

**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., et al.

Relief Defendants.

**THE RECEIVER'S RESPONSE TO WELLS FARGO BANK'S REQUEST THAT
THIS COURT TAKE JUDICIAL NOTICE OF ACTUAL DOCKETED COURT
FILINGS CHARACTERIZED IN THE RECEIVER'S RESPONSE IN OPPOSITION
TO WELLS FARGO'S MOTION FOR LEAVE TO REPLY (DOC. 798)**

Wells Fargo Bank, N.A.'s (the "**Bank**") request for judicial notice (the "**Request**") (Doc. 798) asks the Court to take judicial notice of certain filings from *SEC v. Latin Am. Svcs. Co.*, Case No. 99-2360-cv (S.D. Fla.), a case in which a partner of the law firm representing the Bank in this case, Michael Goldberg of Akerman Senterfitt ("**Akerman**"), acted as receiver. As an initial matter, the Receiver does not contest several matters raised by the Request. First, the Request asserts that Mr. Goldberg was never a receiver in *SEC v. Lauer*, Case No. 03-80612-cv-Marra (S.D. Fla.). It is correct, and the Receiver and Wiand Guerra King P.L.'s ("**WGK**") original response (Doc. 795) to the Bank's motion for leave to reply (Doc. 794) mistakenly referred to that case instead of the relevant case in which Mr. Goldberg served as receiver, *SEC v. Latin Am. Svcs. Co.* After that original response was filed, counsel for the Bank brought that to the attention of undersigned counsel, and an amended response (the "**Amended Response**") (Doc. 797) was promptly filed to correct that.

Second, the Request asks the Court to take judicial notice of certain filings from that case; the Receiver has no objection (the Request contends the Bank requested that copies of those filings be filed with the Amended Response, and that the Receiver refused (Request ¶ 2) – this mischaracterizes the exchange between counsel, although no need exists to burden the Court with a copy of the email exchange between counsel).

The Receiver, however, does contest other contentions in the Request. Specifically, he contests the Request’s contentions that: (1) the Amended Response “fails to inform the Court as to any of the reasons why” an amended response was necessary and (2) that it “fails to adequately correct their mischaracterizations of” Mr. Goldberg’s relevant actions in *Latin Am. Svcs. Co.* First, the Amended Response does explain why it was necessary: footnote 1 of the Amended Response states that it is being submitted “to correct a discussion on page 3 of a matter in which Michael Goldberg acted as receiver”. That is precisely why it was submitted.

Second, the Amended Response does not mischaracterize Mr. Goldberg’s relevant actions in *Latin Am. Svcs. Co.* As the filings of which the Request asks the Court to take judicial notice establish, after identifying possible claims by his receivership against a client of Akerman, Mr. Goldberg sought appointment of special counsel on January 25, 2000 to represent him in that investigation in place of Akerman.¹ (Doc. 798-1 at CM/ECF pp.1-5.) Almost 4 months later, to avoid any question “regarding the independence” of his judgment, he moved the court to expand special counsel’s role to give that counsel exclusive discretion, subject to court approval, to, in relevant part, decide whether to sue the Akerman client. (*Id.* at CM/ECF pp.9-12.) And almost 8 months after that, he moved the court to substitute one

¹ Although Mr. Goldberg’s motion to appoint special counsel does not explain the source of the “potential conflict” between Akerman and the potential defendant, his next filing identifies the “potential conflict” as arising from the fact that the potential defendant was a then-“current[]” client of Akerman. (Doc. 798-1 at 10.)

of the attorneys who acted as special counsel for him as receiver only with respect to matters relating to the Akerman client. (*Id.* at CM/ECF pp.18-22.)

The Amended Response's characterization is consistent with this:

when Akerman Senterfitt, acting as Mr. Goldberg's counsel, was faced with a conflict, Mr. Goldberg never asked to be removed from that receivership and initially did not even ask to be removed from matters involving Akerman Senterfitt's client, and he certainly did not volunteer to return his or his law firm's fees. Rather, he simply retained special counsel to replace Akerman Senterfitt in receivership matters relating to that client. That is precisely what the Receiver has done here. Mr. Goldberg later sought expansion of special counsel's role and then appointment of a substitute receiver to handle matters relating [to] that party, but here that is unnecessary because the Bank is no longer a client of WGK.

Doc. 797 at 3.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on March 16, 2012, I will mail the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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

s/Jonathan B. Cohen

Jonathan B. Cohen, FBN 0027620

jcohen@jameshoyer.com

Terry A. Smiljanich, FBN 145349

tsmiljanich@jameshoyer.com

JAMES, HOYER, NEWCOMER &
SMILJANICH, P.A.

One Urban Centre, Suite 550

4830 West Kennedy Blvd.

Tampa, FL 33609
Tel: (813) 397-2300
Fax: (813) 397-2310
Attorneys for the Receiver, Burton W. Wiand