

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS,
WILLIAM STENGER,
JAY PEAK, INC.,
Q RESORTS, INC.,
JAY PEAK HOTEL SUITES L.P.,
JAY PEAK HOTEL SUITES PHASE II. L.P.,
JAY PEAK MANAGEMENT, INC.,
JAY PEAK PENTHOUSE SUITES, L.P.,
JAY PEAK GP SERVICES, INC.,
JAY PEAK GOLF AND MOUNTAIN SUITES L.P.,
JAY PEAK GP SERVICES GOLF, INC.,
JAY PEAK LODGE AND TOWNHOUSES L.P.,
JAY PEAK GP SERVICES LODGE, INC.,
JAY PEAK HOTEL SUITES STATESIDE L.P.,
JAY PEAK GP SERVICES STATESIDE, INC.,
JAY PEAK BIOMEDICAL RESEARCH PARK L.P.,
AnC BIO VERMONT GP SERVICES, LLC,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC.,
GSI OF DADE COUNTY, INC.,
NORTH EAST CONTRACT SERVICES, INC.,
Q BURKE MOUNTAIN RESORT, LLC,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL
AND CONFERENCE CENTER, L.P.
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC,

Additional Receivership Defendants¹

RECEIVER'S FIFTH INTERIM OMNIBUS APPLICATION FOR
ALLOWANCE AND PAYMENT OF PROFESSIONALS' FEES
AND REIMBURSEMENT OF EXPENSES FOR
FEBRUARY 1, 2017 – AUGUST 31, 2018

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No. 60].

Michael I. Goldberg (the “Receiver”), in his capacity as the court-appointed Receiver, pursuant to the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver (the “Receivership Order”) [ECF No. 13] dated April 13, 2016, hereby files this Fifth Interim Omnibus Application (the “Application”) for Allowance and Payment of Professionals’ Fees and Reimbursement of Expenses for February 1, 2018 – August 31, 2018 (the “Application Period”), and in support, states as follows:

Preliminary Statement

The Receiver and his professionals continue to provide valuable services as they recover money and property for the benefit of the investors and creditors of the receivership estate. The Receiver worked with the Securities and Exchange Commission to negotiate a settlement with Ariel Quiros, which has resulted in his turnover of cash and receivership properties, including his interest in the Jay Peak Resort and the Burke Mountain Hotel. The Receiver has completed the documentation to take title to those properties and has begun marketing and selling certain of the properties for the benefit of the investors.² The Receiver and his professionals continue to work with the management team on site at the Jay Peak Resort and the Burke Mountain Hotel to improve the operations of the Receivership Entities which will increase the value of the properties when they are sold by the Receiver.

The Receiver and his professionals have also worked with investors and their counsel to provide documentation for their citizenship petitions. The Receiver has facilitated the redeployment of Jay Peak Biomedical Research Park L.P. investors with approved I-526 petitions living in the United States, so they can have the opportunity to obtain their citizenship. The Receiver intervened in litigation where receivership assets were at issue in order to stake a claim

² The Receiver will return to Court at a future date to seek approval to market and sell the Jay Peak Resort. The Receiver intends to hold on to the Burke Mountain Hotel for a short time, in order to generate more jobs as required under the EB-5 program.

in any potential recoveries. The Receiver settled legal disputes resulting in recovery of additional money for the benefit of the investors. The Receiver continues to analyze and pursue claims against third parties who improperly benefited from the Receivership Entities. As a result of these actions, the Receiver and his professionals have incurred fees and expenses and seek Court approval to pay the sum of \$1,052,425.50 in professional fees. This amount represents a \$614,000 discount in fees from the professionals' standard billing rates. The Receiver also seeks the authority to reimburse the professionals the sum of \$40,935.93 in expenses, for a total payment of \$1,132,945.94 to the Receiver and his professionals.

I. Background

On April 12, 2016, the Securities and Exchange Commission ("SEC") filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida (the "Receivership Court") against the Receivership Defendants,³ the Relief Defendants,⁴ William Stenger and Ariel Quiros, alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by among other things, making false or materially misleading representations to foreign investors who invested \$500,000 in the limited partnerships set up by the Receivership Entities pursuant to the federal EB-5 immigration program.

On April 13, 2016, upon the SEC's Motion for Appointment of Receiver [ECF No. 7], the Court entered the Receivership Order and selected Michael Goldberg as the Receiver of the

³ The "Receivership Defendants" are Jay Peak, Inc., Q Resorts, Inc., Jay Peak Hotel Suites L.P., Jay Peak Hotel Suites Phase II L.P., Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P., Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P., Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC.

⁴ The "Relief Defendants" are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P. and Q Burke Mountain Resort GP Services, LLC were added as "Additional Receivership Defendants". The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the "Receivership Entities."

Receivership Defendants and the Relief Defendants. Relevant to this Application, the Receivership Order authorizes the Receiver to appoint professionals to assist him in “exercising the power granted by this Order ...” *See* Receivership Order at ¶ 4. Moreover, the Receiver and his professionals are entitled to reasonable compensation from the assets of the Receivership Defendants, subject to approval of the Court. *See* Receivership Order at ¶14.

II. Information about Applicant and the Application

This Application has been prepared in accordance with the Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission (the “Billing Instructions”).⁵ Pursuant to the Billing Instructions, the Receiver states as follows:

- (a) **Time period covered by the Application:** February 1, 2018 – August 31, 2018
- (b) **Date of Receiver’s appointment:** April 13, 2016
- (c) **Date services commenced:** April 4, 2016⁶
- (d) **Names and rates of all professionals:** See Exhibit 4(a) – (e)
- (e) **Interim or Final Application:** Interim
- (f) **Records supporting fee application:** See below

The following exhibits are provided in accordance with the Billing Instructions:

Exhibit 1: Receiver's Certification

Exhibit 2: Total compensation and expenses

Exhibit 2(a): Total compensation and expenses requested for this Application

Exhibit 2(b): Summary of total compensation and expenses previously awarded

⁵ The Standardized Fund Accounting Report for the most recent quarter was filed with the Receiver’s Fourth Interim Report [ECF No. 437].

⁶ Levine Kellogg Lehman Schneider and Grossman LLP and Kapila Mukamal billed time prior to the official appointment of the Receiver, which is not subject to this fee request.

Exhibit 2(c): Amounts previously requested and total compensation and expenses previously awarded

Exhibit 3: Fee Schedule: Names and Hourly Rates of Professionals and Paraprofessionals & Total Amount Billed for each Professional and Paraprofessional:

Exhibit 3(a): Akerman LLP

Exhibit 3(b): Levine Kellogg Lehman Schneider and Grossman LLP

Exhibit 3(c): Kapila Mukamal

Exhibit 3(d): Klasko Immigration Law Partners, LLP

Exhibit 4: Time records by professional for the time period covered by this Application, sorted in chronological order, including a summary and breakdown of the requested reimbursement of expenses:

Exhibit 4(a): Akerman LLP

Exhibit 4(b): Levine Kellogg Lehman Schneider and Grossman LLP

Exhibit 4(c): Kapila Mukamal

Exhibit 4(d): Klasko Immigration Law Partners, LLP

III. Case Status

(a) Cash on hand

The amount of non-restricted cash in the Receivership bank accounts as of the date of filing this Application is approximately \$7 million. (Restricted funds include funds earmarked to refund or reimburse investors, and to satisfy debt obligations.) Moreover, these amounts do not include the funds used to maintain and operate the Jay Peak Resort, the Burke Mountain Hotel and related properties. The Receiver seeks to use the non-restricted funds to satisfy the accrued administrative fees and expenses of \$1,132,545.94, which is comprised of what is owed to the professionals described herein.

(b) Summary of creditor claims proceedings

The Receiver has returned the principal investments to investors in Jay Peak Hotel Suites L.P. (“Phase I”); satisfied the past-due trade debt owed by the Jay Peak Resort and the Burke Mountain Hotel; provided refunds of the principal investment to the Q Burke Mountain Resort, Hotel and Conference Center, L.P. (“Phase VIII”) investors; paid the allowed claims of the contractors and suppliers involved in the construction of the Burke Mountain Hotel; and provided refunds of the principal investment of the investors in the Jay Peak Biomedical Research Park L.P. (Phase VII”) who cannot qualify for citizenship and those Phase VII investors who have chosen not to redeploy their investment.

(c) Description of assets/liquidated and unliquidated claims held by the Receiver

In addition to the information provided herein, detailed descriptions of the assets and claims are provided in the Status Reports filed in this case. The Receiver continues to review potential causes of action against financial institutions, pre-receivership professionals and various third parties who may have wrongly profited from the Receivership Entities. These claims may include common law claims and claims under fraudulent transfer statutes. While the Receiver cannot yet predict the likelihood, amount or cost-effectiveness of particular claims or the claims as a whole, the Receiver continues to diligently evaluate claims against third parties.

IV. The Professionals

(a) Akerman LLP

The Receiver is a partner at the law firm of Akerman LLP (“Akerman”) and a founding member of Akerman’s Fraud & Recovery Practice Group. The Receiver has practiced law for twenty-six years and specializes in receivership and bankruptcy cases. The Receiver has been appointed receiver in more than twenty state and federal receivership cases and has represented receivers and trustees in many other cases. The Receiver is working with a team of attorneys and paralegals at Akerman to administer this case. Since Akerman employs more than 600 lawyers

and government affairs professionals through a network of 24 offices, the Receiver has ready access to professionals who specialize in litigation, real estate, corporate affairs, and other pertinent matters and has used their expertise to administer the receivership estate.

The Receiver has agreed to reduce his billing rate and the rates of his professionals for this case. Instead of their standard billing rates, which range from \$440.00 to \$725.00, all partners are billed at \$395.00; associate rates are capped at \$260.00; paralegals and paraprofessionals are capped at \$175.00, resulting in a blended rate of \$298.94. In addition to the rate reductions, all time billed to non-working long distance travel is reduced by an additional 50%. These discounts equate to a \$387,400.00 reduction from Akerman's standard billing. During the period covered by this Application, the Receiver and Akerman billed 1,977.40 hours and seek payment of fees in the sum of \$591,125.00 and reimbursement of expenses in the sum of \$39,584.51, for a total of \$630,709.51.

(b) Levine Kellogg Lehman Schneider + Grossman LLP

Jeffrey Schneider, a partner at the law firm Levine Kellogg Lehman Schneider + Grossman LLP ("LKLSG") and a team of LKLSG attorneys and paralegals provide special litigation and conflicts litigation services for the Receiver. Mr. Schneider is a trial lawyer whose practice focuses on complex commercial litigation and receiverships. Mr. Schneider has served as a receiver himself in several cases. Mr. Schneider has agreed to reduce the rates of his professionals for this case. Instead of the standard billing rates of \$450.00 to \$600.00 per hour, all partners are billed at \$250.00 - \$260.00 per hour; all associates rates are reduced from the standard rates of \$325.00 - \$375.00 per hour, to \$200.00 per hour; and all paraprofessionals are billed at \$125.00 per hour, resulting in a blended rate of \$213.85. This represents a significant reduction from LKLSG's standard billing rates and a \$206,000.00 savings for the receivership estate. During the period covered by this Application, LKLSG billed 966.30 hours and seeks

payment of fees in the sum of \$206,625 and reimbursement of expenses in the sum of \$35,390.27, for a total of \$242,015.27.

(c) Kapila Mukamal

Soneet Kapila, CPA, and the accounting firm Kapila Mukamal provide accounting and forensic work for the Receiver. Mr. Kapila's practice is focused on restructuring, creditors' rights, bankruptcy, fiduciary matters and financial transactions litigation. He has conducted numerous forensic and fraud investigations, and has worked in conjunction with the SEC, the Federal Bureau of Investigation and the United States Attorney's Office. Mr. Kapila is also a panel trustee for the United States Bankruptcy Court for the Southern District of Florida.

Mr. Kapila has agreed to reduce the rates of his professionals in this case to amounts not to exceed \$395.00 per hour, resulting in a blended rate of \$307.16. This represents a savings for the Receivership Estate in the sum of \$6,600.00. During the period covered by this Application, Kapila Mukamal billed 706.60 hours and seeks payment of fees in the sum of \$217,041.50 and reimbursement of expenses in the sum of \$4,056.30, plus an additional \$400.00 omitted from payment in the 4th Interim Fee Application due to a typographical error, for a total of \$221,497.80.

(d) Klasko Immigration Law Partners, LLP

The attorneys of Klasko Immigration Law Partners, LLP ("Klasko") have national reputations for cutting-edge immigration law practice, including working with immigrant investors applying for permanent residence status through the EB-5 program. Their experience working on EB-5 immigrant investor cases includes both representation of pooled investment companies and representation of individual investors investing in pooled investment companies, approved regional centers and their own companies. They used this experience to assist the

Receiver and the Investors in providing information to the United States Citizenship and Immigration Services (“USCIS”) in support of the investors’ I-829 petitions.

The Klasko attorneys bill at rates from \$340.00 to \$850.00, but have reduced partners’ rates to \$495.00, resulting in a blended rate of \$373.67 per hour for this case. These discounts equate to a \$13,800 reduction from Klasko’s standard billing. During the period covered by this Application, Klasko seeks payment in the sum of \$37,234.00 for 107.00 hours and reimbursement of expenses in the sum of \$1,489.36, for a total of \$38,723.36.

V. Summary of Services Rendered During the Application Period

Summaries of the services rendered during the Application Period are provided below. More detailed information is included in the time records attached hereto as Exhibits 4(a) – (e).

(a) The Receiver and Akerman LLP

The Receiver and the Akerman professionals have separated their time into the activity categories provided in the Billing Instructions. Narrative summaries of these activity categories are provided below.

Asset Analysis and Recovery

Asset Analysis and Recovery refers to the identification and review of potential assets including causes of action and non-litigation recoveries.

- Although the Receiver believed that AnC Bio VT, LLC (“AnC Bio VT”) was included in the receivership estate as an affiliate of the Receivership Entities, Peoples United Bank, disagreed and refused to give the Receiver access to funds held in bank accounts titled in the name of AnC Bio VT, LLC. The Receiver and the Akerman attorneys researched and reviewed the status of AnC Bio VT and drafted a Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is Part of the Receivership or in the Alternative to Expand the Receivership to Include AnC Bio VT, LLC [ECF No. 492]. (The Court has subsequently approved the motion.)

Asset Disposition

Asset Disposition relates to sales, leases, abandonment and related transaction work.

- On February 5, 2018, the Court entered a Final Judgment against Quiros [ECF No. 450, as amended by ECF No. 474], which holds him liable for disgorgement of profits, prejudgment interest and a civil penalty of a combined amount of \$83 million. The Final Judgment provided that Quiros shall satisfy his obligations by disgorging certain assets to the Receiver, including bank accounts and real property (the “Transferred Properties”). Akerman attorneys and paralegals, reviewed title reports on the Transferred Properties, prepared deeds, transfer tax forms and corporate consents for the Transferred Properties, and researched and identified expense payments needed to maintain the value of the Transferred Properties prior to their sale to third parties.
- The Receiver and the SEC previously negotiated with Quiros to turn over his condominium (the “Condominium”) located in New York City (previously referred to as the Setai Condominium) to the Receiver for the benefit of the investors. The Court previously entered an Order [ECF No 444] authorizing the Receiver to retain a broker market the Condominium for sale. The Receiver, along with Akerman attorneys and paralegals, worked closely with the broker to access the value of the Condominium and confirm that the listing price needed to be lowered to better reflect the comparable units. Upon lowering the price, the Receiver obtained an offer for the Condominium. Akerman attorneys and paralegals prepared a purchase agreement and other closing sale documents for sale of the Condominium, prepared a Motion for Authorization to Sell 400 Fifth Avenue, Unit 39F (f/k/a The Setai Condominium) [ECF No. 490] and obtained the entry of an Order approving the sale of the Condominium [ECF No. 491].
- The Receiver located and retained brokers to market most of the other Transferred Properties. The Village Condominium Unit 417, sold quickly. Akerman attorneys and paralegals prepared closing documents, prepared a Motion for Authorization to Sell Jay Peak Village Condominium Unit 417 [ECF No. 478] and obtained the entry of an Order approving the sale of Village Condominium Unit 417 [ECF No. 498].
- The Receiver was approached by counsel for a small, six-unit condominium complex adjacent to the Burke Hotel, to the transfer ownership of a parking lot that services the condominium. The Receiver and Akerman attorneys analyzed the property records and confirmed that prior owners of Burke Mountain intended to transfer the parking lot. Moreover, the Receiver determined that the land comprising the parking lot was of no use to the Burke Mountain Hotel, the ski slopes, or the related amenities and has little value outside of serving as a parking lot for the condominium owners. Akerman attorneys prepared a Motion Receiver's Motion for Authority to Transfer Ownership of 260-Acre Parking Lot From Burke 2000 LLC to Sno Bear LLC [ECF No. 475] and obtained an Order authorizing the transfer of the parking lot [ECF No. 477].
- At the time the Receiver was appointed, there were limited funds in the Receivership Entities’ bank accounts to pay major expenses such as the approximately \$2 million in real property taxes owed to the Town of Jay. By the time the Receiver obtained sufficient funds to pay the 2016 property taxes, the

Town of Jay had imposed additional charges, including over \$113,000 in interest and more than \$164,000 in penalties on the amount due. The Receiver disputed the amount of interest and the Town of Jay's authority to impose penalties, but negotiated a settlement of their dispute whereby the Receiver has agreed to pay \$113,000 in interest and the Town of Jay has agreed to accept a \$60,000 for the penalties. Akerman attorneys prepared a Motion to Approve Settlement with Town of Jay Regarding 2016 Real Property Taxes [ECF No. 488] and obtained an Order authorizing the settlement with the Town of Jay [ECF No. 489].

- The Court previously entered an Order authorizing the Receiver to recommence modified construction of the project funded by Jay Peak Hotel Suites Stateside L.P. investors ("Phase VI") for the construction of cottages, a recreation center and athletic fields (the "Stateside Project"). Akerman attorneys reviewed and revised construction contracts for the athletic fields. The construction on the Stateside Project has generated jobs which should help the Phase VI investors with their citizenship petitions and will increase the value of the Stateside Project when the property is sold by the Receiver.
- Akerman attorneys worked with New Cingular Wireless PCS, LLC, a subsidiary of AT&T, Inc., ("Cingular") to implement the License Agreement which leased a portion of the Sky Haus to Cingular for placement of a cellular tower and ancillary transmission equipment, which was previously approved by the Court and will provide \$44,484.00 in annual revenue with an increase of the revenue each year. Akerman attorneys continued to negotiate and draft a Building and Rooftop Lease Agreement with Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless ("Verizon"), which grants Verizon the right to install, maintain and operate communications equipment at the Burke Mountain Hotel for a period of five years. Rental payments commence at an annual rate of \$26,000 and increase annually.

Business Operations

Business Operations cover the issues related to operation of an ongoing business.

- The Receiver continues to work with the court-approved management company, Leisure Hotels, LLC ("Leisure") who operate the Jay Peak Resort and the Burke Mountain Resort, along with Jay Peak's General Manager, Steven Wright and Burke Mountain Resort's General Manager, Kevin Mack. The Receiver confers with the Leisure management team, Steven Wright and Kevin Mack on a regular basis to monitor the hotels' operations.
- The Receiver also works with Leisure and the management team on budgets, financial projections and capital improvements to enhance the operations of the Receivership Entities for ultimate sale of the properties. The Receiver made periodic visits to the properties to meet with the management team and tour the properties.

- The Receiver and Akerman attorneys continue to work with the management team to resolve legal and business disputes and the transition of telephone and internet services.
- The Receiver and Akerman attorneys analyzed construction contracts and reviewed funding requests for the Stateside construction project.
- Akerman attorneys continued to address compliance issues for the employment benefits provided to the employees. Akerman attorneys updated the wrap plan and the benefit plan coverage.

Case Administration

Case Administration includes coordination and compliance activities, preparation of reports and responding to investor inquiries.

- The Receiver and his staff continue to communicate with investors, creditors, contractors, government officials and interested parties. The Receiver continues to maintain a toll-free investor hotline, an email address for general inquiries, and a website to provide up to date information for investors and interested parties. The Receiver prepared and posted numerous updates on his website, including court filings and letters to investors. The Receiver returned to Vermont to tour the properties and meet with creditors and government officials.
- The Receiver and his staff continue to respond to inquiries from investors regarding a wide range of matters, including immigration inquiries and the viability of assigning/transferring partnership interests.
- The Receiver and Akerman worked with immigration counsel to respond to inquiries from the USCIS, and gathered information verifying job creation in support of the investors' citizenship petitions.
- The Receiver and Akerman continued to implement the redeployment of the Phase VII Investors with approved I-526 petitions who have already moved to the United States or adjusted their status in the United States to the One Wall Street Project and issued refunds to the Phase VII investors who were not eligible or choose not to redeploy.
- The Receiver and Akerman researched and prepared Status Reports and complied with other reporting requirements.
- The Receiver reviewed the Notice of Termination of Regional Center; researched and conferred with counsel regarding the effect of termination on the citizenship applications.

Claims Administration and Objections

Claims Administration and Objections relates to formulating, gaining approval of and administering claims procedure.

- The Receiver and Akerman staff continued to review and respond to inquiries about pre-receivership claims.
- Akerman staff also processed refunds and prepared Release and Indemnity Agreements for Phase VII investors who have requested receipt of their distribution payment by wire transfer through their attorney.

Litigation/Contested Matters

- The Receiver continued to engage in settlement discussions with Quiros.
- The Receiver had previously intervened in the case *Quiros v. Ironshore Indemnity, Inc.*, Case No. 16-25073 (the “Ironshore Case”), where Quiros sued his insurer to cover the costs of his legal defense.⁷ The Receiver worked with special counsel on the prospective terms of settlement of the Ironshore Case. Akerman counsel researched and gathered documentation in support of the Receiver’s claims for damages.
- The Receiver finalized the terms of settlement with PeakCM, LLC (“PeakCM”), the general contractor on various projects. The settlement reduces PeakCM’s claims in the sum of \$2.75 million against the receivership estate to \$1.5 million. The Receiver will not make any payment to PeakCM, rather PeakCM will satisfy a portion of its claim from funds in its possession and will delay receipt of payment of its claim until the biomedical research facility’s real property is sold. The Court entered an Order [ECF No. 467] approving the Receiver’s motion to approve settlement with PeakCM [ECF No. 462]. Akerman attorneys prepared a detailed release and other documents to implement the settlement.
- Akerman litigators continued with the discovery phase of the litigation against William Kelly, the director of Relief Defendant North East Contract Services, Inc. (“NECS”) for the recovery of \$6 million in overpayment for the services NECS provided to AnC Bio Vermont GP Services LLC (“AnC Bio”) the general partner of Phase VII in connection with the construction of the biomedical research facility.
- The Receiver and Akerman attorneys continued to negotiate receivership claims against other professionals who provided pre-receivership services to Quiros and the receivership entities and to serve discovery.

⁷ Ironshore Indemnity, Inc. (“Ironshore”) provided insurance coverage for claims made against the directors and officers of Q Resorts, Inc. as well as liability claims against Q Resorts, Inc. In December 2016, Quiros sued Ironshore, among other things, seeking a declaration that Ironshore is contractually required to advance the costs of defending multiple actions filed against Quiros. The Receiver was granted permission to intervene in the Ironshore case on July 19, 2017 for the purpose of asserting a claim to the proceeds of the insurance policies.

(b) Levine Kellogg Lehman Schneider and Grossman LLP

The LKLSG professionals represent the Receiver in certain litigation matters.

- The LKLSG professionals continued to engage in pre-suit settlement discussions with certain of the financial institutions who provided services to the Receivership Entities prior to the appointment of the Receiver.
- The LKLSG professionals represent the Receiver in the Ironshore Case. The LKLSG attorneys continued to engage in discovery; and prepared for and took depositions of corporate representatives. The LKLSG professionals also prepared pretrial disclosures and worked on the Joint Pretrial Stipulation with counsel for the various parties in the Ironshore Case.
- The LKLSG professionals continued to research and revise the Receiver's Motion for Summary Judgment, prepared exhibits, statement of material facts, and an Affidavit in support of the motion for summary judgment. The LKLSG professionals reviewed and prepared a Response in Opposition to Ironshore's Motion for Summary Judgment.
- The LKLSG professionals prepared a Mediation Statement and attended mediation in the Ironshore Case.
- The LKLSG attorneys monitored the filings in the receivership case and conferred with the Receiver regarding various filings.
- The LKLSG researched and responded to subpoenas served on the Receiver. In response to the subpoenas, the LKLSG professionals visited GSI's Miami office to inventory, categorize and separate documents; and reviewed and updated the database maintained by the Receiver.

(c) Kapila Mukamal

Kapila Mukamal ("Kapila" or the "Accountants") separated their time into the activity categories provided in the Billing Instructions. Narrative summaries of these activity categories are provided below.

Tax Services

Tax Services include analysis of tax issues and preparation of tax returns.

- The Accountants reviewed 2017 Investor Schedules, researched and requested additional data needed for preparation of Schedule K-1's for the limited partnerships and prepared K-1's. The Accountants researched the responsibility for foreign reporting and drafted foreign K-1 letters.

- The Accountants reviewed outstanding items needed to prepare federal and Vermont tax returns for 2017 for each of the Receivership Entities; prepared drafts of tax returns, reviewed the drafts, revised and prepared tax returns for certain of the Receivership Entities. The Accountants reviewed draft financials and prepared taxable income estimates for extensions for other Receivership Entities and prepared extensions for federal and Vermont extensions.
- The Accountants reviewed the effects of changes in tax laws on the Receivership Entities' tax obligations.
- The Accountants prepared an appeal in response to penalties assessed against Burke.
- The Accountants worked with the Receiver's office on the Receiver's sale of real property transfer by Quiros to the Receiver and researched and prepared Vermont Land Gain Tax forms.
- The Accountants continued their work on the potential benefits of consolidating the Receivership Entities for tax purposes, analyzed the need to wind down non-asset entities, researched tax combinations and prepared worksheets for reorganization analysis.

Forensic Accounting

Forensic Accounting comprises reconstructing books and records from past transactions, bringing accounting current, tracing and sourcing assets.

- The Accountants prepared bank reconstruction for various Receivership Entities and summaries of bank account activity for various financial institutions. The Accountants reviewed the bank reconstructions to identify transfers between Receivership Entities and third parties.
- The Accountants reviewed the management agreement with Leisure and analyzed relevant financial reports for the purpose of calculating management and accounting fees.
- The Accountants reviewed and researched the Receiver's database and gathered records needed to respond to document production served on the Receiver. The Accountants searched GSI's office for corporate records; identified and scanned relevant documents for inclusion in database.
- The Accountants analyzed financial documents produced in the Ironshore Case against Jay Peak's financial records.

(d) Klasko Immigration Law Partners, LLP

- The Klasko professionals continued to work with the Receiver, the accountants and economists to gather and analyze information needed by the investors for preparation of their I-829 Petitions and respond to inquiries from the USCIS. The Klasko professionals prepared and updated templates for the I-829 Petitions. The Klasko attorneys responded to inquiries from investors regarding their petitions and prepared an analysis of options for all projects.
- The Klasko attorneys continued to work on the redeployment project for qualifying Phase VII investors; reviewed and advised the Receiver on the proposed partnership agreement and disclosure documents; revised the I-829 template for redeployment; and reviewed and revised the motion seeking authority to redeploy. The Klasko attorneys worked closely with the attorneys for the One Wall Street Project on the redeployment documents.
- The Klasko attorneys advised the Receiver on the impact of the termination of the State of Vermont's Regional Center and formulated proposed strategy.
- The Klasko attorneys reviewed the Request for Evidence (RFE) and Notice of Intent to Deny (NOID) for the Phase VI investors and prepared a response template for use by the investors. Klasko attorneys reviewed investor charts to determine the number of investors for job creation purposes, review numbers for the economic report, and responded to emails regarding economic report preparation.
- The Klasko attorneys prepared amendments to draft EB-5 legislation to address concerns of the investors and conferred with the Receiver about new legislation with clauses to save investors.

VI. Memorandum of Law

The Receiver and his professionals are entitled to reasonable compensation and expenses, pursuant to the Receivership Order. Receivership courts have traditionally determined reasonableness by utilizing the familiar lodestar approach, calculating a reasonable hourly rate in the relevant market and the reasonable number of hours expended. *See, e.g., S.E.C. v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2008 WL 276026, *3 (M.D. Fla. Jan 31, 2008); *see also Norman v. Hous. Auth.*, 836 F.2d 1292, 1299-1302 (11th Cir. 1988).⁸ The hourly rates billed

⁸ The law in this circuit for assessing the reasonableness of fees is set out in *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292. (11th Cir. 1988). According to *Norman*, the starting point in determining an objective estimate of the value of professional services is to calculate the "lodestar" amount, by multiplying a reasonable hourly rate by the

by the Receiver and his professionals are reasonable for professionals practicing in the Southern District of Florida. The Receiver has reduced his standard rate by \$300.00 per hour and the rates of the Akerman professionals by \$215.00 to \$50.00 (depending on the individual's standard rate). All LKLSG professionals have also reduced their rates by \$350.00 to \$100.00. These are the same hourly rates already approved by the Court in prior fee applications. Moreover, these reductions have resulted in a substantial savings to the receivership estate, including \$__ during the Application Period.

"In general, a reasonable fee is based on all circumstances surrounding the receivership." *SEC v. W. L. Moody & Co., Bankers*, 374 F. Supp. 465, 480 (S.D. Tex. 1974), *aff'd*, 519 F.2d 1087 (5th Cir. 1975); ("[T]he court may consider all of the factors involved in a particular receivership in determining an appropriate fee." *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). "In determining the amount of their compensation, due consideration should be given to the amount realized, as well as the labor and skill needed or expended, and other circumstances having a bearing on the question of the value of the services." *Sec. & Exch. Comm'n v. Striker Petroleum, LLC* (N.D. Tex., 2012) citing *City of New Orleans v. Malone*, 12 F.2d 17, 19 (5th Cir. 1926). Part of "determining the nature and extent of the services rendered," however, includes an analysis as to the reasonableness of the services rendered, bearing in mind the nature of a receivership. As the Supreme Court has noted:

The receiver is an officer of the court, and subject to its directions and orders [H]e is . . . permitted to obtain counsel for himself, and counsel fees are considered as within the just allowances that may be made by the court. . . . So far as the allowances to counsel are concerned, it is a mere question as to their reasonableness. The compensation is usually determined according to the circumstances of the particular case, and corresponds with the degree of responsibility and business ability required in the management of the affairs intrusted to him, and the perplexity and difficulty involved in that management.

number of hours reasonably expended. *Id.* at 1299 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

Stuart v. Boulware, 133 U.S. 78, 81-82 (1890).

The Receiver continues to oversee the operations of the two ski resorts and related amenities. The Receiver has used his business judgment to develop plans to enhance the operations of the Receivership Entities prior to their sale in order to enhance the value of the receivership assets and provide proof of job creation for the benefit of the investors. The Receiver has worked cooperatively with Vermont government officials, various creditors, counsel and the SEC, with the cooperative goal to create jobs, provide opportunities for investors to obtain citizenship and to pay the claims of creditors. Moreover, the Receiver has implemented the \$150 million settlement the will fund these objectives.

In addition to fees, the receiver is "also entitled to be reimbursed for the actual and necessary expenses" that the receiver "incurred in the performance of [its] duties." *Fed. Trade Comm'n v. Direct Benefits Grp., LLC*, No. 6:11-cv-1186-Orl-28TBS, 2013 WL 6408379, at *3 (M.D. Fla. Dec. 6, 2013). The Receiver and his professionals support their claims for reimbursement of expenses with "sufficient information for the Court to determine that the expenses are actual and necessary costs of preserving the estate." *Sec. & Exch. Comm'n v. Kirkland*, No. 6:06-cv-183-Orl-28KRS, 2007 WL 470417, at *2 (M.D. Fla. Feb. 13, 2007) (citing *In re Se. Banking Corp.*, 314 B.R. 250, 271 (Bankr. S.D. Fla. 2004)).

A receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred. *See SEC v. Byers*, 590 F.Supp.2d 637, 644 (S.D.N.Y. 2008); *see also SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992) ("[I]f a receiver reasonably and diligently discharges his duties, he is entitled to compensation."). As more fully described herein and supported by the time records, the Receiver and his professionals have reasonably and diligently discharged their duties, and provided a benefit to the receivership estate, the investors and creditors.

WHEREFORE, the Receiver seeks entry of an Order granting this motion and awarding the Receiver and his professionals their interim fees, reimbursement of costs, and for such other relief that is just and proper.

LOCAL RULE CERTIFICATION

Pursuant to Local Rule 7.3, the Receiver hereby certifies that he has conferred with counsel for the SEC, the plaintiff in this case, who has no objection to the Application. A hearing is requested only in the event that someone files an objection thereto.

Respectfully submitted,

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Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this October 9, 2018 via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case as indicated on the attached Service List.

By: /s/ Michael I. Goldberg
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