

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, LLC¹,
AnC BIO VT, LLC,²

Additional Receivership Defendants.

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

²See Order Granting Receiver's Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is included in the Receivership or in the Alternative to Expand the Receivership to include AnC Bio VT, LLC, *Nunc Pro Tunc* dated September 7, 2018 [ECF No. 493].

**RECEIVER'S SIXTH INTERIM OMNIBUS APPLICATION FOR
ALLOWANCE AND PAYMENT OF PROFESSIONALS' FEES
AND REIMBURSEMENT OF EXPENSES FOR
SEPTEMBER 1, 2018 – FEBRUARY 28, 2019**

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 Sixth Interim Omnibus Application (the "Application") for Allowance and Payment of Professionals' Fees and Reimbursement of Expenses for September 1, 2018 – February 28, 2019 (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 reached a significant settlement with Ariel Quiros, which 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 taken title to those properties and has begun marketing the Jay Peak Resort for sale.³ 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 settled legal disputes resulting in recovery of additional money for the benefit of the investors. The Receiver continues

³ 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.

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 \$640,717.50 in professional fees. This amount represents a \$329,259.00 discount in fees from the professionals' standard billing rates. The Receiver also seeks the authority to reimburse the professionals the sum of \$54,888.27 in expenses, for a total payment of \$695,605.77 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,⁴ the Relief Defendants,⁵ 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 Receivership Defendants and the Relief Defendants. Relevant to this Application, the

⁴ 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.

⁵ 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 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”).⁶ Pursuant to the Billing Instructions, the Receiver states as follows:

- (a) **Time period covered by the Application:** September 1, 2018 – February 28, 2019
- (b) **Date of Receiver’s appointment:** April 13, 2016
- (c) **Date services commenced:** April 4, 2016
- (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

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

⁶ The Standardized Fund Accounting Report for the most recent quarter was filed with the Receiver’s Fourth Interim Report [ECF No. 437].

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 \$5,850,000.00. (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 a portion of the non-restricted funds to satisfy the accrued administrative fees and expenses of his professionals.

(b) Summary of creditor claims proceedings

The Receiver has returned the principal investments to investors in Jay Peak Hotel Suites L.P. The Receiver is actively marketing the Jay Peak Resort for sale and intends to distribute the

proceeds of the sale on a pro-rata basis to the Phase II – Phase VI investors. The Receiver has 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 and assisted other Phase VII investors in redeploying into another qualifying project. The Receiver has also satisfied the past-due trade debt owed by the Jay Peak Resort and the Burke Mountain Hotel and paid the allowed claims of the contractors and suppliers involved in the construction of the Burke Mountain Hotel.

(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-nine 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 700 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 \$550.00 to \$750.00, 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 \$320.85. 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 \$192,416.50 reduction in Akerman's fees. During the period covered by this Application, the Receiver and Akerman billed 1,099.10 hours and seek payment of fees in the sum of \$352,643.00 and reimbursement of expenses in the sum of \$40,763.95, for a total of \$393,406.95.

(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 \$550.00 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 \$191.88. This represents a significant reduction from LKLSG's standard billing rates and a \$125,831.00 savings for the receivership

estate. During the period covered by this Application, LKLSG billed 747.30 hours and seeks payment of fees in the sum of \$143,391.00 and reimbursement of expenses in the sum of \$11,474.57, for a total of \$154,865.57.

(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 \$318.26. This represents a savings for the Receivership Estate in the sum of \$3,005.50. During the period covered by this Application, Kapila Mukamal billed 392.30 hours and seeks payment of fees in the sum of \$124,853.50 and reimbursement of expenses in the sum of \$1,856.55, for a total of \$126,710.05.

(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 \$8,006.00 reduction of Klasko’s fees. During the period covered by this Application, Klasko seeks payment in the sum of \$19,830.00 for 49.8 hours and reimbursement of expenses in the sum of \$793.20, for a total of \$20,623.20.

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.

- The Receiver located bank accounts held in the names of entities owned by or affiliated with the Receivership Entities and took control over the accounts. Peoples United Bank initially hesitated to give the Receiver access to funds held in bank accounts titled in the name of AnC Bio VT, LLC. After the Court entered the Order Granting Receiver’s Motion 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. 493], the Receiver and his staff moved forward to liquidate the bank accounts. Akerman staff also liquidated Mr. Quiros’ bank accounts related to the Tango Grill.

Asset Disposition

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

- As a result of the entry of the Final Judgment against Mr. Quiros [ECF No. 450, as amended by ECF No. 474], Mr. Quiros disgorged certain assets to the Receiver, including bank accounts and real property (the “Transferred Properties”). The Receiver continues to maintain the Transferred Properties and market them for sale. On September 11, 2018, the Court entered an Order [ECF No. 498] approving the Receiver’s motion to sell one such parcel, representing 10.2 acres of vacant land located at TH 1 Cross Road, Jay Vermont. The Receiver’s staff prepared the deed, researched comparable sales and drafted the motion to approve the sale of the vacant land.
- The Receiver previously obtained Court approval [ECF No. 491] to sell Mr. Quiros’ luxury condominium located at 400 Fifth Avenue (f/k/a The Setai Condominium) in New York City. The Receiver’s real estate staff worked on post-closing matters, including claiming a refund for overpayment of taxes at closing due to tax adjustments for the property.
- The Receiver obtained title from Mr. Quiros for another luxury condominium, located at 220 Riverside Drive in New York City (the “Riverside Condo”). The Receiver focused on the maintenance and sale of the Riverside Condo. The Receiver’s staff conferred with the building’s managing agent with regard to maintenance payments and access to the Riverside Condo; conferred with real estate broker regarding marketing the Riverside Condo for sale, oversaw repairs to Riverside Condo; and coordinated staging the Riverside Condo to optimize the sale price.
- Although the Receiver has decided to postpone the sale of Burke Hotel until it generates sufficient jobs for all of the investors in the project, the Receiver focused on the sale of other portions of the land owned by Burke 2000 LLC that are not necessary for the operation of the hotel and ski area. The Receiver identified a 71-acre tract of undeveloped land owned by Burke 2000 LLC, which can be divided into four lots and sold as separate parcels. The Receiver engaged a broker to market the four lots for sale; negotiated sale prices; engaged an engineer to obtain local approval to divide the 71-acre parcel. The Receiver’s attorneys researched sales of similar units and prepared a motion to approve the sale of the four lots. After the Court entered an Order [ECF No. 535] authorizing the sale of the four lots, the Receiver’s real estate staff worked with the broker and the buyers’ agents to close on the sales and address potential land use issues relating to the four lots.
- The Akerman professionals worked on contracts for sale of other receivership properties, including the airplane hangar, a Jay Peak Village townhouse, and a 3-acre parcel near the entrance of the Burke Hotel.

- Since construction had been completed at Jay Peak Resort; all the necessary jobs for EB-5 purposes have been created; and the settlement with Mr. Quiros eliminated any interest Mr. Quiros may have in the Jay Peak Resort, the Receiver decided the time is appropriate to market Jay Peak Resort for sale. Due to the size of the Jay Peak Resort and the complexity of the sale, the Receiver obtained court approval [ECF No. 522] to retain a financial advisor to assist with the sale of the Jay Peak Resort. Prior to filing the Motion to Retain a Financial Advisor, the Receiver researched advisors with the appropriate experience and negotiated an Employment Agreement. The financial advisor will develop a detailed report on the financial status of the resort and will help package the sale in a way that a potential buyer can review the resort's financial records and understand the actual costs involved in operating the ski resort and other amenities to facilitate the best possible sale.

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 resorts' 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. 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, including employment matters.

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 sale of the Jay Peak Resort.
- 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 researched and prepared Status Reports and complied with other reporting requirements.

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 continued to processed refunds and prepared Release and Indemnity Agreements for Phase VII investors who requested receipt of their distribution payment by wire transfer through their counsel.

Litigation/Contested Matters

- The Receiver finalized settlement discussions with Mr. Quiros. In exchange for Mr. Quiros agreement to waive any interest he may have in the Jay Peak Resort and Burke Mountain Hotel and their related assets, the Receiver agreed (i) to waive all claims against Mr. Quiros, compromise all claims relating to a separate lawsuit brought by the Receiver against Mr. Quiros, and dismiss that action with prejudice; and (ii) use his best efforts to obtain entry of a bar order enjoining all investors and creditors of the Receivership Entities (excluding governmental entities) from pursuing any claims against Mr. Quiros arising out of the facts related to this case. Eliminating Mr. Quiros' interest in the Receivership Entities is an important step that will enable the Receiver to sell the property and distribute the proceeds thereof to the investors. The Receiver prepared a motion to approve the settlement with Mr. Ariel Quiros; and entry of an Order barring certain claims against Mr. Quiros [ECF No. 501]. The Receiver's staff worked on providing notice to all interested parties through email, mail or publication. Certain creditors filed objections to the settlement, which were addressed at a court hearing prior to the Court entering an Order [ECF No. 527] approving the settlement (with exceptions to the bar order for certain objectors.)
- The Receiver had previously intervened in the case *Quiros v. Ironshore Indemnity, Inc.*, Case No. 16-25073 (the "Ironshore Case"), where Mr. Quiros sued Ironshore Indemnity, Inc. ("Ironshore") (which provided insurance coverage

for claims made against the directors and officers of Q Resorts, Inc. as well as liability claims against Q Resorts, Inc.) to cover the costs of his legal defense. The Receiver participated in settlement discussions that led to a settlement among the parties. The Receiver worked with special counsel on the prospective terms of the settlement. Akerman counsel researched and gathered documentation in support of the Receiver's claims for damages. The Court has recently entered an Order approving the settlement and bar order [ECF No. 554, 555].

- At the inception of the case, the Receiver took control of a Miami office condominium when Mr. Quiros conducted business. The condominium association demanded payment of the assessments from the Receiver or Mr. Quiros. The Receiver, Mr. Quiros, through his business 111AQ, LLC and the condominium association reached a settlement, which was approved by Order [ECF No. 521] of the Court on January 7, 2019. The settlement relieves the Receivership Entities from any further obligation to the condominium association.
- 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 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 Mr. Quiros and the receivership entities; to serve discovery; to review and catalog responses to discovery.

(b) Levine Kellogg Lehman Schneider and Grossman LLP

The LKLSG professionals represent the Receiver in certain litigation matters.

- The LKLSG professionals represent the Receiver in the Ironshore Case. The LKLSG professionals prepared for the hearing on the Receiver's Motion for Summary Judgment in Ironshore case, prepared for trial in the matter and engaged in settlement discussions, which ultimately lead to settlement of the Ironshore Case. Prior to settlement, the LKLSG professionals prepared for trial by analyzing and strategizing use of motions in limine; reviewed deposition designations to prepare cross-designations/objections; reviewed Ironshore's Motion in Limine; and researched and prepared responses to Ironshore's Motion in Limine. While the LKLSG professionals prepared for trial, they also joined the Receiver in settlement conferences with the attorneys for Ironshore; prepared summaries of proposed settlement terms; reviewed and revised the proposed settlement worked on attachments to settlement agreement and revised the draft term sheet. The LKLSG professionals researched implementation of bar orders and researched and gathered documentation in support of the Receiver's claims for damages, and revised the settlement motion, the preliminary approval order, the final approval order, bar order and notice of settlement. The LKLSG

professionals coordinated the publication deadlines and notice requirements with the Receiver's office.

- The LKLSG attorneys monitored the filings in the receivership case and conferred with the Receiver regarding various filings.
- The LKLSG professionals researched and responded to subpoenas served on the Receiver. They assembled documents in response to subpoenas, strategized regarding searches and document production, reviewed keyword search results, catalogued production, coordinated production of documents with e-discovery vendors and IT departments of document recipients. They conferred with the Receiver and Kapila regarding the document production. The LKLSG professionals also prepared summaries of document produced by third parties.
- The LKLSG professionals prepared for the status conference in the class action case against People's Bank, *Qureshi v. People's United Financial, Inc., et al.*, Case No. 2:18-cv-163. Since the case was filed in Vermont, Mr. Schneider traveled to Vermont to attend the status conference.
- The LKLSG professionals engaged in strategy conferences regarding potential lawsuit against third parties. The researched and prepared a Complaint against a specific third party and engaged in multiple conferences with counsel for the third party.

(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 prepared and assembled state and federal tax forms, including Form 56, Form 4506-T, Form 1042, Form 1042-T, Form 945, Form 1099, Form 1096 for various receivership entities.
- The Accountants reviewed prior year tax files and correspondence for data needed to prepare tax returns; requested documentation for cash receipts and real property transfers and other items needed to prepare federal and Vermont tax returns for 2018 for certain of the Receivership Entities; prepared drafts of tax returns, reviewed the drafts, revised and prepared the tax returns. The Accountants reviewed draft financials and prepared taxable income estimates for extensions for

other Receivership Entities and prepared extensions for federal and Vermont taxes.

- The Accountants worked with the Receiver's office on the Receiver's sale of real property transfer by Mr. Quiros to the Receiver and researched and prepared Vermont Land Gain Tax forms.
- The Accountants reviewed the terms of the Receiver's settlement with Raymond James for allocation of restitution receivable, analyze receivership entities' balance sheets to determine adjustments necessary to record restitution receivables and analyzed EB-5 investors cumulative losses to address settlement and disgorgement journal entries.

Forensic Accounting

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

- The Accountants reviewed historical accounting documents to locate information requested by government agencies.
- The Accountants reviewed subpoenas and gathered records needed to respond to document production served on the Receiver.

(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 attorneys responded to inquiries from investors regarding their petitions and prepared an analysis of job creation at the Burke Hotel.
- The Klasko attorneys continued to respond to inquiries from investors and their attorneys regarding the redeployment project for qualifying Phase VII investors.
- The Klasko attorneys advised the Receiver on the impact of the termination of the State of Vermont's Regional Center and engaged in numerous conferences with the Receiver regarding the proposed strategy and options for the Receiver.

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).⁷ The hourly rates billed by the Receiver and his professionals are reasonable for professionals practicing in the Southern District of Florida. The Receiver reduced his standard rate by \$300.00 per hour and lowered the rates of the Akerman professionals anywhere from by \$50.00 an hour to \$215.00 an hour (depending on the individual's standard rate). The LKLSG professionals also reduced their rates by \$100.00 to \$350.00 from their standard rates. 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, in the amount of \$329,259 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,

⁷ 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 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)).

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.

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,

AKERMAN LLP
350 E. Las Olas Boulevard
Suite 1600
Ft. Lauderdale, Florida 33301
Telephone: (954) 46-2700
Facsimile: (954) 463-2224

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.
Florida Bar No.: 886602
Email: michael.goldberg@akerman.com
Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this May 31, 2019 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
Michael I. Goldberg, Esq.

SERVICE LIST

1:16-cv-21301-DPG Notice will be electronically mailed via CM/ECF to the following:

Robert K. Levenson, Esq.
Senior Trial Counsel
Email: levensonr@sec.gov
almonte@sec.gov, gonzalezlm@sec.gov,
jacqmeinv@sec.gov
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154
Attorneys for Plaintiff

Roberto Martinez, Esq.
Email: bob@colson.com
Stephanie A. Casey, Esq.
Email: scasey@colson.com
COLSON HICKS EIDSON, P.A.
255 Alhambra Circle, Penthouse
Coral Gables, Florida 33134
Telephone: (305) 476-7400
Facsimile: (305) 476-7444
Attorneys for William Stenger

Jonathan S. Robbins, Esq.
jonathan.robbins@akerman.com
AKERMAN LLP
350 E. Las Olas Blvd., Suite 1600
Ft. Lauderdale, Florida 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
Attorney for Receiver

David B. Gordon, Esq.
Email: dbg@msk.com
MITCHELL SILBERBERG & KNOPP, LLP
12 East 49th Street – 30th Floor
New York, New York 10017
Telephone: (212) 509-3900
Co-Counsel for Ariel Quiros

Christopher E. Martin, Esq.
Senior Trial Counsel
Email: martinc@sec.gov
almonte@sec.gov, benitez-perelladaj@sec.gov
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154
Attorneys for Plaintiff

Jeffrey C. Schneider, Esq.
Email: jcs@lkls.com
**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN**
Miami Center, 22nd Floor
201 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 403-8788
Co-Counsel for Receiver

Naim Surgeon, Esq.
naim.surgeon@akerman.com
AKERMAN LLP
Three Brickell City Centre
98 Southeast Seventh Street, Suite 1100
Miami, Florida 33131
Telephone: (305) 374-5600
Facsimile: (305) 349-4654
Attorney for Receiver

Jean Pierre Nogues, Esq.
Email: jpn@msk.com
Mark T. Hiraide, Esq.
Email: mth@msk.com
MITCHELL SILBERBERG & KNOPP, LLP
11377 West Olympic Blvd.
Los Angeles, CA 90064-1683
Telephone (310) 312-2000
Co-Counsel for Ariel Quiros

Mark P. Schnapp, Esq.
Email: schnapp@gtlaw.com
Mark D. Bloom, Esq.
Email: bloomm@gtlaw.com
Danielle N. Garno, Esq.
E-Mail: garnod@gtlaw.com
GREENBERG TRAUERIG, P.A.
333 SE 2nd Avenue, Suite 4400
Miami, Florida 33131
Telephone: (305) 579-0500
Attorneys for Citibank

Stanley Howard Wakshlag, Esq.
Email: swakshlag@knpa.com
KENNY NACHWALTER, P.A.
Four Seasons Tower
1441 Brickell Avenue
Suite 1100
Miami, FL 33131-4327
Telephone: (305) 373-1000
Attorneys for Raymond James & Associates Inc.

Stephen James Binhak, Esquire
THE LAW OFFICE OF STEPHEN JAMES BINAK, P.L.L.C.
1221 Brickell Avenue, Suite 2010
Miami, Florida 33131
Telephone: (305) 361-5500
Facsimile: (305) 428-9532
Counsel for Attorney for Saint-Sauveur Valley Resorts

J. Ben Vitale, Esq.
Email: bvitale@gurleyvitale.com
David E. Gurley, Esq.
Email: dgurley@gurleyvitale.com
GURLEY VITALE
601 S. Osprey Avenue
Sarasota, Florida 32436
Telephone: (941) 365-4501
Attorneys for Blanc & Bailey Construction, Inc.

Melissa Damian Visconti, Esquire
Email: mdamian@dvlip.com
DAMIAN & VALORI LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: 305-371-3960
Facsimile: 305-371-3965
Attorneys for Ariel Quiros

Laurence May, Esquire
EISEMAN, LEVIN, LEHRHAUPT & KAKOYIANNIS, P.C.
805 Third Avenue
New York, New York 10002
Telephone: (212) 752-1000
Co-Counsel for Attorney for Saint-Sauveur Valley Resorts

Exhibit 1

CERTIFICATION

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared **MICHAEL I. GOLDBERG** (the "Applicant"), who, after first having been duly sworn, deposes and says:

1. The Applicant is a partner in the law firm of Akerman LLP ("Akerman") and the Receiver in this action. This Certification is based on the Applicant's first-hand knowledge of and review of the books, records and documents prepared and maintained by Akerman in the ordinary course of its business. The Applicant knows that the facts contained in this motion regarding work performed by the Receiver and his staff and the facts contained in this Certification are true, and the Applicant is authorized by Akerman to make this Certification. Having reviewed the time records and data which support the motion, the Applicant further certifies that said motion is well grounded in fact and justified.

2. The billing records of Akerman which are attached to this Application are true and correct copies of the records maintained by Akerman. These records were made at or near the time the acts, events, conditions or opinions described in such records occurred or were made. The Applicant knows that the records were made by persons with knowledge of the transactions or occurrences described in such records or that the information contained in the records was transmitted by a person with knowledge of the transactions or occurrences described in the records. The records were kept in the ordinary course of the regularly conducted business activity of Akerman and it is the regular business practice of Akerman to prepare these records.

3. To the best of the Applicant's knowledge, information and belief formed after reasonable inquiry, this motion and all fees and expenses herein are true and accurate and comply with the Billing Instructions for Receivers in Civil Actions Commenced by the SEC.

4. All fees contained in this Application are based on the rates listed in the fee schedule attached hereto and such fees are reasonable, necessary and commensurate with the skill and experience required for the activity performed.

5. The Applicant has not included in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay (except to the extent that any such amortization is included within the permitted allowable amounts set forth herein for photocopies and facsimile transmission).

6. In seeking reimbursement for a service which Akerman justifiably purchased or contracted for from a third party, the Applicant requests reimbursement only for a service which the Applicant justifiably purchased or contracted for from a third party, the Applicant requests reimbursement only for the amount billed to the Applicant by the third-party vendor and paid by the Applicant to such vendor. If such services are performed by the Applicant, the Applicant will certify that he is not making a profit on such reimbursable service.

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.
Court Appointed Receiver