

**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.

_____ /

**MOTION TO APPROVE PROPOSED
NOTICE OF SETTLEMENT**

Burton W. Wiand, as Receiver (the "Receiver"), moves the Court for an order approving the proposed notice of settlement with Holland & Knight LLP and Scott R. MacLeod (collectively, "H&K"), in the form attached hereto as Exhibit A (the "Notice"), and the proposed abbreviated notice for publication, as described below (the "Short Form Notice"). H&K is a defendant in a lawsuit brought by the Receiver in a Florida state court,

styled *Scoop Real Estate, L.P. et al. v. Holland & Knight, et al.*, Case No. 2009-CA-014877-NC (Twelfth Judicial Circuit, Sarasota County, Florida). The Receiver, concurrent with this motion, is filing a Motion To Approve Settlement (the "Settlement Motion"), which requests that the Court approve the settlement of the Receiver's claims against H&K for \$25,000,000. The Settlement Motion also requests that the Court enter an order barring any claims against H&K by investors and others, including claims for contribution or indemnity (the "Bar Order"). The Receiver wishes to provide notice of the settlement to investors and other interested parties because the Bar Order may affect their rights.

To that end, the Notice provides that recipients will have until October 1, 2012 to object or otherwise respond to the Settlement Motion. If the Court grants this motion, the Receiver will promptly mail the Notice by U.S. First Class Mail to the last known address of investors in the Receivership entities known to the Receiver, and other potentially interested parties, and place for publication on one day in the Sarasota Herald Tribune and a newspaper of national circulation the Short Form Notice (or an abbreviated notice that is substantially similar) as follows:

Burton W. Wiand, the court-appointed receiver in *S.E.C. v. Nadel et al.*, Case No. 8:09-cv-87-T-26TBM for, among others, Valhalla Investment Partners, L.P.; Viking Fund, LLC; Viking IRA Fund, LLC; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Scoop Real Estate, L.P. and Traders Investment Club, has entered into a settlement agreement with Holland & Knight LLP and one of its lawyers, Scott R. MacLeod, hereinafter "H&K." The settlement may affect your rights, as it includes a request to the Court for an order permanently barring and enjoining investors in receivership entities and other individuals and entities that may bear some liability in connection with the fraudulent scheme underlying this matter from commencing or continuing a claim, action, or proceeding of any kind and in any forum against H&K that arises from or relates to the legal services

that H&K performed for in connection with receivership entities. A notice of settlement, a copy of the settlement agreement, and the Receiver's motion to approve the settlement agreement are available on the Receiver's website at www.nadelreceivership.com. Any person who objects to the settlement must do so in accordance with the procedures set forth in the notice of settlement by October 1, 2012.

The legal and factual basis for the notices discussed in this motion is addressed in the Settlement Motion.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order approving (1) the proposed Notice attached hereto as Exhibit A and the procedures described therein and in this motion, and (2) the proposed Short Form Notice set forth above, so that the Receiver can promptly provide notice to interested parties.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission and is authorized to represent to the Court that the Commission has no objection to the relief requested in this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2012, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system.

s/Gianluca Morello

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EXHIBIT A

**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, et al.,

PLEASE READ THIS NOTICE AS YOUR RIGHTS MAY BE AFFECTED

**NOTICE TO INVESTORS AND OTHERS OF RECEIVER'S MOTION TO APPROVE
SETTLEMENT WITH HOLLAND & KNIGHT, L.L.P. AND SCOTT R. MacLEOD
INCLUDING PROPOSED BAR ORDER**

Burton W. Wiand, as Receiver for certain defendants and the Relief Defendants (the "Receiver"), has filed a motion (the "Motion") with the Court for approval of a settlement agreement (the "Settlement Agreement") between the Receiver, on behalf of the entities for which he serves as Receiver (the "Receivership Entities"), and Holland & Knight, L.L.P. and one of its lawyers, Scott R. MacLeod (collectively, "H&K").

This Settlement Agreement calls for H&K to pay to the Receiver \$25,000,000.00 for the ultimate benefit of the receivership estate (the "Settlement Amount") in exchange for the Receiver's release of all claims that have been asserted against H&K in a Florida state court action, Scoop Real Estate, LP et al. v. Holland & Knight L.L.P., et al., Case No. 2009-CA-014877-NC (Twelfth Judicial Circuit, Sarasota County, FL) (the "H&K Case"), including any and all claims, demands, rights, promises, and obligations arising from or related in any way to the operation of the Receivership Entities or to H&K's provision of legal services to or in connection with any account, product, fund, entity, or venture proposed, established, operated, or controlled by Arthur Nadel, Neil Moody or Christopher Moody, or any Receivership Entity, which includes hedge funds 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 addition, the Motion requests that the Court enter an order barring any claims against H&K by investors or by potential joint tortfeasors, including claims for contribution or indemnity. A copy of the Motion is available on the Receiver's website at www.nadelreceivership.com,¹ and the Settlement Agreement is attached to the Motion as its Exhibit A.

Any objections or other responses to the Motion must: (i) be made in writing; (ii) bear the caption of this case (the "SEC Receivership Action"), including the case

¹ If you do not have internet access or are otherwise unable to retrieve a copy of the Motion, please contact the Receiver's counsel.

EXHIBIT A

number, at the top of the first page; (iii) be signed by the objecting or responding party, or that party's attorney; (iv) be filed with the Clerk of the Court no later than October 1, 2012; and (v) contemporaneously be served on the Receiver. The address of the Clerk of the Court is Sam M. Gibbons U.S. Courthouse, 801 N. Florida Ave., Tampa FL 33602. The address of the Receiver is Wiand Guerra King P.L., 3000 Bayport Drive, Suite 600, Tampa, FL 33607. Unless the Court orders otherwise, a public hearing on the Motion will not be held. At any time after October 1, 2012, the Court may rule on the Motion or direct such further proceedings as it deems appropriate.

The following sections summarize the background of the settlement with H&K and the terms of the Settlement Agreement.

The Receiver's Investigation

The Receivers' investigation has revealed that H&K provided legal services to both the Hedge Funds and to Nadel's various related management entities, beginning October 2, 2002 and continuing through January 16, 2009, when Nadel disappeared and his Ponzi scheme was discovered. At that point, H&K resigned from further representation. H&K's legal representation included, but was not limited to, assistance with the preparation of the various Private Placement Memoranda ("PPMs") that were used to sell interests in the Hedge Funds to certain investors, and the representation of both the Hedge Funds as well as the Funds' managers, for a period of over six years.

The Receiver determined that H&K may have been professionally negligent, breached fiduciary duties owed, and/or aided and abetted Nadel's own fraud and breach(es) of fiduciary duty, by acts or omissions relating to their representation of the Hedge Funds and related entities that may have allowed the Ponzi scheme to continue longer than it otherwise might have continued. Based upon those findings, the Receiver concluded that it was appropriate to seek compensation from H&K.

The Receiver sought, and on August 12, 2009 obtained, the Court's express permission to retain the Johnson Pope Bokor Ruppel & Burns, L.L.P. law firm to represent him on a contingency fee basis "for the limited purpose of pursuing claims by the entities in Receivership against Holland & Knight, LLP, and its partner, Scott R. MacLeod" (Dkt. 175).

The Receiver's litigation efforts against H&K over the past three years have included extensive discovery, depositions, and motion practice, numerous depositions around the country, and the use of six expert witnesses. Millions of documents have been exchanged among the parties, and numerous non-party documents have been obtained as well, through subpoenas and otherwise. The Receiver's counsel has expended thousands of hours of time and incurred over \$400,000 in expenses.

The Receiver's Negotiations With H&K And Settlement Considerations

After this extensive discovery process, the Receiver and H&K communicated their various views with respect to potential liability, and the Receiver's and H&K's counsels engaged in a two-day mediation session ordered by the presiding judge in the H&K Case to consider potential resolution. These negotiations focused on potential liability, defenses, and risk to the

EXHIBIT A

parties, as well as other potential valuation of the Receiver's claims. Diligent good-faith efforts by the parties, their counsel, and the mediator continued after the mediation sessions, even as dispositive motion responses were being prepared and filed.

As a result of these negotiations, an agreement was reached which has been presented to this Court that includes a resolution of all claims against H&K. In deciding to accept \$25,000,000 from H&K in resolution of all claims, the Receiver considered a number of significant factors. First, the Receiver considered the risks associated with litigating his claims. Primary among those risks is the uncertainty inherent in the trial process, and any resulting appeal, not to mention the time consumed through the appellate process.

The Receiver believes the Settlement Amount represents an equitable and good faith compromise of existing claims. In addition, the Receiver recognizes that H&K is financially able to, and has, vigorously defended itself against the Receiver's claims. Consequently, additional litigation is not without significant risks. If litigation is unsuccessful, nothing would be received, instead of the \$25,000,000 set forth in the Settlement Agreement.

As noted in the Settlement Agreement, the Receiver and H&K, subject to the approval of this Court, have agreed to settle for, among other things, payment by H&K to the Receiver of \$25,000,000 and a broad release of liability. Also, as part of the Settlement Agreement, the Receiver and H&K agreed to seek entry of a bar order in the form of an injunction precluding any claims against H&K by investors or creditors of the Receivership Entities or by other potential joint tortfeasors, including claims for contribution or indemnity, which relate in any way to the operation of the Receivership Entities and to Nadel's Ponzi scheme (the "Bar Order").

From the \$25,000,000 Settlement Amount, the Receiver will be obligated to pay its contingency counsel a fee of \$6,333,333 plus reimbursement of costs estimated not to exceed \$450,000. The net settlement proceeds to the Receiver are expected to exceed \$18,200,000.00.

The Terms Of The Settlement Agreement

In exchange for the settlement payment of \$25,000,000.00, the Settlement Agreement contains the following terms required to provide assurances of finality:

1. Upon the Receiver's receipt and clearing of the full settlement payment, the Receiver, on behalf of the Receivership Entities and their present and former officers, directors, members, employees, agents, representatives, beneficiaries, investors, creditors, and assigns, shall be deemed to have released and forever discharged H&K, its parents, subsidiaries, and affiliates, and their respective officers, directors, partners, employees, agents, successors, and assigns of and from any and all claims which could have been asserted by the Receiver, as well as any and all other claims, demands, rights, promises, and obligations arising from or related in any way to the operation of the Receivership Entities or to H&K's provision of legal services to any account, product, fund, entity, or venture established, operated, or controlled by Arthur Nadel or any Receivership Entity.
2. Upon the Receiver's receipt and clearing of the full settlement payment, H&K shall be deemed to have waived any claim that it had, has, or hereafter may have against the Receiver and/or any Receivership Entity relating to the operation of the Receivership

EXHIBIT A

Entities or to H&K's involvement with or provision of legal services to any account, product, fund, entity, or venture established, operated, or controlled by Arthur Nadel or any Receivership Entity.

3. The Receiver will request that in any order granting the Motion, the Court order that all individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action or proceeding of any kind and in any forum against H&K that directly or indirectly arises from or relates to the operation of the Receivership Entities or to legal services that H&K rendered in connection with the Receivership Entities.

4. H&K will cooperate reasonably with the Receiver's efforts to gather information and otherwise fulfill his Court-ordered obligations imposed in this action.

Should you have any questions or require further information concerning the proposed settlement terms or the process for submitting a response to the Receiver's Motion, please contact the Receiver's counsel either at guyb@jpfirm.com; jonathanc@jpfirm.com; or by telephone at (813) 225-2500.

Please take note that all responses concerning the Receiver's motion must be filed with the Court on or before October 1, 2012.

Dated:

Burton W. Wiand, as Receiver