UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, et al.,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC., et al.,

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL AND CONFERENCE CENTER, L.P., et al.

Additional Receivership Defendants.
_____/

LEÓN COSGROVE, LLP'S OBJECTION TO PROPOSED BAR ORDER OR MOTION FOR CLARIFCIATION OF BAR ORDER; REQUEST TO APPEAR AT FINAL APPROVAL HEARING; AND MOTION FOR SANCTIONS

León Cosgrove, LLP ("LC") objects to, or alternatively seeks clarification of, the bar order requested in the motion to approve the settlement between the Receiver and Defendant Ariel Quiros [DE 501]. To the extent the proposed bar order bars claims by LC against Quiros for any legal fees and costs incurred after the commencement of this action and appointment of the Receiver, the bar order should be denied. Alternatively, the Court should expressly clarify that the bar order does not bar such claims. LC further requests to appear at the December 19, 2018, Final Approval Hearing and seeks an award of sanctions against Quiros and his counsel.

INTRODUCTION

On October 19, 2018, the Receiver moved for approval of a settlement he reached with

Quiros, which included a provision for the entry of a bar order "enjoining the claims of all investors and creditors of the Receivership Entities from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action."

Counsel for Quiros, however, has taken the absurd position that the proposed bar order would bar not only claims based upon Quiros's alleged conduct that gave rise to this action and the claims brought by the Receiver, but also claims for attorneys' fees and costs by Quiros's former counsel in this and related actions—representations which necessarily occurred after the commencement of this action and the creation of the receivership and thus do not arise out of the facts related to any released claim.

The Receiver does not share Quiros's view of the scope of the bar order. In conversations with the Receiver, he has expressed that he takes no formal position, but in his opinion the bar order only precludes claims relating to the raising of money from investors and the operations of the entities. Thus, only Quiros takes the position that the bar order should allow him to escape his liabilities to LC.

The proposed bar order should be rejected, or alternatively clarified to expressly state that it does not bar claims for attorneys' fees and costs by Quiros's former counsel in this and related actions, for three reasons. *First*, the Court lacks jurisdiction to bar LC's claims for fees and costs against Quiros, its former client, because doing so would not be in aid of its jurisdiction—especially when, at Quiros's urging, this Court has already ruled that it would be inappropriate for it to resolve a fee dispute between LC and Quiros. *Second*, the bar order would not be fair and equitable if construed to bar LC's claims against Quiros. A bar order is not fair and equitable if it bars claims that do not arise from the same facts as the underlying litigation, if the barred claims have a likelihood of prevailing, or if the claims are barred without any corresponding benefit to

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the third party whose claim is being barred. To the extent the bar order here bars LC's claims for fees and costs against Quiros, it fails on each of these scores. *Third*, any bar order that bars LC's claims would be inconsistent with the underlying settlement and the Receiver's understanding of the bar order and its intent.

Accordingly, the bar order should be rejected to the extent it bars LC's claims, and Quiros and his counsel should be sanctioned for advancing a position without any valid basis and for necessitating LC to incur further fees to protect its rights and claims against Quiros.

FACTS AND PROCEDURAL BACKGROUND

Defendant Ariel Quiros was the owner of the Jay Peak ski resort in Vermont. Jay Peak began offering and selling securities to hundreds of foreign investors in connection with the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program.

On April 12, 2016, the U.S. Securities and Exchange Commission filed this action against Quiros related to the offering and selling of these securities (the "SEC Action"). In its complaint, the SEC alleged that Quiros perpetrated a "massive eight-year fraudulent scheme in which [he] systematically looted more than $50 million of the more than $350 million that has been raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program." [DE 1 ¶ 1.]

Simultaneously with filing its complaint, the SEC moved for the appointment of a receiver over the corporate defendants and relief defendants in this action. [DE 7.] The next day, the Court appointed the Receiver. [DE 13.] The Court empowered the Receiver to bring legal actions against those who the Receiver may claim "wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Corporate Defendants and Relief Defendants, including the Corporate Defendants, the other

Defendants, and the Relief Defendants, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Corporate Defendants and Relief Defendant." [DE 13 ¶ 2.] In other words, the Receiver could bring claims against Quiros for actions taken during the course of the alleged fraudulent scheme (i.e., pre-receivership conduct).

Since this SEC Action was filed, others have brought actions against Quiros related to the misconduct alleged by the SEC. These include actions brought by allegedly-defrauded investors and an action brought by the Receiver. *See Daccache et al. v. Raymond James & Associates, Inc. et al.*, Case No. 1:16-cv-21575-FAM (S.D. Fla.); *Goldberg v. Raymond James Financial, Inc. et al.*, Case No. 1:16-cv-21831-JAL (S.D. Fla.); *Zheng Zhang et al. v. Raymond James & Associates, Inc. et al.*, Case No. 1:16-cv-24655-KMW (S.D. Fla.); *Caterina Gonzalez Calero et al. v. Raymond James & Associates, Inc. et al.*, Case No. 2016-017840-CA-01 (Fla. 11th Cir. Ct.). LC represented Quiros in these and other related actions.

In the action brought by the Receiver—which is the subject of the settlement at issue—the Receiver asserts claims against Quiros for aiding and abetting breach of fiduciary duty, conspiracy to breach fiduciary duty, violation of the federal RICO statute, and conspiracy in violation of RICO. All of the claims asserted by the Receiver against Quiros arise out of Qurios's alleged pre-receivership conduct.

In addition to defending Quiros in the numerous actions against him, LC represented Quiros in prosecuting a claim against Ironshore Indemnity, Inc. ("Ironshore"), the insurer who issued Directors, Officers and Private Company Liability Insurance Policies under which Quiros is an insured. *See Quiros v. Ironshore Indemnity, Inc.*, Case No. 16-cv-25073-MGC (S.D. Fla.).

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Ironshore had improperly denied coverage for Quiros's defense costs in the various actions against him, including this SEC Action. In the action against Ironshore, Quiros asserted claims for breach of contract and declaratory relief. During the course of LC's representation of Quiros against Ironshore, LC successfully secured Ironshore's agreement to fund certain defense costs on an interim basis while the parties litigated their insurance coverage dispute. Obtaining such an agreement from Ironshore was an express contingency in the engagement agreement between LC and Quiros for which LC would be entitled to a contingency fee. *See* Ex. 1, Engagement Agreement.

In March 2017, the law firm Damian & Valori LLP ("DV") became Quiros's counsel. Quiros subsequently terminated LC, and LC withdrew from its representation of Quiros in this SEC Action and in the related actions in which it represented Quiros. In the action against Ironshore, LC additionally filed a notice of charging lien. LC remains owed approximately $280,000.00 in fees and costs in connection with its defense of Quiros in this SEC Action and the other actions against him. Based on its hourly rate, LC also incurred fees and costs in excess of $140,000.00 in connection with its representation of Quiros against Ironshore. However, this amount represents only the floor of the amount owed to LC in connection with the insurance coverage aspect of the representation because the terms of the engagement agreement for actions related to insurance coverage include provisions for increased fees based on various contingencies. Ever since DV became counsel for Quiros, DV and Quiros have attempted to thwart every effort by LC to obtain payment for the fees and costs owed to it, including from third-party sources (e.g., Ironshore).

On October 19, 2018, the Receiver moved for approval of a settlement he reached with Quiros. [DE 501.] The settlement expressly states that it is settling claims of the Receiver "arising

out of [Quiros's] pre-receivership dealings with the Receivership Entities." [DE 501 at 22] (emphasis added). The settlement includes a provision for the entry of a bar order "enjoining the claims of all investors and creditors of the Receivership Entities from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action." [DE 501 at 26] (emphasis added). The proposed bar order attached to the motion more broadly purports to bar "[a]ny non-governmental person or entity" from bringing any claims "that in any way relate to, are based upon, arise from, or are connected with the released claims or interests of any kind as set forth in the Settlement Agreement, with the Receivership Entities, the investments made in the eight limited partnerships which raised funds from investors, including but not limited to those events, transactions and circumstances alleged in the SEC Action." [DE 501 at 41–42.]

A few hours later, the Court entered an Order (I) Preliminarily Approving Settlement Between Receiver and Ariel Quiros; (II) Approving Form and Consent of Notice, and Manner and Method of Service and Publication; (III) Setting Deadline to Object to Approval of Settlement and Entry of Bar Order; and (IV) Scheduling a Hearing. [DE 502.]

Subsequently, counsel for Quiros told counsel for LC that she viewed the proposed bar order as barring any claim by LC (and presumably any other attorneys and law firms) for its fees and costs. When asked for the basis for her view that the proposed bar order bars claims by LC for its fees and costs, Qurios's counsel Melissa Visconti, Esq. retorted that "the settlement speaks for itself" and expressly refused to provide any further explanation for her view.

LC was not an investor in any of Quiros's (or his businesses') securities offerings and is not a creditor of Quiros by virtue of doing business with him or his businesses before the SEC commenced this action and the Receiver was appointed. LC is not an investor or creditor of the Receivership Entities. And LC's claims arise solely out of its representation of Quiros (in multiple

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matters) after this action commenced and the Receiver was appointed. The Receiver's claims against Quiros have nothing to do with LC's claims against Quiros, and there is no valid basis for the Court to bar any of LC's claims against Quiros.

ARGUMENT

A. The Court lacks the authority to bar LC's claims.

The Court's authority to enter a bar order enjoining the rights of third parties derives from the All Writs Act, which grants the Court ancillary jurisdiction to issue writs "necessary or appropriate in aid of" its jurisdiction. 28 U.S.C. § 1651; *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 335 (2d Cir. 1985). Here, no injunction of LC's claims against Quiros is necessary or appropriate in aid of the Court's jurisdiction over this case. The attorneys' fees issues between LC and Quiros (arising from representations across multiple matters beyond this one SEC Action) are not before this Court and are not part of the Receiver's or the SEC's claims. No bar order as to LC's claims could credibly be said to be "in aid of" this Court's jurisdiction over this case. *Cf. In re Baldwin-United Corp.*, 770 F.2d at 335 ("This provision permits a district court to enjoin actions . . . where necessary to prevent relitigation of an existing federal judgment."). Indeed, this Court previously ruled that it would be inappropriate for it to inject itself in a fee dispute between LC and Quiros, even as to LC's fees for its representation of Quiros in this case. [DE 310] ("The Court does not find it appropriate to resolve a private attorney's fee issue between Quiros and his prior counsel in this action."). Thus, no decision in an action for fees against Quiros could possibly frustrate this Court's jurisdiction.

Further, because Quiros previously prevailed on the argument that this Court should not adjudicate any attorneys' fees dispute between him and LC, he is now judicially estopped from seeking an order from this Court enjoining LC from seeking payment of its attorneys' fees and

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costs in other fora. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) ("This rule, known as judicial estoppel, 'generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'"). The purpose of the doctrine of judicial estoppel is to protect the integrity of the judicial process by prohibiting parties, like Quiros, "from deliberately changing positions according to the exigencies of the moment." *Id.* at 750. And, in any event, this Court should adhere to its prior ruling that it would stay out of resolving any attorneys' fee issue between Quiros and LC, which enjoining LC's claims would effectively (and unfairly) do.

B. The proposed Bar Order—as misconstrued by Quiros's counsel—is not fair and equitable.

Even if the Court had the authority to enter an order barring LC's claims for attorneys' fees (it does not), it would be error to enter such a bar order because it would not be fair and equitable. The Eleventh Circuit has held that a bar order is improper and may not be approved unless it is "fair and equitable" to the non-settling third parties whose claims will be enjoined. *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996); *see also In re GunnAllen Fin., Inc.*, 443 B.R. 908, 915 (Bankr. M.D. Fla. 2011) ("When a bankruptcy settlement also seeks entry of a bar order, the bankruptcy court must also determine whether the bar order is fair and equitable to the parties whose claims will be enjoined.").[1] "In making such a determination, courts consider the interrelatedness of the claims that the bar order precludes, the likelihood of nonsettling defendants to prevail on the barred claim, the complexity of the litigation, and the likelihood of depletion of the resources of the settling defendants." *Wald v. Wolfson* (*In re U.S. Oil & Gas Litig.*), 967 F.2d

[1] The parties agree that case law on bar orders in the bankruptcy context is instructive in the context here of a bar order pursuant to a settlement with a receiver. [DE 501 at 13 n.8]; *see also* [DE 501 at 40.]

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489, 496 (11th Cir. 1992); *see also Brophy v. Salkin*, 550 B.R. 595, 599 (S.D. Fla. 2015). Any bar order in this case barring LC's claims would not be fair and equitable for multiple reasons.

First, as misconstrued by Quiros and his counsel to bar claims brought by LC based on Quiros's post-receivership nonpayment of attorneys' fees and costs, the bar order is not fair and equitable because it would bar claims that are not "interrelated" with the claims asserted and settled by the Receiver. Claims are "interrelated" when they "arise out of the same facts as those underlying the litigation." *Brophy*, 550 B.R. at 600 (quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d at 496); *see also SEC v. Kaleta*, 530 F. App'x 360, 363 (5th Cir. 2013) (approving bar order because "the investors continue to retain all other putative claims against the Wallace Bajjali Parties that do not arise from the allegedly fraudulent notes that underlie this action" (emphasis added)). If a claim is not interrelated with a settled claim, the district court lacks any discretion to enter an order barring that claim. *See In re U.S. Oil & Gas Litig.*, 967 F.2d at 496 ("The propriety of the settlement bar order should turn upon the interrelatedness of the claims that it precludes . . . . If the cross-claims that the district court seeks to extinguish through the entry of a bar order arise out of the same facts as those underlying the litigation, then the district court may exercise its discretion to bar such claims in reaching a fair and equitable settlement.").

Any bar order enjoining LC's (or any other attorney's) claims for attorneys' fees and costs would fail to satisfy the "interrelatedness" requirement because LC's claims do not arise (and could not possibly have arisen) out of the same facts that underlie the SEC Action or the action brought by the Receiver. LC's claims for attorneys' fees and costs against Quiros in connection with its representation of Quiros in various matters is not, and could not have been, a claim asserted by the Receiver (or the SEC). And the settlement makes clear that the claims against Quiros that are being settled and released are those "arising out of his pre-receivership dealings with the

Receivership Entities." [DE 501 at 22] (emphasis added). LC's claims are not interrelated with these released claims because (1) its claims are based on Quiros's post-receivership actions and (2) its claims are based on Quiros's dealings with LC, not Quiros's dealings with the Receivership Entities. Each of these facts alone renders any bar order enjoining claims by LC reversible error and wholly unfair and inequitable.

Second, the bar order is not fair and equitable to the extent it bars LC's claims because LC has a high likelihood of prevailing on its claims. LC duly represented Quiros in a number of actions and Quiros has undisputedly refused to pay LC for its fees and costs. Further, in the Ironshore matter, LC has a valid charging lien and obtained the extraordinary result of securing Ironshore's agreement to fund certain defense costs pursuant to an interim funding agreement while the parties litigated their coverage dispute. Quiros has recently reached a settlement with Ironshore in that matter, which is necessarily subject to LC's charging lien.

Third, in determining whether the bar order is fair and equitable, the Court must also examine whether the benefit the enjoined parties will receive from the overall agreement suffices to render the inclusion of a bar order fair to those parties. *See Feld v. Zale* (*In re Zale Corp.*), 62 F.3d 746, 754 (5th Cir. 1995) (holding that ignoring third-party rights and instead "looking only to the fairness of the settlement as between the debtor and other settling claimant contravenes a basic notion of fairness"). Thus, in *Munford*, the Eleventh Circuit upheld a bar order enjoining certain non-settling defendants from raising future claims only because the settlement containing the bar order provided those defendants with a dollar-for-dollar offset of the claims against them, compensating for their loss of claims for indemnification and contribution against the settling defendants. *See Munford*, 97 F.3d at 455–56.

Contrarily, a bar order cannot be approved and is not fair and equitable if it fails to provide

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a fair exchange to the enjoined parties. In *GunnAllen*, for example, the Court rejected a bar order that would have extinguished claims belonging to the enjoined parties in return for no more than 25% of their potential worth. *See GunnAllen*, 443 B.R. at 916. There, the Court explained that under the circumstances such a settlement provided "little value" to the enjoined parties. *Id.* at 917. It thus held that the bar order was "not fair and equitable" and could not be approved over the objections of those parties. *Id.* Other courts reach the same result. *See, e.g., In re Covington Props., Inc.*, 255 B.R. 77, 79–80 (Bank. N.D. Fla. 2000) (rejecting bar order as not "fair and equitable" because "it would have the effect of curtailing the [enjoined parties'] state court action against [the settling parties] without conferring any real benefit on them").

Here, the settlement provides no value whatsoever to LC (or any other attorneys who represented Quiros or any post-receivership creditor). This is unsurprising because—unlike an investor or creditor of the Receivership Entities who has claims based on pre-receivership conduct—LC's interests are not represented by the Receiver. However, this also means that no settlement with a bar order enjoining LC from pursuing its claims against Quiros can possibly be fair and equitable (and also underscores how the claims at issue cannot satisfy the "interrelatedness" requirement). *See GunnAllen*, 443 B.R. at 917 ("The absence of the payment of any meaningful consideration by the released parties has been a key consideration by courts in considering whether to approve bar orders."). Entering an order barring LC's claims against Quiros would unjustly enrich Quiros, allowing him to have received hundreds of thousands of dollars' worth of legal work performed for him for free, with no compensation to LC. There is nothing fair and equitable about such a bar order.

Each of these is an <u>independent</u> basis for why any proposed bar order barring LC's claims against Quiros must be rejected. Accordingly, the Court must deny the bar order or expressly

clarify that it does not bar LC's claims.

C. The proposed Bar Order, as misconstrued by Quiros's counsel, is not a valid part of the settlement because it is not a product of a meeting of the minds between Quiros and the Receiver and is contrary to their settlement.

Quiros's position regarding the proposed bar order is also at odds with the Receiver's understanding of the settlement he agreed to and the plain terms of the settlement. As discussed *supra*, the Receiver does not join in Quiros and his counsel's view that the proposed bar order bars claims by LC against Quiros for legal fees and costs in connection with its representation of Quiros in various matters—all of which occurred after the commencement of this action and after the Receiver was appointed. Further, the proposed bar order—as misconstrued by Quiros and his current counsel—is contrary to the description of the bar order in the Receiver's motion to approve the settlement and the settlement agreement itself. As the Receiver makes clear in his motion, he seeks "the entry of a bar order preventing all investors and creditors of the Receivership Entities (excluding governmental entities) from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action." [DE 501 at 11] (emphasis added). This language, in turn, comes straight from the settlement itself, which states: "The Receiver covenants that he shall use his best efforts to seek the entry of a Bar Order by the District Court enjoining the claims of all investors and creditors of the Receivership Entities from prosecuting or pursuing any claims against Mr. Quiros arising out of the facts related to the SEC Action." [DE 501 at 26] (emphasis added).

LC's claims do not come within the bar order contemplated by the settlement. First, LC has claims directly against Quiros for his nonpayment of attorneys' fees and costs. LC is not an investor or creditor of the Receivership Entities. Second, LC's claims do not arise out of the facts related to the SEC Action. Indeed, LC's claims arose after the facts related to the SEC Action,

when it represented Quiros in various matters after the commencement of the SEC Action and the appointment of the Receiver.

The proposed bar order itself is also contrary to the settlement. While the settlement provides for an order barring claims of "all investors and creditors of the Receivership Entities," the proposed bar order attached to the motion more broadly defines a "Barred Person" as "[a]ny non-governmental person or entity, including, without limitation," investors and creditors of the Receivership Entities and those claiming through such persons. [DE 501 at 41.] Likewise, while the settlement provides for a an order barring claims against Quiros "arising out of the facts related to the SEC Action," the proposed bar order more broadly includes claims "that in any way relate to, are based upon, arise from, or are connected with the released claims or interests of any kind as set forth in the Settlement Agreement, with the Receivership Entities, the investments made in the eight limited partnerships which raised funds from investors, including but not limited to those events, transactions and circumstances alleged in the SEC Action." [*Id.* at 42.] While this definition of "Barred Claims" also does not encompass LC's claims for attorneys' fees and costs (and can properly only be, at most, coterminous with claims satisfying the Eleventh Circuit's "interrelatedness" requirement), the bar order should be limited to the language in the settlement, and should be no broader.

D. Quiros and his counsel should be sanctioned for taking an utterly frivolous position that necessitated the filing of this objection.

Finally, LC should be awarded its attorneys' fees for preparing this objection, as it was necessitated only due to the frivolous and absurd position advanced by Quiros and his counsel—a position that the Receiver disagrees with. The Court has inherent power to sanction litigants and their counsel for advancing frivolous positions. *Hayden v. Vance*, 708 F. App'x 976, 978 (11th Cir. 2017); *Peer v. Lewis*, 571 F. App'x 840, 844–45 (11th Cir. 2014). Such sanctions are

warranted here against Quiros and his counsel. Indeed, when asked, Quiros's counsel refused to provide any basis for her position (because there is none) other than the perfunctory and meaningless statement that "the settlement speaks for itself." Sanctions would deter Quiros and his counsel from advancing baseless positions in the future and causing litigants and the Court to unnecessarily expend their resources.

CONCLUSION

For the foregoing reasons, the Court should not enter the proposed bar order or should expressly clarify that "Barred Claims" (as defined in the proposed order) do not include any claims for any legal fees and costs (including but not limited to direct actions and claims pursuant to a charging lien) in connection with LC's representation of Quiros at any time after this action was commenced and the Receiver was appointed. The Court should additionally give LC an opportunity to appear and be heard at the final approval hearing on December 19, 2018. Finally, the Court should enter an award of sanctions against Quiros and his counsel and in favor of LC for its reasonable attorneys' fees in bringing this objection.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(3)

Counsel for LC conferred with the Receiver and counsel for Quiros regarding this objection. The Receiver has advised that he takes no position, but expressed his view that the bar order would only preclude debts from investors arising from investments and the operation of the entities. On the other hand, Mr. Quiros's current counsel, Melissa Visconti, Esq., contends that the bar order would bar LC's claims and refused to provide any basis for such position other than that "the settlement speaks for itself."

Dated: December 6, 2018

Respectfully submitted,

By: *s/ Jeremy L. Kahn*
Scott B. Cosgrove
Florida Bar No. 161365
Jeremy L. Kahn
Florida Bar No. 105277
León Cosgrove, LLP
255 Alhambra Circle, Suite 800
Coral Gables, Florida 33133
Telephone: (305) 740-1975
Facsimile: (305) 437-8158
Email: scosgrove@leoncosgrove.com
Email: jkahn@leoncosgrove.com
Email: anoonan@leoncosgrove.com
Email: eperez@leoncosgrove.com
Counsel for León Cosgrove, LLP

CERTIFICATE OF SERVICE

I certify that on December 6, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which in turn will serve all counsel of record. I also certify that, pursuant to the Court's Order Preliminarily Approving Settlement [DE 502], I also served this objection by email on the following:

Michael I. Goldberg, Esq.
(michael.goldberg@akerman.com)
Akerman LLP
350 East Las Olas Boulevard, Ste. 1600
Fort Lauderdale, FL 33301

Melissa Visconti, Esq.
(mvisconti@dvllp.com)
Damian & Valori, LLP
1000 Brickell Avenue, Suite 1020
Miami, FL. 33131

s/ Jeremy L. Kahn
Jeremy L. Kahn

EXHIBIT 1

LEÓN COSGROVE

Derek E. León
305.740.1977
dleon@leoncosgrove.com

November 28, 2016

BY EMAIL (*dbg@msk.com*)

Ariel Quiros
19 Grand Bay Estates Circle
Key Biscayne, FL 33149

c/o

David B. Gordon
Mitchell Silberberg & Knupp LLP
12 East 49th Street, 30th Floor
New York, NY 10017

Re: Insurance Recovery Advice and Possible Litigation against Ironshore Indemnity, Inc.

Dear Mr. Quiros:

León Cosgrove LLC appreciates the opportunity to provide legal services to Ariel Quiros ("you," or the "Client") in connection with the above matter. The purpose of this letter is to set forth our understanding as to the terms upon which we have been retained.

MUTUAL RESPONSIBILITIES

We will provide the legal services that, in our professional judgment, are appropriate for this matter and in accordance with applicable legal and ethical standards. You agree that you will be reasonably available to confer with us upon request, will provide us with such documents and information as you may possess relating to the matter, will disclose all facts and circumstances of which you are aware that may bear upon our handling of the matter, will promptly pay our fees in accordance with the terms of this letter, and will otherwise assist our efforts as we reasonably request.

SCOPE OF REPRESENTATION

Our present agreement to provide legal services to you is limited to the matters set forth above. To the extent you wish our firm to represent you regarding other matters, you will be required to sign a separate engagement agreement describing the scope of that representation prior to our initiation of services.

RETAINER

In light of the judicial freeze of your assets, the firm will not require a retainer.

DETERMINATION OF FEE

As per our prior correspondence on this subject, our fee for this particular matter will be determined as follows:

(1) Recovery of all incurred defense costs to-date. We understand there is approximately $2 million owed in fees and expenses that were incurred in defending the referenced actions. Any amounts paid by the carrier to satisfy these outstanding obligations will entitle the Firm to the lesser of a 40% contingent fee or a 2 Xs multiplier on hourly fees spent by the Firm on the representation. Notwithstanding, the Firm may petition a court for a fee award against the carrier to the maximum extent permitted by law, which shall not be subject to any cap on recovery. Any amounts recovered against the carrier directly may be used to offset the fee owed by the Client.

(2) Recovery of future defense costs. Should the carrier agree to pay any portion of future defense fees and costs associated with any of the pending matters, the Firm will be entitled to a minimum 2 Xs multiplier on hourly fees spent by the Firm on the representation. The Firm may petition a court for a fee award against the carrier to the maximum extent permitted by law. Any amounts recovered against the carrier may be used to offset the fee owed by the Client.

(3) Recovery of indemnity obligations and damages. The Firm will be entitled to a 40% contingent fee on any amounts recovered against the carrier (inclusive of any fee award) arising from the carrier's indemnity obligations under the referenced policies, as well as any extra-contractual damages awarded against the carrier in any action.

(4) The Firm will advance all costs associated with the representation. The reimbursement of such costs will be paid first out of any recovery in this matter, and will not offset or affect the percentages of recovery on fees noted above.

RESPONSIBLE ATTORNEY

I will be the partner responsible for this representation. If at any time you have questions regarding statements for our services or the management of your matter, you should feel free to contact me at 305.740.1977.

STATEMENTS AND PAYMENTS

We will prepare statements for services rendered and for expenditures made on your behalf on a monthly basis. We understand that under the present circumstances, absent payment from a settlement with the carrier, payment of our fees and costs may require an application to the Court, and that the Court must approve our fee application.

TERMINATION

We anticipate a long and mutually satisfactory relationship. However, you have the right to terminate our engagement at any time by giving us written notice of termination. We also have the right, subject to our responsibilities under applicable ethical rules, to terminate our engagement by giving you written notice if you fail to cooperate with us or to pay our bills when due or if we determine that continuing to represent you would be unethical, impractical or improper. If our relationship is terminated by either of us, you will remain obligated to pay us in full for our past services and for costs and expenses in accordance with the terms of this letter.

This agreement will apply to any additional matters we agree to undertake upon your behalf unless we enter into an express written agreement reflecting an alternate arrangement.

Please review this letter carefully, and raise and discuss with me any questions which you may have. If this letter accurately reflects your understanding of our attorney-client relationship, please indicate your approval and acceptance by dating and signing a duplicate of the letter and returning it to me.

Again, thank you for the opportunity to represent you.

Sincerely,

Derek E. León

(SIGNATURE PAGE TO FOLLOW)

AGREED AND ACCEPTED

Ariel Quiros

By: _____

Date: 11/29/16