

**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,

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

Relief Defendants, and

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

Additional Defendants

**FINAL ORDER APPROVING SETTLEMENT BETWEEN RECEIVER, ARIEL
QUIROS, WILLIAM STENGER, AND IRONSHORE INDEMNITY, INC.**

THIS MATTER came before the Court on the Motion for Approval of Settlement between the Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc. [ECF No. 523] (the

“**Motion**”) filed by Michael I. Goldberg, as the Court-appointed receiver (the “**Receiver**”) of the entities set forth on Exhibit A to this Order (the “**Receivership Entities**”) in the above-captioned civil enforcement action (the “**SEC Action**”). Pursuant to the Order Preliminarily Approving the Settlement between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc. [ECF No. 530] (the “**Preliminary Approval Order**”), the Court held a hearing on March 20, 2019, at 1:00 p.m. to consider the Motion and hear the objection [ECF No. 540] (“**SSVR Objection**”) filed by Saint Sauveur Valley Resorts, Inc. (“**SSVR**”) and the joint objection [ECF No. 544] (“**LC/MSK Objection**”) filed by Leon Cosgrove, LLC (“**LC**”) and Mitchell Silberberg & Knupp, LLP (“**MSK**”).

By way of the Motion, the Receiver requests final approval of the proposed settlement with Ariel Quiros, William Stenger and Ironshore Indemnity, Inc. (“**Ironshore**”) set forth in the Settlement Agreement dated December 27, 2018 (the “**Settlement Agreement**”) attached as Ex. A to the Motion, executed by the Receiver on behalf of each of the Receivership Entities, by Ariel Quiros and William Stenger, and by Ironshore (collectively, the “**Settling Parties**”); and for entry of a bar order (the “**Bar Order**”) enjoining, except as provided in the Settlement Agreement, any and all persons, including any Insured under the Policies or any such Insureds’ current or former attorneys, from commencing, continuing, or in the future filing, any claims whatsoever against Ironshore which directly or indirectly arise from or relate to the Policies, to any other contract or agreement with Ironshore purporting to provide payment to any Insured or to any of the Insureds’ current or former attorneys, or to transactions and occurrences alleged in the SEC Action, without exception and including that certain action filed by Quiros’s former attorneys against Ironshore in New York State court styled *Leon Cosgrove, LLC and Mitchell Silberberg & Knupp LLP v. Ironshore Indemnity, Inc.*, Index No. 0656248/2017. **This Order addresses the final approval**

of the Settlement Agreement. The Court will address entry of the requested Bar Order by separate order.

The Court's Preliminary Approval Order preliminarily approved the Settlement Agreement, approved the form and content of the Notice, and set forth procedures for the manner and method of service and publication of the Notice to affected parties. The Preliminary Approval Order and related documents were served by email on all identifiable interested parties and publicized in an effort to reach any unidentified persons.

The Preliminary Approval Order set a deadline for affected parties to object to the Settlement Agreement or the Bar Order, and scheduled the hearing for consideration of such objections, as well as the Settling Parties' argument and evidence in support of the Settlement Agreement and Bar Order. That deadline has passed, and Objections were filed at ECF Nos. 540 (by SSVR) and 544 (by LC and MSK), which were the only objections received by the Court.

The Receiver filed a Declaration with the Court in which he detailed his compliance with the notice and publication requirements contained in the Preliminary Approval Order [ECF No. 543].

This Court is fully advised of the issues in the various actions, as it has previously received evidence and heard argument concerning the events, circumstances, and transactions in the SEC Action, which resulted in the appointment of the Receiver and the issuance of the Preliminary Injunction [ECF No. 238], the Permanent Injunction [ECF No. 260], and the Asset Freeze Order [ECF No. 11]. In addition, the Court has read and considered the Motion, the Settlement Agreement, the SSVR Objection, the LC/MSK Objection, the Responses to the Objections [ECF Nos. 546 and 550], other relevant filings of record in the Coverage Action, and the arguments and evidence presented at the hearing; therefore, the Court **FINDS AND DETERMINES** as follows:

A. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion, the Settlement Agreement and the Bar Order, and authority to grant the Motion, approve the Settlement Agreement, and enter the Bar Order. *See* 28 U.S.C. § 1651; *SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action); *see also Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (approving settlement and bar order in a bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving settlement and bar order in a class action). In addition, the insurance policies and proceeds therefrom at issue in the Settlement Agreement are, at least in part, property of the receivership estate and subject to administration by this Court. *See SEC v. Narayan*, Case No. 3:16-cv-1417-M, 2017 WL 447205, at *4 (N.D. Tex. Feb. 2, 2017); *SEC v. Faulkner*, Case No. 3:16-CV-1735-D, 2017 WL 4238705, at *5 (N.D. Tex. Sept. 25, 2017); *In re CyberMedica, Inc.*, 208 B.R. 12, 17 (Bankr. D. Mass. 2002).

B. The service or publication of the Notice as described in the Receiver's Declaration is consistent with the Preliminary Approval Order, constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all affected persons of the Motion, and the Settlement Agreement, and of their opportunity to object thereto, of the deadline for objections, and of their opportunity to appear and be heard at the hearing concerning these matters. Accordingly, all affected parties were furnished a full and fair opportunity to object to the Motion, the Settlement Agreement, and all matters related thereto and to be heard at the hearing; therefore, the service and publication of the Notice complied with all requirements of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's Local Rules, and the due process requirements of the United States Constitution.

C. The Court has allowed any investors, creditors, objectors, and parties to the SEC Action and the Coverage Action to be heard if they desired to participate. Each of these persons or entities has standing to be heard on these issues. Only SSVR, LC, and MSK objected.

D. The Settling Parties negotiated over a period of more than a year; their negotiations included the exchange and review of documents, multiple in-person meetings, numerous depositions, many telephone conferences, and two mediation sessions.

E. The Settlement Agreement was entered into in good faith, is the product of arm's-length negotiations, and is not collusive. The claims the Receiver brought against Ironshore involve disputed facts and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation, the measurement of damages, the allocation of benefits to each relevant Receivership Entity, and any ensuing appeal.

F. The Receiver has a present and immediate need for the funds he is receiving pursuant to the settlement to preserve and maximize the value of the assets in the Receivership Entities for the benefit of the remaining investors and other creditors and stakeholders.

G. The Settlement Agreement provides for Ironshore to pay the Receiver, Quiros, and Stenger a total settlement amount of One Million Nine Hundred Thousand Dollars (\$1,900,000.00) (the "Settlement Payment"), of which One Million Four Hundred Thousand Dollars (\$1,400,000.00) is nonrefundable. The remainder of the Settlement Payment (Five Hundred Thousand Dollars) will be paid when the Bar Order becomes final and non-appealable.

H. The Settlement Agreement provides for a total anticipated payment of \$712,500 to the Receiver. The Court finds this consideration fair, adequate, and reasonable as to the Receiver, and that the payment would represent a substantial recovery under the Ironshore Policies to the receivership estate.

I. Based upon the foregoing findings, the Court further finds and determines that entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver, that the proposed settlement as set forth in the Settlement Agreement is fair, adequate and reasonable, that the interests of all affected persons were fairly and reasonably considered and addressed, and that the Settlement Payment provides a recovery to the Receiver for the benefit of the Receivership Entities and the investors that is well within the range of reasonableness. *See Sterling v. Stewart*, 158 F.3d 1199 (11th Cir. 1996) (settlement in a receivership may be approved where it is fair, adequate and reasonable, and is not the product of collusion between the settling parties).

J. The Court also finds that the provisions of Section 3 of the Settlement Agreement fairly and equitably address the Receiver's need for immediate funds and fairly and equitably compensate Ironshore for the risks of making immediate payment of the Settlement Payment, without waiting for relevant appellate periods to expire or appellate proceedings to be concluded.

K. The Coverage Action against Ironshore arises from the Policies Ironshore issued to Receivership entity Q Resorts, Inc. ("**Q Resorts**"). The Policies insured both Q Resorts and its officers and directors, including Ariel Quiros and William Stenger.

L. The SSVR Objection is directed only to entry of the Bar Order. To the extent SSVR objects to approval of the Settlement Agreement, the Court finds that SSVR's concerns are not sufficient to preclude approval of the Settlement Agreement, and are therefore overruled.

M. LC and MSK object to approval of the Settlement Agreement by arguing that the Settlement Agreement is not fair and reasonable because it does not adequately protect LC's charging lien filed in the Coverage Action and it would eliminate their asserted third-party beneficiary rights in an interim funding agreement between Ironshore and Ariel Quiros. The Court finds that the Settlement Agreement provides sufficient protection for LC's charging lien in that it

provides for \$300,000 to be held in escrow by the Receiver pending adjudication of LC's charging lien. As a matter of law, LC's charging lien is equal to, *at most*, "the reasonable value of [its] services, as limited by the contract maximum." *Fid. Warranty Servs., Inc. v. Firststate Ins. Holdings, Inc.*, 98 So. 3d 672, 675 (Fla. 4th DCA 2012). Counsel for LC conceded at the hearing that the firm billed approximately \$140,000 in connection with the Ironshore coverage dispute, and there is no evidence to the contrary. Thus, even assuming that LC's fee contract applied and its hours are reasonable (both of which Quiros disputes), the escrow is sufficient to cover LC's maximum contract fee. That contract fee is equal to the lesser of (a) 40% of Quiros's recovery from the Settlement Payment (\$285,000) or (b) two times LC's hourly fee (again, about \$280,000). LC and MSK's concerns about their asserted rights under the interim funding agreement are unjustified insofar as the Settlement Agreement would not affect such rights. While the Bar Order entered concurrently herewith bars enforcement of LC and MSK's asserted rights, the propriety of that Bar Order is a separate issue discussed in the Bar Order. Accordingly, LC and MSK's objection to the Settlement Agreement is overruled.

N. **Notice to Affected Parties**

The Receiver has given the best practical notice of the proposed Settlement Agreement and Bar Order to all known interested persons:

1. all counsel who have appeared of record in the SEC Action;
2. all counsel for all investors who are known by the Receiver to have appeared of record in any legal proceeding or arbitration commenced by or on behalf of any individual investor or putative class of investors seeking relief against any person or entity relating in any manner to the Receivership Entities or the subject matter of the SEC Action;
3. all known investors in each and every one of the Receivership Entities identified in the investor lists in the possession of the Receiver at the addresses set forth therein; and
4. all known non-investor creditors of each and every one of the Receivership Entities identified after a reasonable search by the Receiver.

5. all parties to the SEC Action and the Coverage Action.
6. all owners, officers, directors, and senior management employees of the Receivership Entities identified by the Receiver from discovery in the SEC Action.

The Receiver has maintained a list of those given notice.

In addition, the Receiver has published the Notice approved by the Preliminary Approval Order in the Vermont Digger, and The Burlington (Vermont) Free Press, twice a week for three consecutive weeks. The Receiver has also maintained the Notice on the website maintained by the Receiver in connection with the SEC Action (www.JayPeakReceivership.com).

Through these notices and publications, anyone with an interest in the Receivership Entities would have become aware of the Settlement Agreement and Bar Order and have been provided sufficient information to put them on notice how to obtain more information and/or object, if they wished to do so.

O. The releases and other provisions in the Settlement Agreement are tailored to matters relating to the Receivership Entities' and other insureds' rights under the Policies and are appropriate in light of the Policies' coverage to maximize the value of the Receivership Entities. Accordingly, the Settlement Agreement is fair, adequate and reasonable, and in the best interests of all creditors of, investors in, or other persons or entities claiming an interest in, having authority over, or asserting claims against the Receivership Entities, and of all persons who could have claims against Ironshore relating to the Policies.

P. Approval of the Settlement Agreement and adjudication of the Motion are discrete from other matters in the SEC Action, and, as set forth above, the Settling Parties have shown good reason for the approval of the Settlement Agreement to proceed expeditiously. Therefore, there is no just reason for delay of the finality of this Order.

Based on the foregoing findings and conclusions, the Court **ORDERS, ADJUDGES, AND DECREES** as follows:

1. The Motion is **GRANTED**. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved. The SSVR Objection and LC/MSK Objection are overruled.

2. The Settlement Agreement is **APPROVED**, and is final and binding upon the Settling Parties and their successors and assigns as provided in the Settlement Agreement. The Settling Parties are authorized to perform their obligations under the Settlement Agreement.

3. The Receiver shall use and disburse the Settlement Payment in accordance with the terms and conditions of the Settlement Agreement (Ex. 1 to the Motion), the Distribution Agreement (Ex. 2 to the Motion), and the Bar Order entered concurrently herewith. Without limitation of the foregoing, upon the occurrence of the Effective Date, the releases set forth in Section 8 of the Settlement Agreement are **APPROVED**, and are final and binding on the Parties and their successors and assigns as provided in the Settlement Agreement.

4. Nothing in this Order or the Settlement Agreement, and no aspect of the Settling Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Settling Parties with regard to any case or proceeding.

5. Nothing in this Order or the Settlement Agreement, nor the performance of the Settling Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of Ironshore, the Receiver, Ariel Quiros, or William Stenger against any party not released in the Settlement Agreement.

6. The Receiver is directed and authorized to dismiss his claims against Ironshore in the Coverage Action with prejudice in accordance with the terms of the Settlement Agreement.

7. Pursuant to Fed. R. Civ. P. 54(b), and the Court's authority in this equity receivership to issue ancillary relief, this Order is a final order for all purposes, including, without limitation, for purposes of the time to appeal or to seek rehearing or reconsideration.

8. This Order shall be served by counsel for the Receiver via email, first class mail, or international delivery service on any person or entity afforded notice (other than publication notice) pursuant to the Preliminary Approval Order.

9. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret and enforce this Order, including, without limitation, the releases in the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of April, 2019.

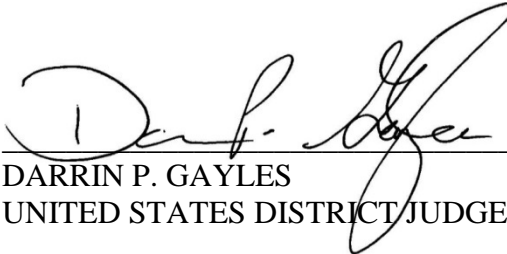

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Exhibit A

(List of Receivership Entities)

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

Q Burke Mountain Resort, Hotel and Conference Center, L.P.

Q Burke Mountain Resort GP Services, LLC

Jay Construction Management, Inc.

GSI of Dade County, Inc.

North East Contract Services, Inc.

Q Burke Mountain Resort, LLC