

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

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

Defendants,

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

Relief Defendants.

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**RECEIVER'S UNOPPOSED MOTION FOR LEAVE TO PAY  
ARBITRATORS' HOURLY FEES DIRECTLY FROM RECEIVERSHIP ESTATE**

Pursuant to Rule 66 of the Federal Rules of Civil Procedure and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “Receiver”), moves for leave to pay the arbitrator’s hourly fees in connection with the pending arbitrations, as well as any subsequent arbitrations that may be filed, from the Receivership Estate. Those arbitration proceedings are part of the Receiver’s continued efforts to recover money and other assets for the Receivership Estate so that they may be re-

distributed in an equitable manner to investors who were injured by the fraudulent scheme underlying this case and to other creditors. The Court previously authorized the Receiver to pay the arbitration filing fees (Doc. 878), but not specifically the fees charged by each arbitrator.

Pursuant to the Order Reappointing Receiver (Doc. 140), the Receiver has the duty and authority to:

Investigate the manner in which the affairs of the Receivership Entities were conducted and institutes such actions and legal proceedings, for the benefit of and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally, or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Receivership Entities, including against their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfer of money or other proceeds directly or indirectly traceable from investors in the Receivership Entities; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Florida Statute §726.101, et seq. or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order.

Order Reappointing Receiver, ¶ 2.

In fulfillment of his responsibilities, the Receiver commenced numerous Clawback Cases. As the Receiver previously informed the Court (*see* Docs. 668 & 671), the defendants in 24 of the Clawback Cases (the “**Defendants**”) successfully moved to compel arbitration under arbitration language in the offering documents used to attract investors into the scheme underlying this case.<sup>1</sup> Based on a number of considerations, the Receiver plans to

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<sup>1</sup> With the Court’s permission, the Receiver attempted to pursue appeals of the orders compelling arbitration. (*See* Docs. 668, 669, 671, 672.) As the Receiver had foreseen as a

consolidate his claims against the Defendants into 9 separate arbitrations. To date, the Receiver has initiated 4 arbitrations (“**Filed Arbitrations**”).<sup>2</sup> With respect to the other cases, the Receiver is currently engaged in settlement discussions with certain Defendants, but he stands ready to file the remaining arbitration proceedings should settlement appear unlikely.

In the aggregate, the Receiver’s claims against the Defendants seek or will seek to recover approximately \$36 million, not including pre-judgment interest and costs. Of that sum, approximately \$10 million represent the “false profits” received by Defendants (*i.e.*, the amount they each received from the scheme in excess of their total investment). The resulting balance, or approximately \$26 million, represents distributions to Defendants who are professionals or otherwise sophisticated investors whom, for various reasons, were or should have been aware of “red flags” surrounding the scheme underlying this case. If these arbitration proceedings are ultimately successful, the Receiver stands to recover a significant amount of assets for the Receivership Estate that would, in turn, be distributed to investors defrauded by the scheme.

By this Motion, the Receiver seeks leave to pay directly from the Receivership Estate hourly fees due and owing to the arbitrator(s) presiding over the Filed Arbitrations, as well as

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possibility, the U.S. Circuit Court of Appeals for the Eleventh Circuit concluded the orders compelling arbitration and staying the court cases were not final appealable orders and thus dismissed the appeals. To hedge against that possibility, the Receiver had also moved in this Court for a certification to pursue an interlocutory appeal under 28 U.S.C. § 1292(b) (*see* Doc. 668 at 9), but those motions were denied (*see, e.g., Wiand, as Receiver v. Munson Family Partners, Ltd.*, Case No. 8:10-cv-221-T-17MAP, Doc. 56). As such, the Receiver has no choice but to proceed to arbitration.

<sup>2</sup> The Receiver amicably resolved the claims against one of the two Defendants in an arbitration proceeding. (*See* Doc. 896.)

the arbitrator fees the Receiver will incur in the Filed Arbitration and other arbitrations he will have to file if the disputes are not amicably resolved. These hourly fees range from \$250 to \$900 per hour, and are dependent on the specific arbitrator's credentials and experience, the tribunal in which the arbitration was brought, and the arbitration's location.<sup>3</sup> Although the Receiver is mindful about minimizing fees and costs, the Receiver's ability to do so is limited.<sup>4</sup> Unfortunately, it is difficult (if not impossible) to predict the amount of fees that will be incurred by each party in each arbitration because it is unknown how much time the arbitrator(s) will spend on a particular case. While the amount is potentially significant, as set forth in the Receiver's motion to pay the arbitration filing fees (Doc. 877), the Receiver believes it is in the best interests of the Receivership Estate to proceed with arbitration proceedings against the Defendants in light of the merits of the claims asserted and the potential recovery.<sup>5</sup> Accordingly, pursuant to paragraph 4 of the Order Reappointing Receiver, the Receiver seeks leave to pay those fees directly out of accounts held by the

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<sup>3</sup> Per the "contracts", the arbitrations are to occur in Sarasota, Florida (AAA), Chicago, Illinois (AAA), or New York, New York (JAMS). The arbitrators in New York, which are required to be individuals knowledgeable in securities matters, charge a significantly higher rate than arbitrators located in Florida.

<sup>4</sup> For example, again per the "contracts," some disputes require a panel of three arbitrators when they involve a particularly significant amount of money sought by the Receiver, and the Receiver has no ability to reduce that to a single arbitrator without the opposition's consent.

<sup>5</sup> For example, in an arbitration pending in Chicago, Illinois against World Opportunity Fund, L.P., the three arbitrators charge \$395, \$495, and \$630 per hour. The Receiver, however, seeks over \$4 million transferred to the Defendant, including over \$2.3 million in "false profits." Thus, while the arbitrator fees could be significant, the arbitration could generate a significantly larger amount of money for the Receivership Estate. As such, not pursuing the Defendant would significantly decrease the potential money available to distribute to losing investors through the claims process.

Receivership Estate.<sup>6</sup> See *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992) (“The district court has broad powers and wide discretion to determine relief in an equity receivership.”).

WHEREFORE, the Receiver respectfully requests that the Court grant him leave to pay hourly fees incurred in arbitration proceedings directly from funds in the Receivership Estate.

**LOCAL RULE 3.01(g) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC does not object to the relief requested in this motion.

**s/Gianluca Morello**

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<sup>6</sup> In relevant part, that paragraph authorizes the Receiver to pay all reasonable expenses associated with “exercising the power granted by” the Order Reappointing Receiver subject to the Court’s approval. Without approval from the Court, the arbitrator fees would have to be paid by the Receiver’s and his counsel’s law firm (which would then seek reimbursement). Consistent with the law firm’s policy requiring clients to directly pay significant costs, the Receiver seeks leave to pay the hourly fees directly out of the Receivership Estate.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on October 25, 2012, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system.

**s/Gianluca Morello**

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