

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

CASE NO.:

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Relief Defendants.

CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

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PLAINTIFF'S EMERGENCY MOTION FOR APPOINTMENT  
OF RECEIVER AND MEMORANDUM OF LAW

Plaintiff Securities and Exchange Commission moves this Court for an Order appointing a Receiver for Defendants Scoop Capital LLC and Scoop Management Inc. ("Defendants"), and 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 ("Relief Defendants") with full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, choses in action and

any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors. The grounds for this motion are fully set forth in the memorandum of law below. As additional support for this motion, the Commission incorporates the factual discussion in its Emergency Motion and Memorandum of Law in Support of Temporary Restraining Order and Other Emergency Relief ("TRO Motion").

The Commission's staff has solicited expressions of interest from three potential receivers it believes are well-suited to handle this matter. After considering these candidates, the Commission's staff believes the interests of defrauded investors would best be served by appointing Burton Wiand, Esq., to serve as Receiver over the Defendants and Relief Defendants. Mr. Wiand's credentials are attached as Exhibit 1.

As Mr. Wiand's letter and resume indicate, he is a partner with the law firm of Fowler White Boggs in Tampa. In addition to extensive experience litigating in securities cases in general and Commission enforcement actions specifically – both as a Commission attorney and representing defendants – he has previous receivership experience. Most significantly, Mr. Wiand was the Court-appointed Receiver in case of *SEC v. HKW Trading, et al.*, Case No. Case No. 8:05-CV-1076-T-24MSS, in the Tampa Division of the Middle District of Florida. Like this case, that action involved allegations of a failed hedge fund and a manager who was not present (in *HKW*, the hedge fund manager died shortly before the Commission sued). Mr. Wiand's experience from that case in pursuing and collecting assets from third parties will likely prove valuable in this case if the Court accepts the Commission's recommendation.

If appointed Receiver, Mr. Wiand intends to use, only as necessary, several attorneys at Fowler White who have experience in Commission receivership actions, securities litigation, and

asset recovery. As he indicates in his letter seeking this appointment, he will be cognizant of costs and expenses in order to maximize the return of funds to defrauded investors.

Mr. Wiand has agreed to significantly discount his normal hourly billable rate from \$450 to \$350, a discount of more than 20 percent. In addition, he has offered to discount the rates of other attorneys who may work on this matter from Fowler White by 10 percent. Finally, Mr. Wiand has informed the Commission that no conflict of interest exists in this matter, and he is ready, willing and able to serve as Receiver. Indeed, he is currently coordinating with the Commission staff on this matter so that, if appointed, he and his team of can immediately proceed to discharge their duties.

For all those reasons, the Commission recommends the Court select Mr. Wiand as the Receiver over the Defendants and Relief Defendants. As we indicated previously, we sought expressions of interest to serve from two additional candidates, both of whom are also well-qualified and able to serve as receivers. Both, along with their respective firms, have also agreed to significantly discount their fees. Accordingly, if the Court does not agree with the Commission's recommendation, the Commission suggests the Court appoint either Frederick Schriels, Esq., with the firm of Gray-Robinson, or, third, Hans Beyer, Esq., with the firm of Saxon Gilmore. Their letters of interest and resumes are attached as Exhibits 2 and 3, respectively.<sup>1</sup>

#### **MEMORANDUM OF LAW**

The appointment of a Receiver is a well-established equitable remedy available to the Commission in civil enforcement proceedings for injunctive relief. *See, e.g., SEC v. First Financial*

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<sup>1</sup> As the letters indicate, both Mr. Schriels and Mr. Beyer have offered to serve at rates less than Mr. Wiand. We believe despite that the Court should appoint Mr. Wiand, due to his experience in similar matters and the need to move as quickly as possible here.

*Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981); Section 22(a) of the Securities Act of 1933, 15 U.S.C. § 77v(a); and Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa.

An appointment of a Receiver is particularly appropriate in cases where a defendant, through its management, has defrauded members of the investing public. *First Financial Group of Texas*, 645 F.2d at 438. In such cases, without the appointment of a Receiver to maintain the status quo, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme. *Id.*; see also *SEC v. R.J. Allen & Associates, Inc.*, 386 F. Supp. 866, 878-79 (S.D. Fla. 1974). A Receiver is appropriate to protect the public interest when it is obvious that those in control of an entity who have inflicted serious detriment in the past must be ousted. *SEC v. Bowler*, 427 F.2d 190, 198 (4th Cir. 1970).

Here, as discussed in more detail in the TRO Motion and our complaint, the Defendants in this matter for at least the last year, if not longer, made materially false and misleading statements to investors in hedge funds they managed by grossly exaggerating the value of the amounts investors held in their individual accounts. The Defendants also materially overstated the hedge funds' historical investment returns and the value of the funds' assets in statements to prospective investors to persuade them to invest.

For example, at the end of November 2008, private placement memoranda seeking investments in three of the funds that the Defendants distributed to investors represented the three funds had approximately \$342 million in capital. In reality, the value of the funds' assets was less than \$1 million. The same offering materials represented that the Funds generated investment returns of 11 percent and more in 2008, when, in reality, all of the Funds lost significant amounts in 2008.

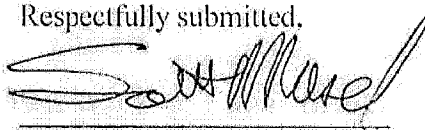
All of the misrepresentations and omissions described in the Commission's complaint and TRO motion occurred under the auspices of Defendants Scoop Management and Scoop Capital and Arthur Nadel. Nadel, as described in more detail in our TRO motion, has disappeared. Therefore, the risk of dissipation of funds is great if Nadel remains at large and has any access to the accounts of the other Defendants and Relief Defendants. Therefore, the best interest of investors would be served by appointing a Receiver to take possession of the Defendants and the Relief Defendants and their accounts, and marshal their assets for the benefits of investors.

**WHEREFORE**, for the foregoing reasons, the Commission requests that the Court appoint Burton Wiand, Esq. or any other suitable person, as Receiver for the Defendants and the Relief Defendants.

January 21, 2009

By:

Respectfully submitted,

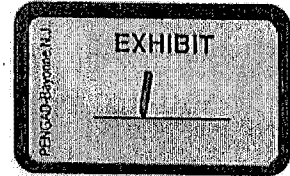


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*Lead and Trial Counsel*

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Senior Counsel  
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Facsimile: (305) 536-4154  
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Attorneys for Plaintiff  
**SECURITIES AND EXCHANGE COMMISSION**  
801 Brickell Avenue, Suite 1800

**Miami, Florida 33131**  
**Telephone: (305) 982-6300**  
**Facsimile: (305) 536-4154**



Burton W. Wiand  
Direct Dial: 813-222-2029 (Tampa)  
954.703.3928 (Ft. Lauderdale)  
bwiand@fowlerwhite.com

January 19, 2009

BY ELECTRONIC MAIL ([dumornayc@sec.gov](mailto:dumornayc@sec.gov))  
AND OVERNIGHT MAIL

Chedly C. Dumornay, Esq.  
Assistant Regional Director  
Securities and Exchange Commission  
Miami Regional  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131

Re: *Potential Receivership for Scoop Capital, LLC  
and related entities*

Dear Mr. Dumornay:

This letter is submitted as my proposal to serve as Receiver over the assets and activities of Scoop Management Inc. and their related entities (collectively "Scoop"). I appreciate the opportunity to submit this proposal and your consideration of me to act in this capacity.

My background is well-suited to serve as the Receiver in this matter. A copy of my resume is attached for your reference. Specifically, I spent 14 years with the Division of Enforcement of the SEC where I instituted and participated in enforcement proceedings. I served as Assistant Chief Trial Attorney for the last several years of my career with the Division. Since leaving the Commission, I have focused my practice on securities litigation. I have extensive experience in litigating claims involving inappropriate conduct by securities firms, licensed individuals, and financial institutions.

In 2005 I was appointed Receiver in a Commission action involving a failed hedge fund, (*SEC v. Howard Waxenberg*). During the period of time since this matter was instituted as Receiver, I have instituted numerous lawsuits and collected over \$11 million that will shortly be delivered to investors. This case involved a failed Ponzi scheme hedge fund and has provided Fowler White with broad experience with and in dealing with such matters. We have not only

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Chedly C. Dumornay, Esq.  
January 19, 2009  
Page 2

gained experience, but have conducted research and developed procedures that will go a long way to expedite our efforts in this matter, should we be selected, and save substantial dollars in legal fees and administration costs.

Previously I had been appointed as a Receiver in a Commission action. In SEC v. Captain Crab which proceeded before the United States District Court for the Southern District of Florida, I collected and disbursed funds on behalf of the District Court. I was appointed at the request of the Commission. On a number of occasions, I have also served as a Receiver, Conservator and Independent Arbiter for matters instituted by the State of Florida. Most recently, the State of Florida appointed me as Independent Arbiter for In re Olde Discount which involved the resolution of individual claims that had been uncovered by an action the Division brought against Olde Discount. In this capacity, I reviewed and evaluated over 400 claims for eligibility. I then administered the claims process for those eligible claimants who elected to participate in the process.

If accepted by you and appointed by the Court, my immediate tasks will be to secure all assets and records of Scoop, determine if any inappropriate activity has occurred, and evaluate possible actions to recover assets from third parties. Concurrently, I will administer as appropriate an evaluation of claims against Scoop and thereafter as promptly as possible, distribute Scoop's assets to entitled claimants. My primary goal will be to accomplish each of these tasks as efficiently, expeditiously and economically as possible. I will endeavor to preserve all of Scoop's assets and pursue any additional funds rightfully belonging to Scoop. Simply put, my role is to gather and preserve assets for those who are entitled in a manner that maximizes the assets for these entitled parties. I am cognizant that efficiency and the avoidance of unnecessary expense will enhance the recovery of deserving claimants – a primary goal of a receiver.

If I am chosen, I will bill for my services on hourly basis. My standard rate is \$450 per hour, but I will reduce this rate to \$350 for this matter. For legal services, I intend to retain Fowler White Boggs ("FWB"). FWB is one of Florida's oldest and most successful law firms. It has more than 125 attorneys in five Florida offices located in Tampa, Fort Myers, Tallahassee, Ft. Lauderdale and Jacksonville. FWB is a full service law firm with lawyers specializing in over 36 practice areas, including securities litigation, bankruptcy, and trusts and estates. I have enclosed materials on FWB to give you an idea of the services this Firm can provide. You can also visit the Firm's website at [www.fowlerwhite.com](http://www.fowlerwhite.com) for more information. I anticipate that I will rely primarily on the attorneys working within the Firm's Financial Services Litigation Group. I have included the resumes for attorneys in this group who may work on this matter. I have also included a fee schedule listing the hourly rates for each of these attorneys and will reduce their fees by 10 percent or more for services rendered in this matter.

For assistance with accounting matters and financial analysis, I will retain a well-recognized accounting firm with substantial experience in forensic accounting, fraud examinations and auditing. I will seek the approval of the Commission with respect to this choice and will make the choice cognizant of the expertise necessary to accomplish the tasks

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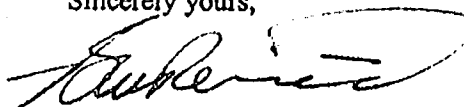


Chedly C. Dumornay, Esq.  
January 19, 2009  
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presented and the minimization of the costs involved. Fowler White has contacts with numerous firms appropriate for this assignment.

Thank you for contacting me and allowing me the opportunity to submit this proposal. I would be delighted to serve as Receiver in this matter. Please do not hesitate to contact me if I can provide you with any additional information.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Burton W. Wiand", with a large, sweeping loop at the end.

Burton W. Wiand

BWW/djb  
Enclosures

40562054v1

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## **ATTORNEY FEE SCHEDULE**

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ATTORNEY NAME	STANDARD BILLING RATE	DISCOUNT BILLING RATE
BURTON WIAND	\$450	\$350
CARL NELSON	\$400	\$325
GIANLUCA MORELLO	\$350	\$315
MAYA LOCKWOOD	\$300	\$270
DOMINIQUE PEARLMAN	\$215	\$193.50
KATHLEEN LIEVER	\$215	\$193.50
SEEMA KELLA	\$215	\$193.50

\*Should it become necessary to involve other attorneys in this matter, similar discount fees would apply to all participating counsel.



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## Burton W. Wiand

Burton W. Wiand represents brokerage firms, financial institutions, corporations, and their associated persons in arbitration and litigation in state and federal courts and in investigations and proceedings before state and federal regulatory agencies and self-regulatory organizations.

### Representative Experience

- Appointed Receiver for matters instituted by the State of Florida, the Federal Trade Commission, and the Securities and Exchange Commission
- Represented corporations and directors in securities class actions
- Defended securities actions that resulted in a ruling that indexed annuities are not securities
- Successfully defended a major New York Stock Exchange brokerage firm in an SEC administrative proceeding involving defalcation by representatives and supervision
- Represented brokerage firms and individuals in hundreds of arbitration proceedings before the NYSE, FINRA, AAA, and MSRB
- Regularly handles the defense of SEC and SRO regulatory investigations and defends brokerage firms and associated individuals in connection with Commission and SRO actions
- Defended a brokerage firm and its president in connection with major DOJ antitrust investigations relating to municipal bond offerings
- Defended a corporate executive in an FTC injunctive action relating to deceptive trade practices

### Significant Reported Decisions

- Washington Square Sec. Inc. v. Aune, 385 F.3d 432 (4th Cir. 2004)
- Ungerleider v. Gordon, 214 F.3d 1279 (11th Cir. 2000)
- Tourdo v. Merrill Lynch Pierce, 1998 WL 304133 (11th Cir. May 28, 1998); Affirming, Tourdo v. Merrill Lynch Pierce, Fenner & Smith, No. 93-484-CIV-T-24(C), 1996 U.S. Dist. LEXIS 22847 (M.D. Fla. Dec. 17, 1996)
- Jones v. Childers, 18 F.3d 899 (11th Cir. 1994)
- Greening v. Western Reserve Life Assurance Co. — F. Supp. 2d —, 2006 LEXIS 52876 (M.D. La. July 20, 2006)
- Malone v. Addison Ins. Mktg., No. 3:01-CV-259(H), 225 F. Supp. 2d 743 (W.D. Ky. 2002); Motion granted by, Dismissed by Malone v. Addison Ins. Mktg., 2002 U.S. Dist. LEXIS 19543 (W.D. Ky., Sept. 30, 2002)
- Investors Capital Corp. v. Brown, 145 F. Supp. 2d 1302 (M.D. Fla. 2001)
- SEC v. Digital Lightwave, 196 F.R.D. 698 (M.D. Fla. 2000)
- Raymond James Fin. Servs. v. Saldukas, 896 So. 2d 707 (Fla. 2005)
- In re Raymond James Fin. Servs., Inc., No. 3-11692, Release No. 296, 2005 SEC LEXIS 2368 (Sept. 15, 2005)
- Dist. Bus. Conduct Comm. v. Merten, Complaint No. C8A950030, 1997 NASD Discl. LEXIS 71 (NBCC Oct. 31, 1997)

### Past Experience

- Macfarlane, Ferguson, Allison and Kelly  
Partner 1984-1989
- United States Securities and Exchange Commission, Division of Enforcement 1971-1984; Assistant Chief Trial Counsel; Senior Counsel to Associate Director; Branch Chief, Branch of Criminal References and Special Proceedings; Special Counsel to Assistant Director



**Shareholder**  
**Securities and Financial**  
**Services Litigation Practice**  
**Group Leader**  
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bwiand@fowlerwhite.com

### Practice Areas

Class Action Litigation  
Securities and Financial Services  
Litigation  
Securities Law and Corporate Finance  
White Collar Crime, Government  
Investigations and Regulatory  
Compliance

### Education

J.D., University of Georgia School of  
Law, 1971  
B.A., University of the South, 1968

### Bar Admissions

Florida  
District of Columbia  
Georgia

### Court Admissions

Florida State Courts  
Florida Supreme Court  
U.S. Court of Appeals, Fourth Circuit  
U.S. Court of Appeals, Sixth Circuit  
U.S. Court of Appeals, Eleventh Circuit  
U.S. District Court, Middle District of  
Florida  
U.S. District Court, Northern District of





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## Burton W. Wiand

### **Presentations and Publications**

#### **Presentations**

- "Arbitration - An Alternative Method of Dispute Resolution with Teeth," Civil Seminar for the Federal Bar Association Tampa Bay Chapter 2008. Click here to view the presentation and click here to view cases related to the presentation.
- "Trouble: How To Avoid It And What To Do When It Arrives," Florida Securities Dealers Association, Regional Conference, 2007
- Interview on CNBC regarding Insider Trading with CNBC's Michelle Caruso-Cabrera, December 4, 2006. Click here to view the video.
- Accounting Controls Seminar, Panelist, Executive Enterprises, Inc.
- University of Tulsa, Principal Speaker, Third Annual Conference of Accountants
- Annual Convention, Principal Speaker, Dallas Society of Certified Public Accountants
- Federal Bar Association Conference on White Collar Crime, Principal Speaker
- Securities Regulation, Guest Lecturer, Penn State University
- Sixth Annual Conference of Legal Problems and Bank Regulation, Panelist, Law Journal Seminar-Press
- National Association of Securities Dealers, Inc., Arbitration & Mediation - Instructor NASD Advanced Arbitrator Training Courses

#### **Publications**

- Contributing Legal Editor, Author, *Securities Litigation Commentator*

#### **Professional Affiliations**

- American Bar Association: Member, Subcommittee on Broker-Dealer Litigation
- Association of Securities and Exchange Commission Alumni, Inc.: Trustee, Atlanta Division
- District of Columbia Bar Association
- FINRA: Arbitrator, New York Stock Exchange
- The Florida Bar
- Securities Industry Association: Legal and Compliance Division
- The State Bar of Georgia
- Stetson University College of Law: Adjunct Professor, Securities Regulation (1987-1990)

#### **Distinctions**

**AV Peer Review Rated by Martindale-Hubbell**

**The Best Lawyers in America, 2006-2009**

**Certified Mediator, Florida Supreme Court**

**Florida Legal Elite, Florida Trend Magazine 2004-2007; ranked in the top 2% of practicing Florida Bar Members**

**Florida Super Lawyers, 2006-2008**

Florida  
U.S. Tax Court  
Georgia State Courts  
U.S. District Court, Southern  
District of Georgia





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## Gianluca Morello

Gianluca Morello practices in the areas of securities litigation and regulation, antitrust litigation and counseling, financial services litigation, and other commercial litigation. Gianluca has defended securities fraud class actions and other matters involving claims of fraud and other misconduct asserted against financial services firms and other businesses and their related individuals; antitrust claims asserted in class or other actions, including claims asserted against businesses in the financial services and healthcare industries; and other claims asserted against businesses and individuals in the financial services and other industries. Gianluca also has counseled businesses on structuring business practices in compliance with securities and antitrust laws.

### Representative Experience

- Defense of stock issuer's independent auditor in federal securities fraud putative class action.
- Defense of international accounting network from fraud, conspiracy, and other claims asserted in connection with alleged fraudulent investment schemes purportedly involving over \$3 billion in U.S. Treasury bonds.
- Defense of former homebuilder in connection with concurrent federal securities fraud putative class action and numerous individual state court suits asserting claims for fraud and civil conspiracy.
- Representation of federal receiver following appointment on SEC enforcement proceeding relating to fraudulent investment scheme.

### Past Experience

- Weil, Gotshal & Manges LLP, New York, NY  
Litigation Associate, Antitrust and Financial Services Practice Groups  
2004-2006
- The Hon. Steven D. Merryday, U.S. District Judge, M.D. Fla., Tampa, FL  
Law Clerk, Winter 2002-2004
- Clifford Chance LLP (formerly Rogers & Wells LLP), New York, NY  
Litigation Associate, 1998-2002

### Presentations and Publications

#### Publications

- Antitrust Litigation Best Practices: Observations and Tips for Antitrust Litigation, Aspatore Books, Thomson Reuters, 2008
- "Diagnosing Monopsony and Other Issues: An Overview of the United/PacificCare Investigation," Co-Authored with F. Schaeffer and L. Protzmann, Antitrust Health Care Chronicle, March 2006
- "Big Six Accounting Firms Shop Worldwide for Law Firms: Why Multi-Discipline Practices Should Be Permitted in the United States," 21 FORDHAM INT'L L. J. 190, 1997

### Professional Affiliations

- American Bar Association: Section of Litigation, Class Action & Derivative Suit; Antitrust Law, Committee Member; Securities Litigation, Committee Member
- Fordham Int'l Law Journal Alumni Association: Associate Director



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### Practice Areas

Antitrust and Trade Regulation

Class Action Litigation

Securities and Financial Services Litigation

White Collar Crime, Government Investigations and Regulatory Compliance

### Education

J.D., Fordham University School of Law, 1998 (Special Publications Editor, *Fordham Int'l Law Journal*; Moot Court Board)

B.A., Hamilton College, 1993 (Omicron Delta Epsilon)

### Bar Admissions

Florida

New York

### Court Admissions

Florida State Courts

New York State Courts

U.S. Court of Appeals, Ninth Circuit

U.S. Court of Appeals, Eleventh Circuit

U.S. District Court, Middle District of Florida

U.S. District Court, Southern District of New York

U.S. District Court, Eastern District of New York





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## Carl R. Nelson

Carl R. Nelson has experience in commercial litigation, including defense of class actions and qui tam proceedings, representation of Receivers in SEC enforcement actions, and representation of insurers on business practices and coverage issues. Admiralty and maritime law litigation of cases involving environmental protection laws (including class actions), collisions, cargo damage, injury and death, charter party disputes, insurance coverage issues, salvage claims, and considered an expert in admiralty limitation of liability actions. Appellate practice in state and federal courts in litigated cases.

### Past Experience

- Nelson Panng and Constructions
- Fowler White Gillen Boggs Villareal Banker, P.A. Clerk
- Fowler White Gillen Boggs Villareal Banker, P.A. Associate
- Served in United States Navy, 1965-1971

### Presentations and Publications

#### Presentations

- "Southeastern Admiralty Law Institute," Speaker, Annual Seminar, Savannah, GA

#### Publications

- "Maritime Jurisdiction" and "Personal Injury and Wrongful Death," Author, The Florida Bar's *Maritime Law and Practice Manual*

### Professional Affiliations

- American Bar Association
- The Florida Bar: Member, Admiralty Law Section and Board Certification Committee
- Hillsborough County Bar Association
- Maritime Law Association of the United States: Member, Maritime Personnel and Cruise Ship Committees, 1980-present
- Southeastern Admiralty Law Institute: Member, 1980-present

### Community Involvement

- Rotary Club of Tampa 1999-present

### Distinctions

AV Peer Review Rated by Martindale-Hubbell

Board Certified in Admiralty and Maritime Law, The Florida Bar



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### Practice Areas

Admiralty / Maritime  
Class Action Litigation  
Securities and Financial Services  
Litigation

### Education

J.D., Stetson University College of Law, 1979 (*Stetson Law Review*; Phi Delta Phi)  
B.S., With Honors, University of Tampa, 1976

### Bar Admissions

Florida

### Court Admissions

U.S. Supreme Court  
Florida State Courts  
U.S. Court of International Trade  
U.S. Court of Appeals, Fifth Circuit  
U.S. Court of Appeals, Eleventh Circuit  
U.S. District Court, Middle District of Florida  
U.S. District Court, Northern District of Florida  
U.S. District Court, Southern District of Florida



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ATTORNEYS AT LAW

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gray-robinson.com MELBOURNE  
MIAMI  
NAPLES  
ORLANDO  
TALLAHASSEE  
TAMPA

January 20, 2009

VIA E-MAIL - [levensonr@sec.gov](mailto:levensonr@sec.gov)

Robert K. Levenson, Esq.  
Regional Trial Counsel  
Miami Regional Office  
*United States Securities and Exchange Commission*  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131

Re: Potential Receivership Involving Arthur Nadel

Dear Mr. Levenson:

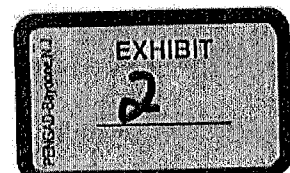
This responds to your request earlier today for a proposal from my law firm to serve as Receiver, and Receiver's counsel, in connection with the referenced matter. I greatly appreciate the opportunity to submit this proposal and look forward to the possibility of working with you and your colleagues in connection with this case.

About GrayRobinson

As you know from our previous discussions and submissions, GrayRobinson is a full-service law firm with over 220 attorneys distributed among ten different offices located throughout the State of Florida. In 2000, GrayRobinson expanded into the Tampa market by merging with the law firm of Shackelford, Farrior, Stallings & Evans, a firm with nearly a century of history in the Tampa area. Presently, our Tampa office employs 38 lawyers practicing in a wide variety of specialty areas including, but not limited to, bankruptcy and creditors' rights, securities, litigation, banking, and public finance. In short, GrayRobinson attorneys -- both statewide and in our Tampa office -- possess the skill, experience, and reputation required to serve as Receiver, and Receiver's counsel, for the referenced case.

The Proposed Receiver

I am pleased to offer my services as a Receiver for the referenced case. As reflected in the attached biography, I have been practicing law in Tampa for nearly 23 years and, during that time, have achieved an "AV" rating from Martindale-Hubbell representing a "Very High to Preeminent" legal ability rating as evaluated by my peers. My peers have also designated me as



GRAYROBINSON  
PROFESSIONAL ASSOCIATION

Robert K. Levenson, Esq.  
U.S. Securities and Exchange Commission  
January 20, 2009  
Page 2

one of Florida's "Legal Elite" for five consecutive years, as reported in Florida Trend magazine, and also as one of Florida's "Super Lawyers" for three consecutive years, as reported in Super Lawyers magazine.

For the past seventeen years, I have devoted the majority of my practice to the representation of securities industry clients, including broker-dealers, investment advisors, and registered representatives, in securities litigation, arbitration, and regulatory proceedings. During this time, I have amassed a great deal of knowledge (and information) regarding a wide array of investments and investment strategies. I have also attained a significant amount of experience compiling, reviewing, and analyzing financial documents and trading records. These skills, coupled with my knowledge of securities and my experience litigating investment disputes, qualifies me to serve as a Receiver in the referenced case.

For billing purposes, my current hourly rate is \$350.00. However, I am willing to discount this rate by 10% for purposes of this Receivership.

#### Receiver's Counsel

I am equally pleased to offer the services of GrayRobinson as counsel for the Receiver in the referenced case. As you may already know from our previous discussions, GrayRobinson is one of Florida's fastest growing law firms with over 50 practice specialties encompassing all key areas of commercial law including, but certainly not limited to, bankruptcy and creditors' rights, corporate and securities laws, and securities litigation. GrayRobinson attorneys have served as counsel, or co-counsel, for Receivers in at least two different SEC receivership cases, and have also served as Receivers or Trustees (or as counsel for Receivers and Trustees) in a large number of receivership and bankruptcy matters over the years.

For purposes of this matter, I envision enlisting the assistance of one or more of the following attorneys in our Tampa office: Richard Zabak, Scott Lilly, and C. Read Sawczyn. Beyond our Tampa office, I might also seek the assistance of Leyza Blanco, a bankruptcy and creditors' rights lawyer, John Brennan, an experienced federal court litigator and member of the firm's Banking and Business Litigation practice areas, and Jack McMullen, a member of the firm's Corporate and Securities practice area who, before obtaining his law degree, worked as an accountant with a national accounting firm. Biographies for all of the aforementioned lawyers are enclosed for your reference.



GRAYROBINSON  
PROFESSIONAL ASSOCIATION

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As with my current hourly rate, GrayRobinson is willing to discount the hourly billing rates of the aforementioned lawyers by 10%, as reflected below:

<u>Attorney</u>	<u>Current Billing Rate</u>	<u>Discounted Billing Rate</u>
Richard Zabak	\$310.00	\$279.00
Scott Lilly	\$275.00	\$247.00
Read Sawczyn	\$225.00	\$202.00
Leyza Blanco	\$395.00	\$355.00
John Brennan	\$375.00	\$337.00
Jack McMullen	\$345.00	\$310.00

On behalf of GrayRobinson, I thank you for inviting my law firm to submit this proposal. If you or your colleagues have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Frederick S. Schrls

FSS/sam

**Frederick S. Schrils**  
Securities Litigation Department Chair  
GrayRobinson, P.A.  
201 North Franklin Street, Suite 2200  
Tampa, Florida 33602  
(813) 273-5000  
Frederick.Schrils@gray-robinson.com



**Experience:**

Fred's practice area is commercial litigation, with an emphasis in securities litigation and arbitration proceedings. He regularly represents securities industry clients, including broker-dealers, registered representatives, investment advisors and financial planners in state and federal courts, as well as in arbitration proceedings conducted by the National Association of Securities Dealers, Inc. (now known as FINRA), the New York Stock Exchange, the National Futures Association, the Pacific Stock Exchange, and the American Arbitration Association. He also has experience representing corporate issuers, officers, and directors in class action cases and shareholder derivative proceedings.

In addition to the litigation and arbitration matters described above, Fred represents securities industry clients in connection with investigations and administrative proceedings initiated by state, federal, and self-regulatory agencies and organizations. Fred has trained securities arbitrators in connection with the NASD's Participatory Training Programs and has taught a Securities Arbitration course as an adjunct Professor at Stetson University College of Law.

**Background:**

Fred received his B.B.A. degree, with distinction, from the University of Kentucky in 1983. He then received his Juris Doctor degree, with honors, from the University of Florida College of Law in 1986. In law school, Fred competed as part of the school's Moot Court team and, in 1986, received the Justice Campbell Thornal National Moot Court Board's "Outstanding Member" award.

Fred holds an "AV" rating from Martindale-Hubbell, representing a "Very High to Preeminent" legal ability rating as evaluated by his peers. Fred also was included in *Florida Trend Magazine's* 2004, 2005, 2006, 2007, and 2008 listings of Florida's "Legal Elite," and *Super Lawyers Magazine's* 2006, 2007 and 2008 listings of Florida's top attorneys.

**Professional:**

- Chairman of Thirteenth Judicial Circuit Grievance Committee
- Hillsborough County Bar Association (former Treasurer and member of the board of directors of the Young Lawyers Division)
- American Bar Association (Securities Litigation Committee; Broker-Dealer Litigation Subcommittee, Securities Arbitration Subcommittee)
- The Federal Bar Association
- Securities Industry and Financial Markets Association ("SIFMA") Compliance and Legal Division
- Florida Securities Dealers Association, Inc.

**Publications:**

- Author: "Dismissal Motions in Arbitration--Are they Worth Saving?" *Florida Review* (Florida Securities Dealers Association), February 15, 2008
- Co-Author: "Should Non-Lawyers Be Permitted to Represent Parties in Binding Arbitrations?" *Lawyer Magazine* (Hillsborough County Bar Association) February 2008
- Co-Author: "Appealing Arbitration Decisions--Look Before You Leap," *Lawyer Magazine* (Hillsborough County Bar Association), June 2007
- Co-Author: "A Practitioner's Introduction to Rule 11 of the Federal Rules of Civil Procedure," *Florida Bar Journal*, December 1989

**SAXON GILMORE**  
SAXON, GILMORE, CARRAWAY  
GIBBONS LASH & WILCOX, P.A.  
*Attorneys and Counselors at Law*

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HANS CHRISTIAN BEYER  
Direct Dial: 813.314.4509  
Email: [hbeyer@wans.net](mailto:hbeyer@wans.net)

January 20, 2009

Via Electronic Transmission to  
levensonr@sec.gov

Robert K. Levenson, Esq.  
Securities and Exchange Commission  
801 Brickell Avenue, Suite 1800  
Miami, FL 33131

Re: Possible receivership(s) relating to Mr. Arthur G. Nadel and  
certain related entities

Dear Bob:

Thank you for your telephone call earlier today regarding a possible receivership involving Mr. Nadel and some or all of the various entities which you e-mailed to me this morning (the "Potential Receivership Entities"). As we discussed, my firm and I are extremely interested in assisting the Securities and Exchange Commission (the "SEC") with this matter.

Since we have previously met and discussed the qualifications of the firm and myself in connection with receiverships and fraudulent transfer litigation and since you expressed an interest in receiving a written proposal as soon as possible today, I have kept this proposal quite brief. Please do not hesitate to contact me or the firm's managing partner, Bernice Saxon, should you require any additional information.

This proposal relates to my services as a receiver for one or more of the Potential Receivership Entities and the possible engagement of Saxon, Gilmore, Carraway, Gibbons, Lash & Wilcox, P.A. by the receiver to assist with the required legal work. Based upon the information regarding the Potential Receivership Entities available in the media, it appears likely that any such receivership action may involve, *inter alia*, locating assets, freezing assets, commencing and prosecuting actions to recover assets (including, without limitation, fraudulent transfer actions), evaluating the



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benefits of possible bankruptcy filings, and establishing and managing a distribution system to return recovered funds to investors.

As we have previously discussed, I have substantial experience with respect to each of these activities. My complete resume is attached for your review, but the most relevant engagements to the facts currently available in connection with the Potential Receivership Entities are Evergreen Securities, Inc. ("Evergreen") and International Administrative Services, Inc. ("IAS"). Both of these cases were bankruptcy cases in which I represented the Official Committee of Unsecured Creditors and, post-confirmation, the Steering Committee, in the case of Evergreen, and the Reorganization Trustee, in the case of IAS. Evergreen involved a Ponzi scheme in which investors in an "offshore mutual fund" lost approximately \$200,000,000.00. IAS involved an extremely convoluted international fraud case in which IAS's founder secreted approximately \$50,000,000.00 in various offshore jurisdictions with the assistance of several U.S. attorneys. The IAS case was recently completed after one of the judgments which I obtained for the Stock Trustee was affirmed following oral argument by the Eleventh Circuit Court of Appeals. The Evergreen Case is nearly completed with only a couple of pending suits remaining to be concluded. Through the two cases, nearly \$50,000,000.00 has been recovered for the benefit of creditors to date.

In addition to these two matters and other bankruptcy matters involving asset recovery for which I was primarily responsible, other attorneys at Saxon, Gilmore, Carraway, Gibbons, Lash & Wilcox, P.A. have had notable successes in the area of fraudulent transfer litigation outside of the bankruptcy arena. Specifically, our attorneys have successfully represented the Resolution Trust Corporation and the Federal Deposit Insurance Corporation in various cases involving allegations of fraud and asset recovery.

In the interest of establishing a relationship with the SEC for receivership cases, my firm has authorized substantial discounts from our standard attorney and paraprofessional rates for this engagement. Specifically, I will reduce my standard billing rate of \$395 per hour to \$275 per hour for this engagement. In the event that my firm is engaged in connection with the proposed receivership, it has agreed to match this discount of thirty percent (30%) for all attorney rates and to discount paraprofessional rates by twenty percent (20%). In addition, there will be an absolute cap of \$275 per hour on attorney fees charged by attorneys of Saxon Gilmore irrespective of their standard hourly rates so that the actual rate charged

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for this engagement will be the lower of seventy percent (70%) of any attorney's standard rate or \$275 per hour.

As previously noted, I have attached a copy of my current resume for your consideration. I have also attached an executed copy of the SEC's *Billing Instructions* as well as biographical information on attorneys at Saxon Gilmore which might be retained to provide services in connection with the proposed receivership case. Again, should you have any questions regarding the matters set forth herein or should you require any additional information, please do not hesitate to contact me. Should you wish to reach me after office hours, please call me on my cell phone at (813) 245-9300.

Thank you for considering me and Saxon, Gilmore, Carraway, Gibbons, Lash & Wilcox, P.A. in connection with this engagement. I look forward to hearing from you shortly and hopefully to working with you on this matter.

Best regards,



Hans Christian Beyer

enclosures

## Hans Christian Beyer

2514 W. Sunset Drive  
Tampa, Florida, 33629  
E-mail Address: hbeyer@wans.net

Office Telephone: (813) 314-4509  
Home Telephone: (813) 258-6222  
Cellular Telephone: (813) 245-9300

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**EDUCATION:** The University of Michigan Law School - Ann Arbor, MI  
Juris Doctorate, May 1991

The University of Michigan Honors College - Ann Arbor, MI  
Bachelor of Arts with High Honors / Distinction, Economics, May 1988

United States Marine Corps. - Quantico, VA  
Graduate of Officer Candidate School.  
Honorable Discharge, August 1985

**HONORS:** Martindale Hubble "AV" Rating.

Chair, Judicial Liaison Committee of Business Law Section of Florida Bar.

Immediate Past Chair, Bankruptcy / UCC Committee of Business Law Section of Florida Bar.

Kiwanian of the Year Award and Past President Award.

Honors College Special Track. Selected as one of fifteen participants from the University of Michigan undergraduate class of 1988.

Class Honors. Eight consecutive terms on Dean's List (maximum possible).

Sophomore Honors Degree.

William J. Branstrom Freshman Prize. Awarded to top five percent of freshman class based on academic performance.

**SKILLS:** Proficiency with a wide variety of computer software, German language

**EMPLOYMENT:** Saxon, Gilmore, Carraway, Gibbons, Lash & Wilcox, P.A. - Tampa, FL  
Partner in firm's insolvency and complex litigation departments with primary responsibility for various high-profile engagements in the Middle and Southern Districts of Florida; also provided business counseling services to a variety of individual and corporate clients particularly in matters pertaining to international transactions.  
2005 - present.

Buchanan Ingersoll, P.C. - Miami, FL & Tampa, FL  
Shareholder (Partner) in charge of firm's creditors' rights department for South Florida. Primary responsibility for bankruptcy and complex litigation matters for a variety of financial institutions, foreign and domestic corporations, and high net worth individuals; handled international asset recovery matters in connection with two of the largest fraud cases in Florida; handled a variety of international transactions for corporate and individual clients; represented bank groups in connection with restructuring large syndicated loans. Firm was ranked as one of the top one hundred law firms nationally.  
2003 - 2005.

Law Office of Hans Christian Beyer, P.A. - Tampa, FL  
Founder and sole shareholder of boutique law firm specializing in commercial insolvency matters, complex litigation, and both in-bound and out-bound international transactions; primary responsibility for successful \$150 million dollar international litigation matter tried in federal courts and affirmed by the United States Court of Appeals for the 11<sup>th</sup> Circuit.  
2002.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. - Tampa, FL  
Shareholder (Partner) in the firm's bankruptcy/creditors' rights department. Member of Board Selection Committee, Business Development Committee, and Collections Committee. Had primary responsibility for large commercial reorganization, bankruptcy, international, and asset recovery matters.  
Associate 1991 - 1997; shareholder 1997 - 2001.

**Hans Christian Beyer**

**Page 2**

**Midwest Continental Company - Perrysburg, OH**

*Financial Planner, Financial Software Designer.* Assisted accredited professionals in creating financial plans for executives of Fortune 500 Corporations using a variety of sophisticated software packages.  
1987 - 1988.

**ADMISSIONS /  
MEMBERSHIPS:**

United States Supreme Court; Eleventh Circuit Court of Appeals; U.S. District Court, Middle and Southern Districts of Florida; U.S. Bankruptcy Court, Middle and Southern Districts of Florida; Executive Committee of the Business Law Section of the Florida Bar (1999 - present); Florida Bar (1991); American Bar Association; American Bankruptcy Institute; Former President and Director of Midtown Chapter of Kiwanis International

**REPRESENTATIVE  
BANKRUPTCY  
CASES:**

**Florida Grande Motor Coach Resort, Inc.**

Tampa, Florida. Counsel for principals of real estate development valued at over \$20 million; handled litigation relating to same and complex negotiations of "global" settlement agreement involving clients and various other parties. *October, 2007 - present.*

**Evergreen Security, Ltd.**

Orlando, Florida. Counsel for Official Committee of Unsecured Creditors and thereafter for Steering Committee in bankruptcy reorganization of British Virgin Islands company doing business as a Bahamian mutual fund. Oversaw asset discovery and recovery activities; created creditor information web site; and assisted in coordination of complex, multi-national litigation seeking to recover over \$200 million stolen from investors through fraudulent transfer, deepening insolvency, and other causes of actions. Drafted reorganization plan which was confirmed 2004; represent Steering Committee in ongoing litigation. *January, 2001 - present.*

**International Administrative Services, Inc. (f/k/a The Charles J. Givens Org.)**

Orlando, Florida. Counsel to the Official Committee of Unsecured Creditors and thereafter to its successor, a reorganization trustee. In addition to performing the typical duties of committee counsel in a large reorganization case, had primary responsibility for investigating, commencing, and coordinating ongoing litigation and appeals in U.S. Bankruptcy Court in Orlando, FL; U.S. District Courts in San Diego, CA, and Orlando, FL; Eleventh Circuit Court of Appeals, Atlanta, GA; and the Royal Court of Guernsey, Channel Islands seeking over \$150 million in damages through fraudulent transfer, RICO, and other causes of actions. Plan confirmed in 1997; prevailed in final appeal before Eleventh Circuit Court of Appeals in 2006. *1996 - 2006.*

**Far & Wide Communication Companies**

Miami, Florida. Represented lead bank on large syndicated loan in complex reorganization proceeding. Case still pending. *2003 - 2004.*

**Gardner Industries, Inc. and various affiliated corporations.**

Miami, Florida; Tampa, Florida; Cleveland, Ohio. Represented eleven affiliated corporate debtors which were the country's largest manufacturer of asphalt products for roofing and driveway applications (over \$50 million in annual gross sale). Plan confirmed in 1993. Had primary responsibility for negotiating and implementing a successful out-of-court financial restructuring in 1996. Lead bankruptcy counsel for Gardner's 2000 acquisition of the Gibson-Homans Company through a bankruptcy auction in Illinois. Continue to act as special bankruptcy and litigation counsel to the companies for complex matters.  
*1992 - 2004.*

**Shaw Aero Devices, Inc.**

Ft. Myers, Florida; Tampa, Florida; Naples, Florida. Counsel for Official Committee of Unsecured Creditors in bankruptcy reorganization of major manufacturer of aircraft parts and replacement parts for heavy machinery. Case successfully confirmed in 2002. Represent the Steering Committee for the case post-confirmation. Distributions continue to be made. *2001 - 2006.*



**Cypress Foods, Inc.** (the infamous "Dead Chicken" Case)  
Tampa, Florida. Counsel for Official Committee of Unsecured Creditors in Chapter 11 liquidation of one of the largest poultry producers in the United States. Represented committee during case and handled post-confirmation litigation for Chapter 11 Trustee. 2002 – 2004.

**Servico, Inc. and various affiliated corporations.**  
Miami, Florida. Assisted in represented sixty seven debtors and non-debtor affiliates in complex reorganization involving over fifty hotels operating under various corporate flags. Recovered approximately \$150 million in fraudulent transfers from shareholders and affiliates and confirmed a plan of reorganization. 1991 - 1995.

**REPRESENTATIVE  
SPEAKING  
ENGAGEMENTS:**

**Greed, Terrorism, and Fraud Symposium**  
*Tracing and Recovering Assets from Foreign Jurisdictions*  
Tampa, Florida; September, 2007

**TTN International Tax Conference**  
*Practical and Legal Considerations for Internationally Mobile Employees and Professionals*  
Miami, Florida; May, 2007

**International Bankruptcy Symposium**  
*Understanding and Collecting Foreign Judgments*  
Freiburg, Germany; June, 2005

**Third Annual International Litigation Update:**  
*Hot Topics in International Litigation*  
Miami, Florida; May, 2005

**University of Florida Law School; Advanced Bankruptcy Seminar**  
Regular lecturer on advanced bankruptcy topics including international asset recovery litigation, choice of laws issues, fraudulent transfer litigation, and ethics.  
Gainesville, Florida; 2000 – present.

**International Bankruptcy Symposium**  
*§ 304 Ancillary Proceedings: Balancing Comity with Territorialism in Transnational Insolvency Cases.* Montreal, Canada; June, 2004

**HLB International Tax Conference**  
*Recent Developments in Offshore Blacklisting and their Effect on Tax Planning.*  
Puerto Rico, United States; June, 2001

**World Tax Conference**  
*Changing International Conventions pertaining to Intellectual Property Protection.*  
Dublin, Ireland: May, 2001

**International Insolvency Symposium**  
1) *Fraudulent Transfer Recovery through International Litigation*  
2) *The Proper Use of Ancillary Proceedings when dealing with Foreign Insolvency Cases*  
Budapest, Hungary: April, 2001

**World Tax Conference**  
*The Effect of New International Money Laundering and Fraudulent Transfer Conventions on Tax and Estate Planning*  
Barcelona, Spain: July, 2000

**Florida Bar's Annual Bankruptcy / UCC Conference**  
*Pre-Bankruptcy Counseling, Asset Protection Planning, and Fraudulent Transfer Recovery*  
Miami, Florida: March, 2000

Numerous book chapters and articles published nationally and internationally in such publications as the *American Bankruptcy Institute Journal* and by publishers including the American Bar Association; copies available upon request.