

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

Q BURKE MOUNTAIN RESORT, HOTEL  
AND CONFERENCE CENTER, L.P.,  
Q BURKE MOUNTAIN RESORT GP SERVICES, LLC<sup>1</sup>,  
AnC BIO VT, LLC,<sup>2</sup>

Additional Receivership Defendants.

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

<sup>2</sup>See 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 SEVENTH INTERIM OMNIBUS APPLICATION FOR  
ALLOWANCE AND PAYMENT OF PROFESSIONALS' FEES  
AND REIMBURSEMENT OF EXPENSES FOR  
MARCH 1, 2019 – AUGUST 31, 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 Seventh Interim Omnibus Application (the "Application") for Allowance and Payment of Professionals' Fees and Reimbursement of Expenses for March 1, 2019 – August 31, 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 continued to maintain the properties turned over to the receivership estate by Ariel Quiros and market the properties for sale. The Receiver continues to oversee 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 continue to work with investors who have not received their citizenship to assist them to speed up the USCIS approval process. The Receiver settled legal disputes resulting in recovery of additional money for the benefit of the investors and has initiated new lawsuits 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 \$737,307.00 in professional fees. This amount represents a discount in fees of \$490,000 from the professionals'

standard billing rates. The Receiver also seeks the authority to reimburse the professionals the sum of \$58,912.86 in expenses, for a total payment of \$796,219.86 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,<sup>3</sup> the Relief Defendants,<sup>4</sup> 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 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.

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<sup>3</sup> 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.

<sup>4</sup> 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., Q Burke Mountain Resort GP Services, LLC and AnC Bio VT, LLC were added as “Additional Receivership Defendants”. The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the “Receivership Entities.”

## 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”).<sup>5</sup> Pursuant to the Billing **Instructions**, the Receiver states as follows:

- (a) **Time period covered by the Application:** March 31, 2018 – August 31, 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

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

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<sup>5</sup> The Standardized Fund Accounting Report for the period January 1, 2019 through August 31, 2019 is attached hereto as Exhibit 5.

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

Exhibit 3(e): Downs Rachlin Martin PLLC

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

Exhibit 4(e): Downs Rachlin Martin PLLC

Exhibit 5: Standardized Fund Accounting Report

### **III. Case Status**

#### **(a) Cash on hand/Cash Position Since the Last Fee Application**

The amount of non-restricted cash in the Receivership bank accounts as of the date of filing this Application is approximately \$988,922.27. The Receiver is also holding approximately an additional \$6,756,877.53 from the sale of Quiros' real property and other restricted funds earmarked to refund or reimburse investors and to satisfy debt obligations.<sup>6</sup> Out of this amount, the Receiver collected the sum of \$4,574,862 during the period covering this Application (March 1, 2019 – August 31, 2019), the majority of these funds was from the sale of real properties more fully described herein. The Receiver seeks to use a portion of the non-restricted funds to satisfy the accrued administrative fees and expenses of his professionals.

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<sup>6</sup> These amounts do not include the funds used to maintain and operate the Jay Peak Resort, the Burke Mountain Hotel and related properties.

**(b) Summary of creditor claims proceedings**

The principal investment claims of the investors in Jay Peak Hotel Suites L.P. (“Phase I”) have been fully satisfied. 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.<sup>7</sup> 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. The Receiver has also assisted other Phase VII investors in redeploying their principal investment into another qualifying project. The Receiver continues to operate the Burke Mountain Hotel, in order to generate more jobs as required under the EB-5 program, for the benefit of the investors in Additional Receivership Defendant, Burke Mountain Resort, Hotel and Conference Center, L.P. (“Phase VII”) and is not currently listing the Burke Mountain Hotel for sale. 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

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<sup>7</sup> The partnerships are Receivership Defendants Jay Peak Hotel Suites Phase II L.P., Jay Peak Penthouse Suites L.P., Jay Peak Golf and Mountain Suites L.P., Jay Peak Lodge and Townhouses L.P. and Jay Peak Hotel Suites Stateside L.P.

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 thirty years and specializes in receivership and bankruptcy cases. The Receiver has been appointed receiver in more than 20 state and federal court 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 \$314.27. 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 \$230,000 reduction in Akerman’s fees. During the period covered by this Application, the Receiver and Akerman billed 1,099.50 hours<sup>8</sup> and seek payment of fees in the sum of \$345,522.50 and reimbursement of expenses in the sum of \$42,081.05, for a total of \$387,603.55.

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<sup>8</sup> Akerman deducted 11 hours from number of hours billed, which reflects a 50% reduction in the fees bills relating to long distance travel.

**(b) Levine Kellogg Lehman Schneider + Grossman LLP**

Jeffrey Schneider, a partner at the law firm Levine Kellogg Lehman Schneider + Grossman LLP (“LKLSG” or “Special Counsel”) 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 \$207.67. This represents a significant reduction from Special Counsel’s standard billing rates and a \$243,000 savings for the receivership estate. During the period covered by this Application, Special Counsel billed 1,008.4 hours and seeks payment of fees in the sum of \$209,418.00 and reimbursement of expenses in the sum of \$12,272.67, for a total of \$221,690.67.<sup>9</sup>

**(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.

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<sup>9</sup> In the attached Exhibits 3(b) and 4(b), Special Counsel breaks down its time and expenses between general receivership work (representing 502.4 hours and \$102,360.50 in fees), and work focused on the lawsuit filed against David Gordon and Mitchell, Silberberg & Knupp, LLP (506.0 hours and \$107,057.50 in fees).

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 \$323.62. This represents a savings for the Receivership Estate in the sum of \$3,700.00. During the period covered by this Application, Kapila Mukamal billed 461.7 hours and seeks payment of fees in the sum of \$149,414.00 and reimbursement of expenses in the sum of \$3,456.43, for a total of \$152,870.43.

**(d) Klasko Immigration Law Partners, LLP**

The attorneys of Klasko Immigration Law Partners, LLP (“Klasko”) have national reputations for cutting-edge immigration law practice, including working with immigrant investors applying for permanent residence status through the EB-5 program. Their experience working on EB-5 immigrant investor cases includes both representation of pooled investment companies and representation of individual investors investing in pooled investment companies, approved regional centers and their own companies. They used this experience to assist the Receiver and the investors in providing information to the United States Citizenship and Immigration Services (“USCIS”) in support of the investors’ I-829 petitions.

The Klasko attorneys bill at rates from \$340.00 to \$850.00, but have reduced partners’ rates to \$495.00, resulting in a blended rate of \$373.67 per hour for this case. These discounts equate to a \$13,000.00 reduction of Klasko’s fees. During the period covered by this Application, Klasko seeks payment in the sum of \$26,664.50 for 83.7 hours and reimbursement of expenses in the sum of \$1,066.58, for a total of \$27,731.08.

**(e) Downs Rachlin Martin PLLC**

The foundation for Downs Rachlin Martin PLLC (“DRM”) was established in 1950; DRM grew to the largest law firm in Vermont and one of the largest firms in Northern New England. With more than 140 employees, including approximately 60 attorneys and legal

professionals, DRM has four offices in Vermont and one in New Hampshire. DRM's general law practice includes corporate, business, environment, government affairs, public utilities, real estate, construction, tax and litigation. DRM currently assists the Receiver with Vermont land use matters. The DRM professionals bill at a blended rate of \$314.40. During the period covered by this Application, DRM seeks payment in the sum of \$6,288.00 for 83.7 hours and reimbursement of expenses in the sum of \$36.13, for a total of \$6,324.13.

**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 Disposition

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

- The SEC previously reached a settlement with Mr. Quiros, whereby he consented to the entry of a Final Judgment against him [ECF No. 450, as amended by ECF No. 474] which in relevant part, provided that Mr. Quiros shall satisfy his obligations by disgorging certain bank accounts and real properties to the Receiver. The Receiver continues to maintain the real properties and work with his real estate brokers to market the properties for sale.
- The Court also entered an Order on Plaintiff's Motion for Court to Establish Fair Fund [ECF No. 449], which establish a Fair Fund to allow the distribution of the civil penalties paid by Mr. Quiros and Mr. Stenger, along with the disgorgement and prejudgment interest paid by Quiros, to defrauded Jay Peak investors. The Receiver has worked to set aside the net proceeds of the sale of the properties to be used to reimburse defrauded investors rather than pay general expenses of the receivership estate.

- On April 5, 2019, the Court entered an Order [ECF No. 556] approving the Receiver's Motion for Authorization to (I) Sell Unit # 314 in Phase 1 of Jay Peak Village and (II) Return Deposit to Prior Prospective Purchaser. The Receiver negotiated a settlement with a prior contract-holder regarding reimbursement of his claim, if any, to the sale proceeds. The Receiver's real estate professionals revised the contract for sale, prepared a Rider to the contract, engaged in multiple conferences with the realtor and the buyer or buyer's counsel, reviewed title issues, prepared the warranty deed, and worked on the closing documents to finalize the sale. Counsel researched and analyzed statistics regarding recent sales of similar properties, conferred with counsel for the SEC regarding the sale and comparable sales, and drafted the motion and proposed Order to approve the sale of the property.
- The Court previously approved the sale of a 71-acre tract of land owned by Burke 2000, LLC, separated into four separate parcels. However, two of the buyers decided not to close on their parcels due to the requirement set forth in Vermont's land use law (commonly referred to as Act 250). The Receiver obtained new buyers for those two parcels. On May 14, 2019, the Court entered an Order [ECF No. 562] approving the Receiver's Second Motion for Authorization to Sell 19.76 Acres a/k/a Lot 00 VT Route 114 [ECF No. 560]. On the same day, 2019, the Court entered an Order [ECF No. 563] approving the Receiver's Second Motion for Authorization to Sell 11 Acres a/k/a 2466 VT Route 114 [ECF No. 561]. For both of the properties, the Receiver's real estate professionals revised the contracts for sale, prepared Riders to the contracts, engaged in multiple conferences with the realtor and the buyers or buyers' counsel, reviewed title issues, prepared the warranty deeds, and worked on the closing documents to finalize the sale of the parcels. Counsel researched and analyzed statistics regarding recent sales of similar properties, conferred with counsel for the SEC regarding comparable sales, and drafted the motions and proposed Orders to approve the sale of the parcels.
- On June 24, 2019, the Court entered an Order [ECF No. 567], approving the Receiver's Motion for Authorization to Sell 220 Riverside Blvd., New York, NY [ECF No. 566]. The Receiver's real estate professionals revised the contract for sale, prepared a Rider to the contract, engaged in multiple conferences with the realtor and the buyer or buyer's counsel, reviewed title issues, addressed New York tax issues and condominium issues, prepared the warranty deed, and worked on the closing documents to finalize the sale. Counsel researched and analyzed statistics regarding recent sales of similar properties, conferred with counsel for the SEC regarding the sale and comparable sales, and drafted the motion and proposed Order to approve the sale of the property.
- On July 8, 2019, the Court entered an Order [ECF No. 572], approving the Receiver's Motion for Authorization to Sell Property Located at 986 Lake Road, Newport, Vermont [ECF No. 571]. The Receiver's real estate professionals revised the contract for sale, prepared a Rider to the contract, engaged in multiple conferences with the realtor and the buyer or buyer's counsel, reviewed title

issues, prepared the warranty deed, and worked on the closing documents to finalize the sale. Counsel researched and analyzed statistics regarding recent sales of similar properties, conferred with counsel for the SEC regarding the sale and comparable sales, and drafted the motion and proposed Order to approve the sale of the property.

- On August 14, 2019, the Court entered an Order [ECF No. 574], approving the Receiver's Motion for Authorization to Sell Property Located at 267 Reviator Flats, Jay, Vermont [ECF No. 573]. The Receiver's real estate professionals revised the contract for sale, prepared a Rider to the contract, engaged in multiple conferences with the realtor and the buyer or buyer's counsel, reviewed title issues, prepared the warranty deed, and worked on the closing documents to finalize the sale. Counsel researched and analyzed statistics regarding recent sales of similar properties, conferred with counsel for the SEC regarding the sale and comparable sales, and drafted the motion and proposed Order to approve the sale of the property.
- The Court previously entered an Order [ECF No. 522] authorizing the Receiver to retain a financial advisor to assist with the sale of the Jay Peak Resort. The Receiver participated in weekly conference calls with the financial advisor, researched and gathered documents for the "open data room", and responded to inquiries from investors, potential purchasers and other interested parties regarding the sale.
- The Court previously entered an Order [ECF No. 534] authorizing the sale of a three-acre portion of a 1,611-acre parcel of land owned by Burke 2000 LLC. The sale had been delayed due to a cloud on the title to the property arising from a contractor's lien asserted by Blanc & Bailey Construction, Inc., a subcontractor involved in the construction of the Burke Hotel. Akerman worked closely with counsel for Blanc & Bailey and counsel for PeakCM, LLC, the lead contractor on the construction project to amicably resolve this dispute and clear title for the sale of the three-acre parcel.
- The Receiver and his staff addressed issues relating to the maintenance and sale of other properties, including liability insurance renewals and property tax payments, that are not part of the Jay Peak Resort, including the airport hangar, Kingdom Trails, the Darling Hill property, the Newport building and the Burke Hotel.

### 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 verifying job creation in support of the investors' citizenship petitions. The Receiver and immigration counsel worked to address the backlog in the approval process. The Receiver organized conference calls with investors regarding filing a mandamus complaint (the "Mandamus Complaint") on behalf of all investors with a pending I-526 petition or a pending I-829 petition, who want to be plaintiffs in such litigation.<sup>10</sup> The staff responded to investor inquiries and worked with the investors interested in participating in the mandamus case.
- The Receiver and Akerman researched and prepared Status Reports and complied with other reporting requirements.

#### Claims Administration and Objections

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<sup>10</sup> A mandamus complaint does not seek judicial approval of the pending petitions. It simply requests an order from the court to mandate the adjudication of the petition within a specified period of time.

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.

#### Tax Matters

- The Receiver and Akerman analyzed correspondence from the IRS and worked with the accountants to respond to the inquiries.
- The Receiver reviewed and executed tax returns.

#### Litigation/Contested Matters

- 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 in the Ironshore Case. The Receiver reviewed the objections to the bar order and worked with Special Counsel on responses to the objections. Akerman attorneys attended the court hearing on the settlement and monitored the appeal of the Order approving the settlement and bar order [ECF No. 555] filed by Leon Cosgrove, LLP and Mitchell, Silberberg & Knupp, LLPs.
- Akerman litigators prepared for trial against William Kelly, the director of Relief Defendant North East Contract Services, Inc. (“NECS”), wherein the Receiver sought 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. Akerman litigators drafted a joint pretrial stipulation, prepared outlines for trial witnesses, prepared outlines for trial witnesses and prepared jury instructions. The Receiver and Akerman litigators prepared for and participated in mediation with Mr. Kelly. The Receiver and Akerman litigators prepared for the Receiver’s deposition. Akerman litigators researched and responded to Mr. Kelly’s request to stay the case as a result of his indictment.
- 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.

- Akerman attorneys worked with the Accountants and LKLSG to research and prepare responses to discovery requests served in *Sutton et al v. Saint-Sauveur Valley Resorts, Inc.*, Case No. 17-cv-00061, filed by investors in the U.S. District Court for the District of Vermont (the “SSVR Case”).

**(b) Levine Kellogg Lehman Schneider and Grossman LLP**

Special Counsel represents the Receiver in certain litigation matters and are lead counsel to the Receiver in the Ironshore case and recent litigation filed against David Gordon and Mitchell, Silberberg & Knupp, LLP.

- Special Counsel worked on the settlement with Ironshore, drafted and revised the settlement documents, and drafted the Motion For (I) Approval of Settlement Between Receiver, Ariel Quiros, William Stenger, and Ironshore Indemnity, Inc., (II) Entry of a Bar Order, and (III) Approval of Form, Content and Manner of Notice of Settlement and Bar Order [ECF No. 523]. When three parties objected to the bar order, Special Counsel analyzed the objections and worked with the Receiver and counsel for Mr. Quiros to prepare responses to the objections. Special Counsel conferred with counsel for the objecting parties, and prepared for and attended the hearing on the Ironshore settlement. Special Counsel worked with the Receiver to resolve certain of the objections and worked on revisions to the Order approving the settlement and bar order to incorporate certain of the objectors’ concerns.
- Objecting parties Leon Cosgrove, LLC and Mitchell, Silberberg & Knupp filed an appeal of the Order approving the settlement and bar Order (the “Bar Order Appeal”). Special Counsel analyzed the initial filings, strategized with the Receiver, prepared the corporate disclosures and certificate of interested parties, researched and prepared a Motion to Dismiss the Bar Order Appeal and an Answer brief. Special Counsel researched and drafted a mediation statement for the Bar Order Appeal and prepared for and attended mediation with the Receiver.
- Special Counsel monitored the filings in the receivership case and conferred with the Receiver regarding various filings.
- Special Counsel researched and prepared for the hearing on defendant People’s Bank’s Motion to Dismiss in the case, *Qureshi v. People’s United Financial, Inc., et al.*, Case No. 2:18-cv-163 filed in the U.S. District Court for the District of Vermont. Mr. Schneider traveled to Vermont to attend the hearing.
- Special Counsel analyzed the filings in the SSVR Case, researched SSVR’s demand for indemnification, and conferred with the Receiver and Vermont

counsel. Special Counsel reviewed SSVR's Request for Production, assembled documents in response to the request for production, and catalogued the document production and prepared responses and objections to the request for production.

- Special Counsel researched claims against David Gordon, individually and his law firm Mitchell, Silberberg & Knupp (the "MSK Case"), who served as counsel to the Receivership Entities and their principals Ariel Quiros and William Stenger prior to the appointment of the Receiver. Special Counsel prepared and filed a Complaint in the MSK Case for legal malpractice, breach of fiduciary duty to the Receivership Entities, in the U.S. District Court for the Southern District of Florida, Case No. 19-cv-21862. Special Counsel analyzed records of the Receivership Entities and prepared Request for Production to MSK, analyzed MSK's Motion to Dismiss and drafted a response thereto, prepared Initial Disclosures, and prepared Interrogatories.

**(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 completed the Forms 1042, 1042-S and 1042-T for Jay Peak Inc., Jay Peak Penthouse Suites LP, Jay Peak Golf & Mountain Suites LP, Jay Peak Lodge & Townhouse, L.P., Jay Peak Hotel Suites Stateside LP, Q Burke Mountain Resort Hotel & Conference Center, LP, Burke Mountain Operating Company and other receivership entities.
- The Accountants worked with One Wall Street LLC to gather information for the Jay Peak Biomedical Research Park, LP tax returns and worked on preparation of tax returns.
- The Accountants reviewed draft financials and prepared taxable income estimates for extensions for other Receivership Entities, including preparing extensions for federal and Vermont taxes.
- The Accountants worked with Houlihan Lokey, the financial company working on the sale of Jay Peak to set up a shared file for access to tax files.
- The Accountants gathered and reviewed information for preparation of revised tax forms for 2014 and 2015 tax returns for Jay Peak Inc and other Receivership Entities.

- The Accountants researched and prepared 2015 – 2018 tax returns for ANC Bio VT LLC.

#### Forensic Accounting

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

- The Accountants worked with the Receiver and his litigation attorneys to gather documents for cases instituted by the Receiver.
- 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 worked with the Receiver to address the impact of the shutdown of the Vermont Regional Center on the processing of the citizenship petitions.
- The Klasko attorneys participated in conference calls with investors regarding filing a mandamus complaint on behalf of all investors with a pending I-526 petition or a pending I-829 petition who wish to be plaintiffs in such litigation. (A mandamus complaint does not seek judicial approval of the pending petitions. It simply requests an order from the court to mandate the adjudication of the petition within a specified period of time.) The Klasko attorneys worked with investors (and their attorneys) regarding participating in a mandamus case.
- The Klasko attorneys researched and prepared a mandamus complaint.

#### **(e) Downs Rachlin Martin PLLC**

The Receiver employed DRM to handle Vermont land use matters involving Jay Peak properties.

- DRM has experience working on the permitting process required under Vermont's Act 250 (Vermont's land use and development law). DRM analyzed public records and Jay Peak's development records with regard to potential development of certain properties at Jay Peak. DRM counseled Receiver regarding the procedures needed for new developments at Jay Peak.
- DRM also examined the creation of a water company to serve the Jay Peak Village townhomes.

## 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).<sup>11</sup> 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 \$490,700 during the Application Period.

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<sup>11</sup> 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)).

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

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

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

The Receiver continues to oversee the operations of the two ski resorts and related amenities. The Receiver has used his business judgment to develop plans to enhance the operations of the Receivership Entities prior to their sale in order to enhance the value of the receivership assets and provide proof of job creation for the benefit of the investors. The Receiver has worked cooperatively with Vermont government officials, various creditors, counsel and the SEC, with the cooperative goal to create jobs, provide opportunities for investors

to obtain citizenship and to pay the claims of creditors. Moreover, the Receiver has implemented the \$150 million settlement the will fund these objectives.

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

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

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

**LOCAL RULE CERTIFICATION**

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

Respectfully submitted,

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*Court-Appointed Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this October 16, 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**

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