

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.

RECEIVER'S MOTION FOR LEAVE TO RETAIN COUNSEL

Pursuant to Rule 66 of the Federal Rules of Civil Procedure and Local Rule 3.01, Burton W. Wiand, as Receiver, moves the Court for leave to retain the law firm Johnson, Pope, Bokor, Ruppel & Burns, LLP ("**Johnson Pope**") on a contingency basis for the limited purpose of pursuing claims by entities in Receivership against Holland & Knight, LLP, and its partner, Scott R. MacLeod (collectively, "**H&K**"). The Receiver believes that (1) pursuing such claims would be in the best interest of the Receivership, (2) Johnson Pope

would be effective counsel, and (3) the attached contingency fee agreement is fair and reasonable. (See Exhibit A).<sup>1</sup>

### Memorandum in Support

On January 21, 2009, the Court appointed Burton W. Wiand as Receiver over Relief 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, collectively referred to as the “**Hedge Funds**.” (Order Appointing Receiver (Doc. 8).)<sup>2</sup> Documents previously filed in this Securities & Exchange Commission enforcement action set forth the details of the fraudulent investment scheme that underlies this action (the “**scheme**”). (See, e.g., Receiver’s Second Interim Report dated June 9, 2009 (Doc. 141).) While the scheme was being perpetrated, H&K was counsel for the Hedge Funds. H&K provided legal advice and services with regard to the structure and operation of the Hedge Funds and prepared the Private Placement Memoranda (“**PPMs**”) used to solicit investors to invest in the Hedge Funds.

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<sup>1</sup> Although the Order Appointing Receiver authorizes the Receiver to initiate actions and proceedings for the benefit of Receivership Entities and their investors and creditors without the Court’s approval (see Doc. 8 ¶ 2), the Receiver brings this matter to the Court’s attention and seeks the Court’s approval because this claim is significant to the Receivership and its beneficiaries.

<sup>2</sup> The Court has appointed Burton W. Wiand as Receiver over other entities, including Scoop Capital, LLC; Scoop Management, Inc.; Valhalla Management, Inc.; Viking Management, LLC; Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; the Marguerite J. Nadel Revocable Trust UAD 8/2/07; the Laurel Mountain Preserve Homeowners Association, Inc.; the Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; and Viking Oil & Gas, LLC. (Docs. 8, 17, 44, 68, 79, 140 and 153.)

H&K is currently defending a suit filed by Johnson Pope on behalf of a putative class of investors. *Michael Sullivan, et al. v. Holland & Knight LLP*, Case No. 09-cv-0531-EAJ (M.D. Fla.). Those claims against H&K are grounded in Florida and Delaware securities laws and in negligence. (*Id.* Am. Compl. (Doc. 15).) If certified, the class would include investors who made investments in the Hedge Funds “after the date H&K first prepared the PPMs for the [Hedge] Funds.” (*Id.* ¶ 30.)

The Receiver’s communications with Johnson Pope, as well as his independent investigation into the scheme, indicate that the Receiver, on behalf of the Hedge Funds, also has valid claims against H&K. The Receiver believes that H&K’s actions in representing the Hedge Funds fell below the appropriate standard of care required for the services it provided to the Hedge Funds. The Receiver also believes that H&K’s conduct significantly contributed to the losses suffered by the Hedge Funds and, in turn, the investors. The Receiver met with attorneys from Johnson Pope who provided the Receiver with legal advice regarding the merit of claims on behalf of the Hedge Funds. After careful consideration, the Receiver believes it is in the best interest of this Receivership to pursue claims against H&K based on its representation of the Hedge Funds. The claims pursued will exceed \$50 million.

The Receiver is knowledgeable of the skill and reputation of Johnson Pope and, in particular, attorney Guy Burns, who will be lead counsel. The Receiver has confidence in Mr. Burns based on the aforementioned *Sullivan* class action as well as knowledge of Mr. Burns’ pursuit of matters of a comparable nature and scope. The Receiver also has reviewed potential ethical issues and is satisfied that no conflicts would exist if Mr. Burns represents both the Hedge Funds and investors in two separate actions against H&K. The Receiver

believes that Johnson Pope would be an excellent choice of counsel for pursuing these claims and seeks the Court's approval to do so.

The Receiver believes pursuing these claims on a contingency basis would be beneficial to the Receivership. Doing so would avoid a commitment of Receivership cash or capital to the proposed litigation. A contingency fee would ensure that the Hedge Funds, at best, would recover additional funds and, at worst, would not suffer any financial losses as a result of pursuing this litigation. Using a contingency fee will not put Receivership assets at risk.<sup>3</sup> The Receiver has consulted with a number of sources and has made inquiry into an appropriate contingent fee and believes the terms in the attached agreement are fair and appropriate. (Ex. A.) The Receiver thus requests that the Court grant him leave to retain Johnson Pope on a contingency basis pursuant to the terms set forth on Exhibit A.

The Court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)).

Based on (1) the Court's wide discretion, (2) the Receiver's independent investigation into the claims discussed herein, (3) the skill and competency of Johnson Pope to prosecute those claims, and (4) the reasonableness of the contingency fee agreement (Ex. A), the Receiver requests that the Court grant the Receiver leave to retain Johnson Pope to pursue

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<sup>3</sup> The agreement calls for certain limited costs to be paid by the Receivership. (Ex. A ¶ 2.)

claims against H&K on behalf of the Hedge Funds under the terms of the attached agreement.

**LOCAL RULE 3.01(g) CERTIFICATION OF COMPLIANCE**

The undersigned counsel for the receiver has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant:

Arthur G. Nadel,  
Register No. 50690-018  
MCC New York  
Metropolitan Correctional Center  
150 Park Row  
New York, NY 10007

s/ Carl R. Nelson  
\_\_\_\_\_  
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Attorneys for the Receiver, Burton W. Wiand

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FILE NO. 118220  
EMAIL: [GuyB@jpfirm.com](mailto:GuyB@jpfirm.com)

August 7, 2009

**Via Electronic Mail and  
Hand Delivery**

Burton W. Wiand, Receiver  
Fowler White Boggs, P.A.  
501 E. Kennedy Blvd., Suite 1700  
Tampa, FL 33602  
[bwiand@fowlerwhite.com](mailto:bwiand@fowlerwhite.com)

Re: Nadel Receivership

Dear Mr. Wiand:

You have requested that I submit to you a letter confirming our contingency fee agreement (subject to Court approval) regarding a case to be filed by me as litigation counsel for you, as Receiver, against Holland & Knight, LLP and its partner, Scott R. MacLeod (collectively, "H & K"). This case is to be filed in Florida State (Hillsborough County) Circuit Court, and will seek to recover damages from H & K on behalf of the six Receivership entities that operated under the following names:

- 1) Scoop Real Estate, L.P.;
- 2) Valhalla Investment Partners, L.P.;
- 3) Victory IRA Fund, Ltd.;

CLEARWATER



TAMPA



**JOHNSON, POPE, BOKOR, RUPPEL & BURNS, LLP**  
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- 4) Victory Fund, Ltd.;
- 5) Viking IRA Fund, LLC; and
- 6) Viking Fund, LLC.

The theories of recovery for this case will be based upon the broad general category of professional negligence and the breach of duties associated with H & K's conduct.

We have agreed on the following regarding the payment of fees and costs:

1. We will proceed with the filing of a suit against H & K on behalf of the Receiver, and we will handle all aspects of the case through discovery and trial for a fee of one-third of the first \$10,000,000 of any gross recovery. Thereafter our contingency fee will be reduced to 20% of any gross recovery over \$10,000,000.

2. We will advance all costs necessary to prosecute the case, with the exception of any costs associated with the services of experts otherwise hired by the Receiver for purposes unrelated to the claim against H & K. We understand you have hired an accounting firm, as well as computer records retrieval investigators. Your accountants will calculate damages for the Receiver's case against H & K, and will be called upon to testify or otherwise provide litigation support. The Receiver will pay directly to these accountants their fees and costs for providing these services. If your computer consultants or other experts hired by the Receiver are used in the case against H & K, the Receivership will pay the attendant fees and costs. Our firm will advance all other costs, including fees to experts such as those opining about professional liability issues.

3. We will be entitled to receive from any recovery reimbursement for all costs incurred or advanced by our firm, including normally charged internal costs such as photocopying, long distance telephone charges, etc.

4. If an appeal is necessary, we will handle that appeal for an additional 5% of the gross amount of any recovery.

As I have disclosed, my firm and I are also plaintiffs' counsel in a putative class action ("the Class Case") against H & K arising out of these same events. We have discussed and agreed that, in the event a common settlement or other resolution is

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achieved in the Receiver's case along with a simultaneous settlement or resolution in the Class Case, the fee charged may be subject to Court review and approval.

We further agreed that this agreement is subject to the approval of the U.S. District Court having jurisdiction over your receivership. When and if Court approval is received, you will sign and return a copy of this letter agreement. Until that occurs, our agreement is not final and we will not file the case against H & K.

Yours very truly,

JOHNSON, POPE, BOKOR,  
RUPPEL & BURNS, LLP



Guy M. Burns

AGREED:

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Burton W. Wiand, Receiver

#130123