to the current anti-dilution protections applicable to the Receiver's equity interests discussed below to the same anti-dilution protections afforded to new strategic investors.

In exchange for the Receiver's consent to the restructuring, Bonds.com agreed to use commercially reasonable best efforts to provide the Receiver with a first priority security interest in the Bonds.com domain name. As of October 18, 2010, approximately two-thirds of noteholders other than the Receiver had agreed to subordinate their security interests in the domain name to those of the Receiver. Further, Bonds.com granted the Receiver (and other noteholders) the right to receive additional shares of common stock if Bonds.com does not meet certain performance thresholds within a year from the date of the restructuring. In light of Bonds.com's capital requirements, a capital infusion was necessary for the company to continue operating. Due to that circumstance and the potential beneficial impact to the Receivership if the company is successful, the Receiver believes that the agreements outlined above are in the best interests of the Receivership.

#### Shares of Stock

The Receiver has possession and control of 7,582,850 unrestricted shares of stock in Bonds.com. As of December 13, 2011, the shares are valued at approximately \$530,799.50 (\$0.07 per share of common stock). For more information regarding how the Receiver obtained these shares, please refer to prior Interim Reports.

At this time, the stocks are thinly traded and their realizable value is highly dependent upon the success of the company in the near-to-intermediate term. If the Receiver were to sell all of these shares through the secondary market, assuming the market could absorb the sell order, the shares would likely have to be sold at a substantial discount compared to the then-current price per share being traded on the OTC Bulletin Board. In other words, the proceeds from such a secondary market sale would most likely equal to only a small fraction

of the current market value stated above. The Receiver is working to sell the Receivership's interests in Bonds.com at a price that is beneficial to the Receivership estate.

#### **4. Quest EMG Promissory Note.**

As mentioned above in Section V.A.7, the Receiver also has a promissory note from Quest EMG and two individuals to Valhalla Investment Partners in the amount of \$1,100,000. Interest is being paid monthly on this note.

#### **5. Miscellaneous Items.**

The Receiver recovered a myriad of other items that he may be able to sell, including a variety of furniture, artwork, sculptures, fixtures, computers, and miscellaneous supplies. The Receiver will make reasonable efforts to maximize the amount he is able to recover from the possible sale of these items.

The Receiver also obtained possession of jewelry from Queen's Wreath Jewels, Inc., Mrs. Nadel, Sharon Moody, and another Profiteer. Through an auction, the Receiver successfully sold 39 pieces of jewelry for a total of approximately \$643,890, which substantially exceeded pre-auction estimates of \$300,000 to \$550,000. After the payment of commission and other related expenses, the Receivership estate realized approximately \$591,663.85 from the sale of this jewelry.

#### **D. Recovery of Assets from the Moodys.**

The Receiver's investigation has revealed that a significant portion of activities of certain Hedge Funds should have been managed and directed by the Moodys. Together, the Moodys received approximately \$42 million in fees from certain Receivership Entities.

In April 2009, the Receiver initiated contact with the Moodys' counsel. On April 17, 2009, the Receiver received a letter from the Moodys agreeing that they would not transfer any assets of value owned by them, nor would they remove any such assets from the state of Florida without prior written notice to the Receiver. Chris Moody has satisfied this commitment and has fully cooperated with the Receiver in connection with the turnover of all of his assets. On January 19, 2010, Chris Moody gave the Receiver a power of attorney which allows the Receiver to effectuate the transfer of most of his assets without any direct participation from Chris Moody.

The Receiver met with Chris Moody, confirmed the assets he owned, and reviewed in detail Chris Moody's interests and liabilities in those assets. Meaningful assets the Receiver has identified are delineated on the attached **Exhibit C**. Where possible, the Exhibit provides percentage of interest acquired or purchase price, the estimated value, and status or disposition of the asset. For the most part, the Receiver is continuing to evaluate these assets and will take appropriate actions as he determines are in the best interests of the Receivership. Any entity in which the Receiver believes he may have a viable interest or potential for meaningful recovery has been put on notice of the Receiver's interests and rights.

Additionally, Chris Moody surrendered all bank and brokerage accounts to the Receiver. On February 24, 2010, Chris Moody sent the Receiver a check in the amount of \$8,085 which represented the total balance in Chris Moody's personal bank account. Shares of stock were transferred to accounts held by the Receiver. In addition to the Bonds.com

interests discussed above, the Receiver also received the shares of stock identified on Exhibit B.

The Receiver has reached an agreement with Neil Moody contingent upon the Court's approval wherein he agrees to cooperate with the Receiver to effect the orderly transfer of all of his meaningful assets and to provide assistance, as necessary, in connection with the Receiver's efforts to recover monies from third parties. Neil Moody's assets include (1) personal property; (2) real property; (3) bank and brokerage accounts; (4) various corporate interests, including the Bonds.com interests discussed above; and (5) the tax refund also discussed above. The Receiver sent the agreement to the Commission for its review. The Commission requested additional information regarding certain of Neil Moody's assets. The Receiver is working on providing this information to the Commission. The Receiver will provide pertinent details of the agreement and Neil Moody's assets in a future Interim Report after the Commission has completed its review.

On January 28, 2010, the Receiver obtained possession of a condominium owned by Neil Moody in Sarasota (*see* Discussion at V.B.10 above for Bellasara Property; Order, Jan. 28, 2010 (Doc. 327)).

#### Enforcement Action Instituted Against Moodys

On January 11, 2010, the Commission instituted an enforcement action against the Moodys alleging that they violated antifraud provisions of the federal securities laws in connection with their involvement in Nadel's scheme. *See generally SEC v. Neil V. Moody, et al.*, Case No. 8:10-cv-00053-T-33TBM (M.D. Fla.) (the "**Moody SEC Action**"), Compl. (attached as Exhibit A to Doc. 325). Also on January 11, 2010, Neil Moody and Chris

Moody, without admitting or denying the allegations of the complaint, consented to entry of a permanent injunction and agreed to disgorge all ill-gotten gains upon the Commission's request. (Moody SEC Action, Consent of Def. Neil V. Moody ¶ 3, Doc. 2, Ex. 2) (also attached as Ex. B to Doc. 325.); (Moody SEC Action, Consent of Def. Christopher D. Moody ¶ 3, Doc. 2, Ex. 1). On April 7, 2010, Judgments of Permanent Injunction and Other Relief were entered against Neil and Chris Moody. (Moody SEC Action, Docs. 9 (Neil Moody) and 9-1 (Chris Moody)). The Judgments permanently enjoin Neil and Chris Moody from further violations of the antifraud provisions of the federal securities laws. The Judgments also allow the Commission to seek an order for disgorgement of ill-gotten gains and/or a civil penalty.

**E. Litigation.**

In January 2010, the Receiver filed **134** lawsuits seeking **\$71,096,326.43**. The lawsuits seek (1) the recovery of false profits from investors; (2) the recovery of distributions from Receivership Entities to Neil and Sharon Moody, Donald and Joyce Rowe, and certain of their affiliated entities; (3) the recovery of other distributions, such as commissions, from other individuals and/or entities; and (4) the recovery of certain charitable contributions made with scheme proceeds. The Receiver also continues to pursue malpractice litigation against Holland & Knight and continues to evaluate possible additional litigation. Not including the litigation against Holland & Knight, as of December 13, 2011, 45 lawsuits filed by the Receiver remain pending in one of several forums.

## **1. Recovery of “Investment” – Related Transfers from Investors.**

As discussed in Section III.C above, the Receiver has determined that some purported investor accounts received monies in an amount that exceeded their investments. These purported profits were false because they were not based on any trading or investment gain, but rather were fruits of a Ponzi scheme that consisted of commingled funds of new and existing investors. To date, the Receiver has discovered approximately \$35 million in such “false profits.” The Receiver spent substantial time identifying recipients of these false profits (the “**Profiteers**”). In consultation with the Commission, the Receiver concluded that, in the best interests of the Receivership Entities and the investors as a whole, these inequitable distributions should be recovered and distributed in an equitable manner among Claimants holding legitimate and allowed claims (as to be determined by the claims process).

As of November 30, 2011, the Receiver reached settlements with **135** Profiteers for a total sum of **\$19,523,449.53** (plus additional non-cash assets). The Court has approved all 135 of these settlements. During the time covered by this Interim Report, the Receiver settled 14 cases for the total amount of \$1,838,631.76.

In January 2010, the Receiver initiated **121** lawsuits against Profiteers seeking to recover total false profits of approximately **\$32,755,269.13** (“January 2010 Cases”). The complaints set forth claims for unjust enrichment and fraudulent transfers pursuant to Florida’s Uniform Fraudulent Transfer Act (“**FUFTA**”). Except in situations where defendants had, or should have had, knowledge of the fraudulent investment scheme or otherwise cannot satisfy the pertinent good-faith standard, the Receiver is seeking to recover false profits but not the amount equivalent to the principal investment. Individuals and/or

entities who the Receiver believes cannot satisfy the good-faith defense are discussed in subsections V.E.2 and V.E.3 immediately below.

The Receiver is proceeding with this litigation. Scheduling conferences required by Rule 16 of the Federal Rules of Civil Procedure have been held for all of the January 2010 Cases. At these conferences, the Court ordered the parties to mediate all cases before proceeding with litigation except those brought to recover charitable contributions discussed in Section E.4 below. The Court stayed all formal discovery and set deadlines for responses to the complaints for after the mediations had been conducted. All January 2010 Cases which remain pending were mediated as of April 2011. The Receiver mediated 70 of these cases, and as a result of those mediations, 26 cases were fully resolved.

The parties also attended additional Rule 16 conferences by order of the court for purposes of further scheduling to efficiently manage the cases. Discovery is ongoing in all pending January 2010 cases. Responsive pleadings, including motions to dismiss, answers and motions to compel arbitration, also have been filed in all of these cases. For instance, in one case, *Wiand, as Receiver v. Henry M. Buhl*, Case No. 8:10-cv-75-T-17MAP (M.D. Fla.), the defendant filed a motion to strike the amended complaint or, alternatively, dismiss the complaint claiming in pertinent part that the Court lacked both personal and subject matter jurisdiction, failed to state a claim, failed to plead fraud with particularity, and failed to adequately plead the debtor-creditor relationship. (*See* Doc. 53.) On November 3, 2011, the Honorable Magistrate Judge Mark A. Pizzo (the “**Magistrate Judge**”) issued a Report and Recommendation in which he recommended the motion be denied in its entirety and found that the Court had subject matter and personal jurisdiction and that all claims were

adequately pled (Doc. 67). The Honorable United States District Judge Elizabeth A. Kovachevich (the “**United States District Judge**”) entered an order adopting the Report and Recommendations on December 6, 2011 (Doc. 72). Similarly, in *Wiand, as Receiver v. Dancing \$, LLC*, Case No. 8:10-cv-92-T-17MAP (M.D. Fla.), the defendant moved to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure claiming that the Receiver lacked standing to bring an action under FUFTA or assert claims of unjust enrichment (Doc. 23). On November 21, 2011, the Magistrate Judge issued a Report and Recommendation denying this motion in full (Doc. 56).

Further, on February 14, 2011, in *Wiand, as Receiver v. David H. Boshart and Helen H. Boshart*, Case No. 8:10-cv-74-T-17MAP (M.D. Fla.), one defendant moved for summary judgment claiming, among other things, that the FUFTA claims against him were untimely (Doc. 20). The Receiver filed his opposition to this motion on April 4, 2011 (Doc. 29), and on June, 8, 2011, the Magistrate Judge issued a Report and Recommendation on that motion (Doc. 35). He recommended that the motion be granted in part and denied in part. Specifically, the Magistrate Judge concluded that the Receiver’s claims under Fla. Stats. §§ 726.105(1)(b) and 726.106(1) and for unjust enrichment could not be tolled and are subject to a four-year statute of limitation, but that his claim under Fla Stats. § 726.105(1)(a) was timely under the discovery provision of Fla Stats. § 726.110(1). In all other respects, the Magistrate Judge recommended that the motion be denied.

On May 25, 2011, the Receiver filed an Omnibus Motion for Partial Summary Judgment (“Summary Judgment Motion”) in all January 2010 Cases still pending. Specifically, the Receiver seeks summary judgment on the following: (1) Nadel’s guilty plea

establishes that he operated the Hedge Funds as a Ponzi scheme from 1999 to January 2009; (2) because Nadel operated the Hedge Funds as a Ponzi scheme from 1999 to January 2009, every transfer of an asset from a Hedge Fund during that time was made with actual intent to hinder, delay, or defraud creditors of the Hedge Funds; and (3) because Nadel operated the Hedge Funds as a Ponzi scheme from 1999 to January 2009, during that period each of the Hedge Funds and Nadel were insolvent. If summary judgment is not entered on issues (1) and (2) above, the Summary Judgment Motion seeks summary judgment that: because Nadel pled guilty to securities fraud, mail fraud, and wire fraud, every transfer of an asset from a Hedge Fund during that period was made with actual intent to hinder, delay, or defraud creditors of the Hedge Funds. The Receiver has requested oral argument. No ruling has been made yet on this Motion.

In 23 of the January 2010 Cases, Defendants filed motions to compel arbitration. The Receiver opposed these motions. Oral argument was held before the Magistrate Judge on April 25, 2011. On June 8, 2011, the Magistrate Judge issued his Omnibus Report and Recommendation. In short, the Report and Recommendation referred the cases to arbitration. The Receiver filed objections to the Report and Recommendation on June 22, 2011. On September 29, 2011, the United States District Judge adopted the Report and Recommendation in Toto. The Receiver requested permission to appeal this decision. On October 31, 2011, the Court granted the Receiver permission to pursue the appeal of this decision (Doc. 669).<sup>10</sup> Notices of Appeal were filed on October 31, 2011. The Receiver is in

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<sup>10</sup> Two of these 23 cases have since been resolved. As such, 21 cases have been referred to arbitration and are the subject of the appeal.

the process of receiving and reviewing briefing schedules for the appeals.

On or about September 27, 2010, the Receiver filed 12 additional actions against Profiteers who invested with Traders “accounts.” The lawsuits seek to recover false profits of approximately \$962,197.43. In anticipation of initiating these lawsuits, the Receiver filed a Motion to Reappoint Receiver (Doc. 492). That motion was granted on September 23, 2010. (Order, Doc. 493.) Rule 16 scheduling conferences have been held for the majority of these cases. As with the January 2010 cases, the Court ordered the parties to mediate the cases before proceeding with litigation. The Court also stayed all formal discovery and set deadlines for responses to the complaints for after the mediations had been conducted. The Receiver mediated three of these cases and, as a result of those mediations, one case was resolved. Seven of the remaining cases have been resolved either by default, settlement prior to mediation, or dismissal without prejudice. The Receiver is working on obtaining default judgments for the two cases where defaults were entered. Only four cases remain pending. Of those four, discovery is proceeding in two cases and Rule 16 conferences have not yet been held for the other two.

On April 20, 2011, the Receiver filed a Motion for Approval to Serve Proposals for Settlement in connection with Ancillary Actions (Doc 617). The Receiver sought to serve proposals for settlement pursuant to Fla. Stat. § 768.79 to (1) encourage settlement of the ancillary actions, which would help preserve Receivership assets while increasing assets available for distribution, and (2) avoid the need to seek Court approval of the settlement if the proposal is accepted. The Court granted the motion on April 21, 2011 (Doc. 618). From April 21, 2011 through May 25, 2011, the Receiver has sent 44 proposals for settlement.

The Receiver believes that he has identified all of the Profiteers. However, the Receiver is verifying that identification and will bring additional actions if appropriate and in the best interests of the Receivership. The Receiver is continuing to engage in settlement discussions with defendants of the lawsuits discussed above.

## **2. Litigation against Moodys and Rowe.**

### **a. Moodys.**

On January 20, 2010, the Receiver filed suit against Neil V. Moody, individually and as Trustee of the Neil V. Moody Revocable Trust; Sharon G. Moody, individually and as Trustee of the Sharon G. Moody Revocable Trust; and the Neil V. Moody Charitable Foundation, Inc. (collectively the “**Moody Defendants**”) for the return of **\$28,341,953.10**. *See Wiand, as Receiver v. Neil V. Moody, et al.*, Case No. 8:10-cv-249-T-17MAP (M.D. Fla.).

On November 5, 2010, the Receiver filed a motion to approve the settlement of all claims asserted against Sharon G. Moody in her individual capacity and in her capacity as Trustee of the Sharon G. Moody Trust (collectively referred to as “**Ms. Moody**”) (Doc. 516). The Court approved the settlement in its entirety on November 8, 2010 (Doc. 517). In pertinent part, the Receiver agreed to settle all claims against Ms. Moody in exchange for the following: (1) payment of \$39,000 within 5 business days after the Court’s approval of the settlement agreement; (2) conveyance of title to real property located in Evergreen, Colorado (which according to an appraisal obtained by the Receiver and a separate realtor’s estimate, has approximately \$450,000 to more than \$500,000 in equity); (3) transfer by Ms. Moody to the Receiver of all jewelry, furnishings, antiques, and other personal property in the

possession, custody, or control of Ms. Moody which was funded by Neil Moody (which items had a collective purchase price of approximately \$350,000 or greater); and (4) transfer and assignment by Ms. Moody to the Receiver of any and all claims Ms. Moody has or may have for tax refunds arising from her investment in the Receivership Entities (the Receiver has already received \$417,964 in tax refunds for Ms. Moody, *see* Section IV.C.1, above).

The Receiver believes that the settlement with Ms. Moody is in the best interests of the Receivership because resolution of these claims avoids protracted litigation, conserving Receivership assets and judicial resources; avoids the risk of litigation and of an unfavorable outcome; and, in the event of a favorable outcome, avoids a significant risk of not being able to fully collect on any eventual judgment.

As discussed above, the Receiver has reached an agreement in principle with Neil Moody which would resolve the remainder of this litigation. The Receiver will provide the pertinent details of this agreement in a future Interim Report after the Commission has completed its review of the agreement.

**b. Rowe.**

On January 20, 2010, the Receiver filed suit against Donald Rowe (“**Rowe**”), individually and as Trustee of the Wall Street Digest Defined Benefit Pension Plan, Joyce Rowe, and Carnegie Asset Management, Inc. (“**CAM**”) (collectively “**Rowe Defendants**”) for the return of **\$8,610,428.90**, which includes approximately \$2,106,568.89 in false profits. *See Wiand, as Receiver v. Donald Rowe, et al.*, Case No. 8:10-cv-245-T-17MAP (M.D. Fla.). As set forth in the Complaint, Donald Rowe, both in his individual capacity and as Trustee of the Wall Street Digest Defined Benefits Pension Plan, and Joyce Rowe were investors in one

or more of the Hedge Funds and received distributions of purported trading profits or purported principal redemptions in connection with their investments which do not satisfy FUFTA's "good faith" standard and which are unjust. The Receiver seeks to recover those transfers under FUFTA, or alternatively, seeks disgorgement of those amounts pursuant to equitable claims of unjust enrichment.

Rowe played a key role in Nadel's scheme, and was also a major financial beneficiary as he, his wife, and his entities received millions of dollars of investor funds. He actively solicited a large number of investors in violation of federal and state securities laws. He also repeatedly touted and recommended the Hedge Funds in his investment newsletter, "The Wall Street Digest," and in "reports." He extolled that the Hedge Funds were managed by "America's Top-Ranked Money Manager" or with similar praise. In addition to Rowe's violation of various state and federal securities laws by his general solicitation of investors for the Hedge Funds, he further violated these laws by: (1) his receipt of purportedly performance-based fees and commissions for soliciting investors even though neither he nor his entities were registered with the State of Florida or the Commission as a broker/dealer, associated person of a broker/dealer, or an investment adviser; and (2) his repeated material omissions and misrepresentations made in connection with his solicitation of investors.

Further, CAM (and Carnegie Wealth Management ("CWM"), a division of CAM) also received certain funds from the Hedge Funds under the terms of a purported "Non-Solicitation Agreement." This Agreement was merely a financial settlement pursuant to which money from the Hedge Funds was transferred to CAM and CWM for "management" and "performance" fees Rowe claimed he was supposed to receive for his referral and

solicitation of investors to the Hedge Funds. The Receiver believes this Agreement was fraudulent and nothing more than a document designed for the sole purpose of paying improper fees to CAM and CWM. The Receiver seeks to recover all such sums distributed to CAM and CWM from Receivership Entities.

The Hedge Funds also paid “management” and “performance” fees based on the purported value and performance of the Hedge Funds to another entity controlled by Rowe, Wall Street Online (“WSO”). WSO is now defunct, however, the Receiver has information and believes that its assets remain under Donald Rowe’s control. The Receiver seeks to recover all such sums distributed to WSO from Receivership Entities.

The parties mediated this matter on September 13, 2010 and September 28, 2010, but were unable to reach an accord. The Rowe Defendants filed an answer on January 27, 2011 (Doc. 39). The Receiver filed a motion for partial summary judgment on May 25, 2011 (Doc. 40) and requested oral argument (Doc. 42). No order has been issued on this motion. The trial in this matter is currently set for March 2012. The parties are engaging in discovery.

### **3. Recovery of Fees from Recipients of Commissions or Other Transfers.**

Information available to the Receiver revealed that at least three individuals received commissions as “compensation” under circumstances that warrant the Receiver’s recovery of those sums.<sup>11</sup> In January 2010, the Receiver initiated lawsuits against these three individuals.

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<sup>11</sup> The Receiver also determined that two entities received improper distributions in connection with Nadel’s Scheme: GQ Digital Home Integration, Inc. and Alpha Ventures  
(footnote cont’d)

See *Wiand, Receiver v. Kelvin V. Lee and Barbara Lee*, Case No. 8:10-cv-251-T-17MAP (M.D. Fla.) (seeking the return of \$93,921.28 in purported fees and \$33,077.26 in false profits); *Wiand, Receiver v. Michael Corcione*, Case No. 8:10-cv-234-T-17MAP (M.D. Fla.) (seeking the return of \$7,500 in purported fees); and *Wiand, Receiver v. Steve Ellis*, Case No. 8:10-cv-233-T-17MAP (M.D. Fla.) (seeking the return of \$62,299.64 in purported fees). The Hedge Funds paid the Defendants in these cases “management” and “performance” fees based on the purported value and performance of the Hedge Funds. The Receiver seeks to recover those transfers under FUFTA, or alternatively, seeks disgorgement of those amounts pursuant to equitable claims of unjust enrichment.

The Receiver has resolved the *Lee* and *Corcione* matters for a total payment of \$137,121.09. For details regarding these settlements, please refer to prior Interim Reports.

#### **4. Recovery of Charitable Contributions Made with Scheme Proceeds.**

Nadel formed the Guy-Nadel Foundation in December 2003 as a non-profit corporation for charitable, educational and scientific purposes. The Foundation was funded solely with proceeds of Nadel’s scheme. All money Nadel wrongfully caused to transfer or pay to the Foundation was diverted and misappropriated by him in connection with his scheme. The Receiver has discovered that from 2000 through 2008, the Guy-Nadel Foundation made a total of \$2,484,589 in contributions to various non-profit and charitable organizations.

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Securities Company. Both of these matters have been resolved. For further information regarding these matters, please refer to prior Interim Reports.

The Receiver has focused his attention on the organizations that received the most misappropriated funds. The Receiver sought to obtain tolling agreements from all of these organizations so he could contemplate the appropriate action to take regarding these significant disbursements. Three organizations did not provide such agreements and one refused to extend a tolling agreement it had entered with the Receiver upon its expiration, thus the Receiver had no recourse but to initiate actions against them. *See Wiand, as Receiver v. Catholic Charities, Diocese of Venice, Inc.*, Case No. 8:10-cv-247-T-17MAP (M.D. Fla.) (seeking the return of \$40,000) (the “**Catholic Charities**”); *Wiand, as Receiver v. Diocese of Venice in Florida, Inc.*, Case No. 8:10-cv-247-T-17MAP (M.D. Fla.) (seeking the return of \$370,000) (the “**Diocese**”); *Wiand, as Receiver v. Sarasota Opera Association, Inc.*, Case No. 8:10-cv-248-T-17MAP (M.D. Fla.) (seeking the return of \$353,125) (the “**Sarasota Opera**”); *Wiand, as Receiver v. The Florida House Foundation of Sarasota, Inc.*, Case No. 8:10-cv-2071-T-17MAP (seeking the return of \$61,000) (the “**Florida House**”).

The Diocese, Catholic Charities, and Sarasota Opera Association each filed a motion to dismiss the Receiver’s complaint. (*See Catholic Charities*, at Doc. 31; *Diocese*, at Doc. 31; and *Sarasota Opera*, at Doc. 32.) On March 3, 2011, the Receiver filed responses to each of those motions, and on July, 11, 2011, the Magistrate Judge issued Reports and Recommendations on those motions. He recommended that the motions be granted in part and denied in part. Specifically, the Magistrate Judge concluded that the Receiver’s claims under Fla. Stats. §§ 726.105(1)(b) and 726.106(1) and for unjust enrichment could not be tolled and are subject to a four-year statute of limitation, but that in all other respects the motions should be denied, including with respect to the defendants’ attempt to limit in any

way the “reach-back” period of the Receiver’s fraudulent transfer claims under Fla. Stats. § 726.105(1)(a). On September 26, 2011, the United States District Judge adopted the Magistrate Judge’s Report and Recommendation in its entirety.

On May 25, 2011, the Receiver also filed the Partial Summary Judgment Motion discussed above in the actions against these organizations. On August 5, 2011, the Diocese, Catholic Charities, and Sarasota Opera Association each filed a Motion for Partial Summary Judgment as to the Receiver’s claim under Fla. Stats. §§ 726.105(1)(a) based essentially on the argument that the presumption that all transfers made during a Ponzi scheme are made with fraudulent intent does not apply to it. On August 22, 2011, the Receiver filed his opposition to these motions. The Court has not ruled on any of the summary judgment motions yet.

*Diocese, Catholic Charities, and Sarasota Opera* were mediated on August 8, 2011. The parties were unable to reach an accord. Trial dates have been set for these matters for March 2012. Florida House provided the Receiver with financial documents and an affidavit to prove its current financial condition rather than respond to the complaint. Based on those documents and sworn statements, the Receiver determined that Florida House has no collectible assets nor does it have an expectation of receiving assets in the near future. Therefore, the Receiver dismissed the Florida House case without prejudice.

The Receiver has also attempted to reach resolutions with the charities that entered tolling agreements which are still in effect. The Receiver reached a settlement agreement with one such charity and is in negotiations with others. If no resolution is reached soon, the Receiver will have no choice but to initiate actions against these organizations as well.

## **5. Class Action Litigation.**

On March 20, 2009, Johnson, Pope, Bokor, Ruppel & Burns, LLP on behalf of investor Michael Sullivan and others similarly situated, instituted a class action suit against Holland & Knight, LLP (“**H&K**”), the law firm that prepared the private placement memoranda used to solicit investors into the Nadel scheme, *Michael Sullivan v. Holland & Knight LLP*, Case No. 09-cv-0531-EAJ (M.D. Fla.). On March 31, 2010, the federal court entered an order of dismissal based on the determination that this class action was preempted by the Securities Litigation Uniform Standards Act of 1998 (“**SLUSA**”). The plaintiffs filed a motion for reconsideration of this determination on April 7, 2010. No ruling on the plaintiff’s motion for reconsideration has been issued yet.

## **6. Receiver’s Litigation Against Holland & Knight LLP.**

The Receiver entered into a contingency fee agreement with Johnson Pope whereby Johnson Pope will pursue professional malpractice claims by the Hedge Funds against H&K, seeking to recover as much as possible of the approximately \$168 million out-of-pocket losses suffered by investors. (*See also* Order dated August 12, 2009 (Doc. 175).) On or about August 31, 2009, the Receiver initiated an action against H&K on behalf of the Hedge Funds. *Scoop Real Estate, L.P., et al. v. Holland & Knight, LLP, et al.*, Case No. 2009-ca-014887-NC (Sarasota County, Fla., 12th Jud. Cir.).

The Receiver successfully overcame a motion for removal to federal court and motions to dismiss. On September 8, 2010, the court on its own motion designated this case as a “complex case” as defined by Rule 1.201 of the Florida Rules of Civil Procedure. This matter is set for trial in October of 2012.

## **7. Other Potential Litigation.**

The Receiver continues to examine the actions of other professionals and businesses that provided services to Receivership Entities to determine whether he needs to take additional steps with respect to any of those professionals and businesses to recover assets for the Receivership. As noted above, the Receiver has reached a settlement agreement with GSEC which provides, among other things, that GSEC will pay \$9,850,000 to the Receiver and contemplates an order barring any claims against GSEC.

## **VI. Claims Process.**

On April 20, 2010, the Receiver filed his 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 (Doc. 390) (“**Claims Motion**”). On April 21, 2010, the Court granted the Receiver’s Claims Motion in its entirety (Doc. 391). The Court established a Claim Bar Date of the later of 90 days from the date of the Order granting the Claims Motion or the mailing of Proof of Claim Forms to all known investors (as the term Claim Bar Date is defined in the Receiver’s motion). Pursuant to the Court’s Order, any person or entity who failed to submit a proof of claim to the Receiver so that it is actually received by the Receiver on or before the Claim Bar Date is barred and precluded from asserting any claim against the Receivership or any Receivership Entity.

The Court’s Order further provided that sufficient and reasonable notice was given by the Receiver if made (1) by mail to the last known addresses of all known potential claimants, (2) by global publication on one day in The Wall Street Journal and publication on

one day in the Sarasota-Herald Tribune, and (3) on the Receiver's website ([www.nadelreceivership.com](http://www.nadelreceivership.com)).

In compliance with the Court's Order, on June 4, 2010, the Receiver mailed 1256 packages to known investors and their attorneys, if any, and any other known potential creditors of the Receivership Estate thereby establishing September 2, 2010 as the Claim Bar Date. Each package included a cover letter, the Notice of Deadline Requiring Filing of Proofs of Claim (the "Notice"), and a Proof of Claim Form. The Receiver also published the Notice in the global edition of The Wall Street Journal and in the Sarasota Herald-Tribune on June 15, 2010, and provided the Notice and a Proof of Claim form on his website.

Following investors' and other potential creditors' submission of Proof of Claim Forms (the "**Claimants**"), over time the Receiver sent approximately 134 letters to pertinent Claimants notifying them of deficiencies in their respective Proof of Claim Forms. The Receiver sent these letters to give Claimants an opportunity to correct deficiencies in their claim filings which might ultimately affect the recognition of their claim. The Claimants were given thirty days from the date of the notice of deficiency to return a corrected Proof of Claim Form.

The Receiver received 504 claims.<sup>12</sup> Of the 504 claims, 478 claims were submitted in connection with 473 investor "accounts"<sup>13</sup> ("**Investor Claimants**"), which represent

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<sup>12</sup> Overall, the Receiver received and reviewed 631 Proof of Claim Forms. This number includes corrected and supplemented Proof of Claim Forms that were received in response to deficiency letters sent by the Receiver. As noted above, these 631 Proof of Claims Forms relate to 504 total claims.

approximately 60% of all currently known Investor Accounts.<sup>14</sup> The Receiver also received 26 claims from other purported creditors (“**Non-Investor Claimants**”), including two claims from taxing authorities. Fourteen of the 504 claims were received after the Claim Bar Date. To date, the Receiver has received claims from Investor Claimants totaling approximately \$149,033,449.32 and claims from Non-Investor Claimants totaling approximately \$9,205,581.14, for a total claim amount of approximately \$158,239,030.46.<sup>15</sup>

The Receiver has carefully and thoroughly reviewed and considered all claims submitted. On December 7, 2011, 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 (“**Claims Determination Motion**”) (Doc. 675).<sup>16</sup> The Court has not entered a ruling on this Motion yet. In the Claims Determination Motion, the Receiver set forth his recommended determination and priority of each claim. The Receiver attached detailed exhibits to the Claims Determination Motion addressing each claim. In an effort to minimize the disclosure of the Claimants’ financial affairs, the

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<sup>13</sup> In reality, Nadel and the Receivership Entities did not maintain separate investor accounts. Nevertheless, for ease of reference they are referred to as “**Investor Accounts**.”

<sup>14</sup> Multiple claims were submitted for five accounts.

<sup>15</sup> The amount indicated for Non-Investor Claimants may not include all claimed interest, fees, or penalties which may be sought by them. Importantly, these numbers reflect the amount Claimants are claiming they are owed, and not the amount the Receiver has determined is the value of allowable claims.

<sup>16</sup> Due to a clerical error, one claim which had been waived was inadvertently included on the allowed investor claims exhibit. Accordingly, on December 9, 2011, the Receiver filed amended exhibits reflecting the correct determination for this claim (Doc. 676 amending Exhibits B & I).

Receiver assigned each claim a number and, except where the Claimant's identity was important to the determination of a claim, did not include the account or accountholder's name(s) in the Motion or exhibits.

The Receiver has proposed a procedure which would allow each Claimant to object to the Receiver's determination of his or her pertinent claim or the Receiver's plan of distribution. The procedure provides, in relevant part, that each Claimant will have 20 days from the date the Receiver mails notice to each Claimant of the Court's order on this Motion to serve the Receiver with an objection to his, her, or its claim determination. After this twenty-day objection period expires and the Receiver completes an initial review of any objections, the Receiver intends to file a motion for approval of a first interim distribution in the amount of \$18 million less any reserves necessitated by any timely served objections. The Receiver will make these reserves where necessary so that objections do not delay a first interim distribution.<sup>17</sup>

The Receiver's proposed plan of distribution provides that, subject to applicable exceptions, priorities, and other parameters discussed in the Claims Determination Motion, Claimants receive a fixed percentage of their Allowed Amount (as defined in the Claims Determination Motion) from the aggregate amount distributed to Claimants in any particular distribution based upon the following formula: each claim's Allowed Amount divided by the total Allowed Amount of all Allowed Claims (as defined in the Claims Determination

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<sup>17</sup> Although the Receiver will make every effort to make a prompt interim distribution, depending on the nature of any timely objection received by the Receiver, this proposed interim distribution may have to be modified or delayed until any objection warranting such delay is resolved.

Motion) multiplied by the aggregate distribution amount. Before making any distribution, the Receiver will seek leave from the Court, and at that time will provide further specifics about the distribution.

On December 9, 2011, the Receiver mailed a letter to all Claimants and their attorneys, if any, notifying them that the Claims Determination Motion had been filed and was available on the Receiver's website and, by request, from the Receiver's office. Each letter specified the claim number assigned to that pertinent account. Each Claimant was then able to cross-reference their claim number with the exhibits attached to the Claims Determination Motion to determine the Receiver's determination of his or her claim.

After the Court enters a ruling on this Motion, it is the Receiver's intention to mail another letter to each Claimant informing them that the order has been entered and providing a summary of the objection procedure as approved by the Court. The order also will be posted to the Receiver's website and be available upon request from the Receiver's office.

#### **VII. Investigating Receivership Affairs and Tracing Receivership Funds.**

The Receiver has retained the services of PDR Certified Public Accountants ("PDR"), forensic accountants, to assist in investigating and analyzing the flow of funds both into and out of the Receivership Entities, and to assist in locating additional funds, if any. The Receiver has also retained the services of Riverside Financial Group ("**Riverside**"), financial analysts to assist in investigating and analyzing all of the trading activity. In conjunction with the Receiver, PDR and Riverside are further attempting to identify additional individuals and/or entities who may be in possession of Receivership funds. PDR is also assisting in determining the amount of each investor's loss. The Receiver has also

retained the services of Otto L. Wheeler, CPA/ABV, of Wheeler Fairman & Kelly Certified Public Accountants in Austin, Texas, in connection with the Viking Oil & Gas venture discussed at Section V.A.7, above.

The Receiver has also retained the services of RWJ Group, LLC (“**RWJ**”) as an asset manager for the Receivership Entities. RWJ is owned and operated by Roger Jernigan. Mr. Jernigan has over 24 years of law enforcement and investigative experience. He also has experience in managing multiple businesses with gross sales exceeding \$1.5 million. Mr. Jernigan formerly was the manager of the VJC and has significant knowledge of the maintenance of assets recovered by the Receiver. Mr. Jernigan is a commercial pilot with over 10,000 hours of accident and incident free flying. After conducting due diligence, the Receiver determined that Mr. Jernigan had no involvement with Nadel’s scheme and was not an investor in the Hedge Funds. Mr. Jernigan has been an invaluable asset to the Receivership. Mr. Jernigan assists the Receiver with overseeing ongoing business operations and property recovered by the Receiver, including aiding with efforts to sell such businesses and property. His efforts are designed to ensure that Receivership assets are maintained and/or enhanced to allow for maximum recovery for the Receivership estate. Pursuant to an agreement with the Receiver, RWJ receives \$5,500 per month for its services and is reimbursed for related expenses.

#### **VIII. The Next Sixty Days.**

The Receiver has received useful information from investors and third parties during the course of the Receivership. A number of people have contacted him with respect to the location of assets. The Receiver would like to thank those parties for their efforts. For

anyone who may have information that they believe would be of use to the Receivership, the Receiver encourages those parties to bring that information to him.

The Receiver has received most but not all of the documents he has subpoenaed from third parties. He will continue to make efforts to obtain additional relevant documents and to review such documents in connection with his efforts to investigate matters underlying this Receivership, including to identify any additional sources of recovery and to prepare an accounting. The Receiver is working diligently on this task, but without knowing the full volume of documents he expects to receive, it is difficult to estimate the time needed for completion.

The Receiver will proceed with the claims process by responding to any inquiries the Claimants may have regarding the Claims Determination Motion. After the Court has ruled on the Motion, it is the Receiver's intention to mail another letter to each Claimant informing them that the order has been entered and providing a summary of the objection procedure as approved by the Court.

The Receiver will proceed with the pending cases. He will engage in discovery and motion practice. The Receiver will attend any court-ordered mediations. He will continue to thoroughly consider and review any settlement offers for pending cases and engage in settlement negotiations. The Receiver will make every effort to reach compromises that are in the best interests of the Receivership Entities and the investors.

The Receiver will continue to review information to determine if any third parties may have liability either to the Receivership estate or investors. The Receiver will likely institute litigation against financial institutions that assisted Nadel and his companies.

The Receiver will continue to pursue the recovery of tax refunds where possible, and will continue to attempt to locate additional funds and other assets. If appropriate, the Receiver will institute proceedings to recover assets on behalf of the Receivership Entities.

In an effort to more fully understand the conduct at issue and in an attempt to locate more assets, the Receiver will continue to conduct interviews and/or depositions of parties and third parties with knowledge.

The Receiver will also continue the operations of all ongoing businesses of the Receivership Entities to maintain and, if possible, enhance their value. The Receiver will continue to market properties for sale and entertain offers for purchase.

### **CONCLUSION**

Creditors and investors in the Receivership Entities are encouraged to periodically check the informational website ([www.nadelreceivership.com](http://www.nadelreceivership.com)) for current information concerning this Receivership. The Receiver and his counsel have received an enormous amount of emails and telephone inquiries and have had to expend significant resources to address them. To minimize those expenses, creditors and investors are strongly encouraged to consult the Receiver's website before contacting the Receiver or his counsel. However, the Receiver continues to encourage individuals or attorneys representing investors who may have information that may be helpful in securing further assets for the Receivership estate or identifying other potential parties who may have liability to either the Receivership estate or investors directly to either email [jrizzo@wiandlaw.com](mailto:jrizzo@wiandlaw.com) or call Jeffrey Rizzo at 813-347-5100.

Dated this 15th day of December, 2011.

Respectfully submitted,

**s/Burton W. Wiand**

Burton W. Wiand, Receiver

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on December 15, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**I FURTHER CERTIFY** that on December 15, 2011, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant(s):

Arthur G. Nadel  
Register No. 50690-018  
FCI BUTNER LOW  
Federal Correctional Institution  
P.O. Box 999  
Butner, NC 27509

**s/Gianluca Morello**

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