

**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 FIND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.

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**AFFIDAVIT OF BURTON W. WIAND IN SUPPORT OF
RECEIVER'S MOTION TO APPROVE SETTLEMENT**

STATE OF FLORIDA)
)
COUNTY OF HILLSBOROUGH)

BEFORE ME, the undersigned authority, appeared Burton W. Wiand, who, first
being duly sworn, deposes and says:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida. I make this affidavit in support of the Receivers' Motion To Approve Settlement (the "**Motion**") with Holland & Knight, LLP and Scott R. MacLeod (collectively, "**H&K**").

2. I was appointed by the Court in *Securities and Exchange Commission v. Arthur Nadel et.al.*, Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "**Commission Proceeding**"), as the Receiver for various entities, including Valhalla Investment Partners, L.P.; Viking Fund, LLC; Viking IRA Fund, LLC; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; and Scoop Real Estate, L.P. (collectively, the "**Hedge Funds**"). In that capacity, the Court authorized me to:

2. Investigate the manner in which the affairs of the Receivership Entities were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Entities and their investors and other creditors as the Receiver deems necessary ... against any transfers of money or other proceeds directly or indirectly traceable from the 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 order from this Court as may be necessary to enforce this Order.

3. My investigation has established that Arthur Nadel ("**Nadel**") operated the Hedge Funds and other entities as part of a Ponzi scheme from 1999 forward.

4. Nadel used certain lawyers in connection with his Ponzi scheme, including H&K.

5. My investigation of Nadel's Ponzi scheme revealed that H&K prepared various Private Placement Memoranda ("**PPMs**") used to sell certain interests in the Hedge Funds; that H&K represented the Hedge Funds, as well as Nadel's management companies;

and, that H&K may have failed to appropriately respond to certain “red flags” that could, upon further inquiry, have revealed Nadel’s scheme. After my investigation I concluded that H&K breached certain duties to the Hedge Funds and allowed conflicts of interest to go unresolved. I believe that H&K’s conduct, in part, permitted Nadel to accomplish his fraudulent scheme. Based upon those conclusions, I determined to seek compensation from H&K. On August 12, 2009, this Court authorized me to hire the law firm of Johnson Pope Bokor Ruppel & Burns, LLP on a contingency basis and pursue claims against H&K in Florida state court.

6. From August 2009 through the present, my counsel has aggressively pursued these claims and in doing so has expended thousands of hours in time and incurred costs of over \$400,000.

7. After three years of vigorously contested litigation, I, through counsel, have pursued these claims with respect to H&K’s potential liability. On August 8-9, 2012, I engaged in a 2-day mediation session with respect to the specifics of a potential resolution of the dispute. These negotiations focused on potential liability, defenses, and risk to the parties, as well as the potential valuation of the claims against H&K. Negotiations with H&K have resulted in a proposal to resolve claims against H&K in exchange for the payment of \$25,000,000.

8. In determining to accept \$25,000,000 from H&K in resolution of all claims, I considered a number of significant factors including the risks associated with litigating the claims. H&K has not admitted any wrongdoing.

9. I recognized that H&K is an entity that is financially able to vigorously defend itself against claims, and has done so. Consequently, additional litigation would likely require expenditure of substantial Receivership resources. If further litigation is unsuccessful, nothing will be received. Instead of the \$25,000,000 proposed in the Settlement Agreement, the Receivership estate would receive nothing. Additionally, if successful at trial, any appeal would further delay the completion of the Receivership and add additional risk.

10. I considered the potential value of the claims against H&K. I could have attempted to hold H&K responsible for all or its portion of all Hedge Fund losses arising from Nadel's scheme, but I am aware that establishing liability against a law firm for all losses arising from a Ponzi scheme may be very difficult. I have evaluated the potential for a successful outcome for this case and the impact of potential defenses of H&K.

11. I considered H&K's contention and defense that responsibility for the Hedge Funds' losses should be allocated among several parties under the theory of comparative fault. I have also evaluated arguments relating to standing and computation of damages. While I believe I should prevail in spite of those defenses, I also realize if H&K were successful on any one of them, it could greatly limit or even preclude any potential recovery. My experience also makes me well aware that in litigation no result can be assured.

12. Finally, I considered the fees that H&K earned for providing legal services to the Hedge Funds. In that regard, the Hedge Funds paid less than \$500,000 to H&K. Continued litigation of claims against H&K would cost the Receivership significant additional expenditures in expert and other costs and would in no way guarantee a significant

benefit to the Receivership. In light of the funds that this settlement would provide and my conclusions and considerations outlined above, I believe it would be imprudent to reject the settlement.

13. It is my opinion that the amount of this settlement constitutes a fair valuation of any potential liability that H&K might have as a result of its involvement with Nadel and the Hedge Funds, given the applicable claims, defenses and risks.

14. The net proceeds to the Receivership estate after attorney's fees and expenses that will result from the settlement will be approximately \$18.2 million. This addition to the Receivership estate will allow for the prompt distribution of a minimum of another \$20 million to victim investors with approved claims. It is my intention to make that distribution promptly upon this settlement becoming final.

15. The utilization of the Johnson Pope Bokor Ruppel & Burns law firm and attorneys Guy Burns, Jonathan Coleman, and their colleagues on a contingency fee basis has served well in the pursuit of this action. It has allowed the Receivership to pursue this large case without exposure to or risk of the substantial attorney's fees that have been and would have been incurred had it not been done on a contingency basis. It also allowed me as Receiver significantly greater flexibility in negotiating a resolution to this case as I was freed from the concern of having to recover legal fees that would have been expended had this case been handled in an alternative fashion. The fee agreement of Johnson Pope Bokor Ruppel and Burns was approved by the court on August 12, 2009 (Document 175). A general description of the services provided are included in the Motion to Approve Settlement. Mr. Burns and his firm undertook and relieved the Receivership of substantial risk regarding

funding and exposure of this litigation. It is my opinion that the legal services provided have been outstanding as is the result achieved.

16. The settlement reflected by the Settlement Agreement is in the best interests of the Receivership and the Hedge Funds and the investors. Specifically, the settlement represents a substantial recovery to the Receivership estate of more than 40% of the amounts I have recovered to date through clawback lawsuits and other settlements. The settlement will ultimately benefit investors with approved claims through the claims process. It will materially increase the distributions on approved claims.

17. To ensure finality and for the other reasons set forth in the Motion, H&K has requested as part of the Settlement Agreement that the Court enter an order barring and enjoining persons from proceeding with or bringing any existing and/or additional claims against H&K, including claims by investors in the Hedge Funds or by potential joint tortfeasors for contribution or indemnity (the “**Bar Order**”). I am aware of two existing claims by investors against H&K. These include a suit filed by investors against H&K, styled Sullivan et al. v. Holland & Knight et al., Case No. 8:09-cv-00531-T-17AEP (M.D. Fla.). That case was dismissed by an Order of District Judge Elizabeth Kovachevich more than two years ago (Dkt. 63). The Plaintiffs in the Sullivan Action have agreed, as a condition of settlement, to withdraw their pending Motion for Reconsideration of that dismissal and to dismiss the Sullivan Action with prejudice with each party to bear its own fees and costs.

Of the six named plaintiffs in that case, five filed claims in the Receivership’s claims process. Only one named plaintiff did not file a claim, but that investor had “false profits.”

As a result, I sued that investor in a “clawback” case, and we subsequently settled that matter. The other five named plaintiffs’ claims were allowed (in whole or in part); none filed an objection; and all five received a distribution in the first interim distribution. In a second matter, another ten investors have filed a direct claim against H&K. *See* John V. Cloud, et al. v. Holland & Knight, et al., Case No. 09-12397 (Div. H), pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the “Cloud Action”). The Cloud Action seeks a recovery that may limit the recovery by the Receivership. Each plaintiff has been given full opportunity to participate in the Receivership claims process and each plaintiff in that case has done so. The claims of nine of those ten investors were allowed or allowed in part; none of those nine investors filed an objection to their respective claim determination; and all nine investors received distributions of receivership assets as part of the first-interim distribution that I made. The tenth investor’s claim was denied because he received “false profits” (i.e., an amount in excess of the amount he invested), and he did not file an objection to that determination. That investor is a defendant in one of my clawback cases. The Cloud Action has been stayed. The claims in the Sullivan and Cloud actions are based on the same alleged facts as asserted in the Receiver’s action against H&K. Allowing the Sullivan Action and the Cloud Action to continue will jeopardize or preclude the settlement and thus interfere with and be prejudicial to the administration of the Receivership. In sum, it is my firm opinion that the Bar Order will have little impact on anyone, and the settlement provides great benefit to the defrauded investors, including those in the two lawsuits against H&K who have allowed claims.

18. I will provide actual notice of the requested Bar Order to the investors in the Hedge Funds and other receivership entities and to known potential joint tortfeasors – *i.e.*, the individuals and entities whose conduct is to be enjoined. A copy of the proposed notice to investors and potential joint tortfeasors (the “**Notice**”) is attached to the Motion to Approve Proposed Notice of Settlement, which is being filed along with the Motion, and an abbreviated notice for publication is described in the Notice motion. The Notice sets forth the terms of the Settlement Agreement and advised recipients that they may object or otherwise respond to the Motion in writing by October 1, 2012. As such, the Notice will provide investors and others with actual notice of the proposed Settlement Agreement and Bar Order as well as an opportunity to seek relief from the Court.

19. For the reasons set forth in the Motion, I have concluded that investors and potential joint tortfeasors are unlikely to be prejudiced by the entry of the Bar Order. I have also concluded that individual investors are unlikely to be able to obtain a greater recovery from H&K than that reflected in the Settlement Agreement.

FURTHER AFFIANT SAYETH NAUGHT.


BURTON W. WIAND

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgements in the state aforesaid and in the county aforesaid, BURTON W. WIAND personally appeared to me, who is personally known to me to be the person described herein and executed the foregoing and acknowledged before me that he executed the same.

SWORN TO AND SUBSCRIBED before the undersigned this 28th day of August,
2012.



Carrie Rehus
NOTARY PUBLIC

Print Name: Carrie Rehus
My Commission Expires: 4-14-14