

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 TWELFTH INTERIM OMNIBUS APPLICATION FOR
ALLOWANCE AND PAYMENT OF PROFESSIONALS’ FEES
AND REIMBURSEMENT OF EXPENSES FOR
AUGUST 1, 2022 – AUGUST 31, 2023**

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 *Twelfth Interim Omnibus Application for Allowance and Payment of Professionals’ Fees and Reimbursement of Expenses* (the “Application”) for August 1, 2022 – August 31, 2023 (the “Application Period”), and in support, states as follows:

Preliminary Statement

During the Application Period, the Receiver and his team of professionals made significant progress towards winding down the Receivership and maximizing the value of the estate’s remaining assets for the benefit of defrauded Jay Peak investors. More specifically, in late 2022, the Receiver completed the long-sought sale of the Jay Peak resort to a third-party company through a Court-approved auction process that netted the Receivership proceeds of \$67,290,080.04. The Receiver and his professionals were thus able to administer an additional \$60,000,000.00 in interim distributions to eligible investors with allowed claims in Jay Peak Phases II-VI, while addressing any lingering administrative issues from prior distributions.

Completing the Jay Peak resort sale and the interim distributions to eligible investors has allowed the Receiver and his professionals to wind down significant operations and focus their attention on administering and disposing of the Receivership’s other main asset, the Burke Mountain ski resort. During the Application Period, the Receiver and his professionals have continued to work to increase the resort’s value to position it to achieve the maximum amount possible in a sale contemplated to take place early next year. The Receiver, through his efforts,

has identified a party interested in serving as a stalking horse bidder for the Burke Mountain ski resort. As such, the Receiver and his professionals have commenced the process of negotiating and drafting the corresponding Asset Purchase Agreement and attendant Bid Procedures for the sale, with the goal of completing such a sale by early next year.

Finally, the Receiver and his professionals also participated in two mediations involving thirty-three lawsuits on behalf of sixty-three plaintiffs against the State of Vermont and others stemming from the Jay Peak fraud during this Application Period. A settlement was reached at mediation for Sixteen Million Five Hundred Thousand Dollars (\$16,500,000.00). The Receiver and his professionals then took the lead in drafting the settlement documents that were later signed by the parties and filed with the Court. This settlement, if approved on a final basis, will provide a significant benefit to the Receivership estate—particularly those investors who have not yet obtained their green cards.

As a result of the foregoing, the Receiver and his professionals incurred fees and expenses and seek Court approval to pay the sum of \$874,151.69 in professional fees. This amount represents a discount of no less than \$766,166.40 from the professionals' standard billing rates. The Receiver also seeks the authority to reimburse the professionals the sum of \$26,709.48 in expenses, for a total payment of \$900,861.26 to the Receiver and his professionals.

I. Background

On April 12, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint [ECF No. 1] in the United States District Court for the Southern District of Florida (the

“Receivership Court”) against the Receivership Defendants,³ the Relief Defendants,⁴ William Stenger and Ariel Quiros, alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by among other things, making false or materially misleading representations to foreign investors who invested \$500,000 in the limited partnerships set up by the Receivership Entities pursuant to the federal EB-5 immigration program.

On April 13, 2016, upon the SEC’s Motion for Appointment of Receiver [ECF No. 7], the Court entered the Receivership Order and selected Michael Goldberg as the Receiver of the Receivership Defendants and the Relief Defendants. Relevant to this Application, the Receivership Order authorizes the Receiver to appoint professionals to assist him in “exercising the power granted by this Order ...” *See* Receivership Order at ¶ 4. Moreover, the Receiver and his professionals are entitled to reasonable compensation from the assets of the Receivership Defendants, subject to approval of the Court. *See* Receivership Order at ¶14.

II. Information about Applicant and the Application

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

(a) Time period covered by the Application: August 1, 2022 – August 31, 2023

(b) Date of Receiver’s appointment: April 13, 2016

³ The “Receivership Defendants” are Jay Peak, Inc. “Jay Peak,” Q Resorts, Inc., Jay Peak Hotel Suites L.P. (“Phase I”), Jay Peak Hotel Suites Phase II L.P. (“Phase II”), Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P. (“Phase III”), Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P. (“Phase IV”), Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P. (“Phase V”), Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P. (“Phase VI”), Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P. (“Phase VII”), and AnC Bio Vermont GP Services, LLC.

⁴ The “Relief Defendants” are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC. Later, Q Burke Mountain Resort, Hotel and Conference Center, L.P., 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.”

- (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 + Grossman LLP

Exhibit 3(c): KapilaMukamal

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

Exhibit 3(e): Gravel & Shea PC

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 + Grossman LLP

Exhibit 4(c): KapilaMukamal

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

Exhibit 4(e): Gravel & Shea PC

III. Case Status

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

The amount of total cash on hand in the Receivership general bank accounts as of the date of filing this Application is approximately \$52,135,554.76; the amount of unrestricted funds is \$21,642,110.29.⁵ These amounts do not include the funds used to maintain and operate the Burke Mountain Hotel and related properties.

(b) Summary of creditor claims proceedings

The principal investment of the investors in Phase I have been fully satisfied. The Receiver has provided refunds of the principal investment of the investors in 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 has 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.

During this Application Period the Receiver has administered \$60,000,000.00 in interim distributions to eligible investors with allowed claims in Jay Peak Phases II-VI. Finally, 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 Phase VIII and is actively exploring a sale of the Burke Mountain Hotel.

⁵ Restricted cash is cash restricted for the benefit of certain classes of creditors. Such funds are either traceable to specific collateral, such as the Jay Peak ski resort or (eventually) the Burke Mountain ski resort, or earmarked for certain creditor groups pursuant to the relevant settlement agreements.

(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 periodic Status Reports filed in this case.

Completing the resort sale and the interim distributions to eligible investors has allowed the Receiver and his professionals to wind down significant operations and focus their attention on administering and disposing of the Receivership's other main asset, the Burke Mountain ski resort. During the Application Period, the Receiver and his professionals have continued to work to increase the resort's value to position it to achieve the maximum amount possible in a sale contemplated to take place early next year. Working closely with Leisure Hotels, LLC, the Court-approved management company operating Burke Mountain, and Burke Mountain's general manager, the Receiver has improved Burke Mountain's financial outlook for 2023 and 2024 notwithstanding numerous operational challenges during the Application Period.

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 \$160.00 to \$1050.00, the Receiver is billed at \$395.00, and partners are billed at \$500.00 to \$750.00, resulting in a blended rate of \$371.67 and a reduction of fees in the sum of \$494,935.00 (if billed at the standard rates). The Receiver further reduced time billed to preparing Status Reports and fee applications, and time billed for matters more clerical rather than administrative in nature. During the Application Period, the Receiver and Akerman billed 1,888.80 hours and seek payment of fees in the sum of \$624,726.00 and reimbursement of expenses in the sum of \$4,583.01, for a total of \$629,309.01.

(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 \$565.00 to \$880.00 per hour, all partners are billed at \$250.00 to \$395 per hour, all associates rates are reduced from the standard rates of \$370.00 to \$460.00 per hour, to \$200.00 per hour, and all paraprofessionals are billed at \$125.00 per hour, resulting in a blended rate of \$327.50. This represents a significant reduction from Special Counsel’s standard billing rates and a savings of approximately \$90,947.50 for the receivership estate. During the Application Period, Special Counsel billed 169.10 hours and seeks payment of fees in the sum of \$65,392.79⁶ and reimbursement of expenses in the sum of \$17,358.88, for a total of \$82,751.67.

⁶ Fees in the amount of \$1,838.29 were inadvertently omitted from the 11th Interim Fee Application award due to a typographical error.

(c) KapilaMukamal

Soneet Kapila, CPA, and the accounting firm KapilaMukamal (“KM” or the “Accountants”) 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 \$351.75. This represents a savings for the Receivership Estate in the sum of \$51,481.50. During the Application Period, KM billed 507.70 hours and seeks payment of fees in the sum of \$178,585.90 and reimbursement of expenses in the sum of \$4,442.31 for a total of \$183,028.21.

(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. Klasko has worked 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 professionals bill at rates from \$505.00 to \$995.00, but have reduced associates' rates to \$350.00 and partners’ rates to \$495.00, resulting in a blended rate of \$430.00

per hour for this case. These discounts equate to a reduction of approximately \$1,698.00 from Klasko's standard rates. During the period covered by this Application, Klasko seeks payment in the sum of \$1,932.00 for 4.10 hours and reimbursement of expenses in the sum of \$77.28 for a total of \$2,009.28.

(e) Gravel & Shea PC

The real estate attorneys at Gravel & Shea PC ("Gravel & Shea") bring many years of experience to a broad range of real estate transactions in the state of Vermont. They are experienced in serving as local counsel for the acquisition, operation, development and sale of several significant Vermont commercial properties, including some of the major ski resorts in the state. They use this experience to assist the Receiver and Akerman in the structuring of the pending sale of the Burke Mountain ski resort.

The Gravel & Shea PC professionals bill at competitive rates resulting in a blended hourly rate of \$309.00 for this case. During the period covered by this Application, Gravel & Shea PC seeks payment in the sum of \$3,515 for 10.1 hours and reimbursement of expenses in the sum of \$248.00, for a total of \$3,763.00.

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 the activity categories with the most substantial amount of time are provided below. Further details are available in the time records attached hereto and incorporated herein as Exhibit 4(a).

Asset Disposition

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

- The Court previously entered an Order [ECF No. 522] authorizing the Receiver to retain Houlihan Lokey (“HL”) to assist with the sale of the Jay Peak Resort. Since that time, the Receiver and his counsel have corresponded regularly with potential purchasers and with HL regarding the potential sale, due diligence, and the sale process for Jay Peak Resort. Receiver and his counsel at Akerman negotiated and drafted the corresponding Asset Purchase Agreement and Bid Procedures for the sale.
- On August 1, 2022, the Receiver's counsel filed a *Motion for Entry of Order (a) Approving Asset Purchase Agreement; (b) Approving Bid Procedures; (c) Approving the Assumption and Assignment of Certain Contracts and Leases; (d) Scheduling Final Hearing to Consider Approval of Sale (21 Days Out); and (e) Granting Related Relief* [ECF No. 726] wherein the Receiver sought the Court’s authorization to sell the Jay Peak Resort to a third party, Pacific Group Reports, Inc. (through an affiliate thereof), subject to competitive bidding and auction process. On August 4, 2022, the Court entered an *Order (a) Approving Asset Purchase Agreement; (b) Approving Bid Procedures; (c) Approving the Assumption and Assignment of Certain Contracts and Leases; (d) Scheduling Final Hearing to Consider Approval of Sale (21 Days Out); and (e) Granting Related Relief* [ECF No. 726].
- The Receiver and his counsel received and responded to inquiries from additional entities interested in participating in the bid process. The Receiver and his professionals subsequently conducted an auction for the Jay Peak Resort on September 7, 2022, wherein the “stalking horse” bidder, Pacific Group Resorts, Inc., submitted the highest and best bid in the amount of \$76,000,000. The Receiver attended the final sale hearing held on September 16, 2022, wherein the Court approved the sale on a final basis.
- On September 22, 2022, the Court entered an *Order Approving Sale of Assets to Pacific Group Resorts, Inc. Free and Clear of All Liens, Claims, and Encumbrances* [ECF No. 734]. The sale of the Jay Peak Resort closed on November 1, 2022, which resulted in the Receiver obtaining net proceeds of \$67,290,080.04 [ECF No. 739].
- On May 2, 2022, the Receiver and his counsel filed a motion with the Court seeking approval to sell a 25.1-acre piece of property (that included a 46,000 square foot industrial warehouse) in Newport, Vermont for \$950,000 (“the Bogner Property”) as-is-where is in a private sale [ECF No. 717]. The Court approved the sale [ECF No. 720], and it closed on Sept. 27, 2022. The Receiver used the proceeds to pay the carrying costs, and the remainder went to satisfy Peak CM’s claim in full (even though the proceeds that went to Peak CM were less than the company’s \$1,064,029

claim, Peak CM accepted the proceeds as payment in full due to the only source of payment being the sale proceeds) [ECF No. 717].

- The Receiver, through his efforts, has identified a party potentially interested in serving as a stalking horse bidder for the Burke Mountain ski resort. As such, the Receiver and Akerman have commenced the process of negotiating and drafting the corresponding Asset Purchase Agreement and Bid Procedures for the sale, with the goal of completing a sale by early next year.

Business Operations

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

- Prior to the closing of the sale of the Jay Peak Resort, the Receiver continued to work with the court-approved management company, Leisure Hotels, LLC (“Leisure”) who operated both the Jay Peak Resort and the Burke Mountain Hotel, along with Jay Peak’s General Manager, Steven Wright and Burke Mountain Resort’s General Manager, Kevin Mack. The Receiver conferred with the Leisure management team, Steven Wright and Kevin Mack on a regular basis to monitor the resorts’ operations.
- Post-closing, the Receiver continued to work with Leisure to manage and operate the Burke Mountain ski resort together with Burke Mountain Resort’s General Manager, Kevin Mack. During the Application Period, the Receiver and his professionals have continued to work to increase Burke Mountain resort's value to position it to achieve the maximum amount possible in a sale contemplated to take place early next year. Burke Mountain’s financial outlook for 2023 and 2024 has improved notwithstanding numerous operational challenges during the Application Period.

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, government officials and other interested parties. The Receiver continues to maintain a toll-free investor hotline, an email address for general inquiries, and a website to provide information for investors and interested parties.
- 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 continued to work with immigration counsel verifying job creation in support of the investors’ citizenship petitions. The Receiver and immigration

counsel continue to work with investors with a pending I-526 petitions or a pending I-829 petitions.

- The Receiver and Akerman researched and prepared Status Reports and complied with other reporting requirements.
- The Receiver and Akerman administered \$60,000,000.00, and implemented and managed a detailed compliance process in order to facilitate this significant claim process.

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.
- The Receiver and Akerman were tasked with distributing \$20,000,000.00 in settlement proceeds to investors in Hotel Phase II, Penthouse Phase III, Golf and Mountain, Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VII (the “Interim Distribution”). Accordingly, the Receiver and counsel sought and obtained Court approval of the Interim Distribution, and the corresponding Interim Distribution Plan and Interim Distribution Procedures as set forth in the *Receiver's Amended Motion for Authorization to Make an Interim Distribution and Supporting Memorandum of Law* [ECF No. 706] and the Court’s *Order Granting, In Part, and Denying, In Part, Receiver’s Amended Motion For Authorization To Make An Interim Distribution* [ECF No. 709].
- In accordance with the initial distribution goals, the Receiver and his counsel developed and distributed an Interim Distribution Claim Form, which required investors to elect a certain claimant status, which election would then determine the amount of the investor's Interim Distribution. However, after limited objection by the SEC [ECF No. 707] and passage of the EB-5 Reform and Integrity Act of 2022⁷, the Receiver opted to modify the Interim Distribution Plan, and instead make payments totaling \$19,500,000 to all investors eligible for an Interim Distribution— regardless of the status of their I-829 petitions— on a *pro rata* and immediate basis.
- Accordingly, on May 2, 2022, the Receiver's counsel filed a *Receiver's Motion Seeking Authorization to Modify Interim Distribution and Supporting Memorandum of Law* [ECF No. 718] wherein the Receiver sought the Court's

⁷ It was thought the 2022 Act might mitigate or even eliminate the damage suffered by investors whose I-829 petitions have not been approved, as it added protection for innocent investors who suffer termination or debarment of their Regional Center, New Commercial Enterprise or Job Creating Enterprise.

authorization to modify the terms of the Interim Distribution Plan. On May 9, 2022, the Court entered the *Order Granting Motion Seeking Authorization to Modify Interim Distribution and Supporting Memorandum of Law* [ECF No. 719].

- The Receiver and his counsel sent out, received and processed all Interim Distribution Forms, and administered an Interim Distribution in the amount of \$29,907.98 to all investors in Hotel Phase II, Penthouse Phase III, Golf and Mountain Phase IV, Lodge and Townhouses Phase V, Stateside Phase VI, and Q Burke Phase VIII who elected to received same. The Receiver and his counsel also fielded a multitude of inquiries from investors as to the Interim Distribution Plan and Interim Distribution Form.
- The sale of the Jay Peak Resort resulted in the Receiver obtaining net proceeds of \$67,290,080.04 [ECF No. 739]. In April of 2023, the Receiver and Akerman filed an *Unopposed Motion to Make Second Distribution* [ECF No. 743] wherein the Receiver sought Court's authorization to distribute \$60,000,000 from the sale of the Jay Peak resort on a *pro rata* basis to Phase II-VI investors with allowed claims [ECF No. 743].
- The Court entered an Order granting the motion on May 3, 2023 [ECF No. 744], and immediately thereafter the Receiver and Akerman commenced the process of distributing \$60,000,000 to Phase II-VI investors with allowed claims. The Receiver and Akerman are still in the process of reconciling and dealing with the multitude of administrative issues arising from and/or related to this distribution.

Tax Matters

- The Receiver and Akerman analyzed correspondence from the IRS and worked with the accountants to respond to inquiries from taxing authorities.
- The Receiver reviewed and executed federal and state tax returns.
- The Receiver and Akerman worked to provide investors with copies of current and historical K-1s, and responded to inquiries regarding same.
- The Receiver and Akerman worked to provide the accountants with all information needed for purposes of preparing all federal and state tax returns.

Litigation

- The Receiver was an active participant in the settlement with the State of Vermont, as more fully detailed in section (b) below.

(b) Levine Kellogg Lehman Schneider + Grossman LLP

Special Counsel represents the Receiver in certain litigation matters and are lead counsel to litigation filed against third parties. Further details of services provided by Special Counsel are available in the time records attached hereto and incorporated herein as Exhibit 4(b).

1. Recent Settlement: State of Vermont

Barr Law Group, a law firm in Stowe, Vermont, brought thirty-three lawsuits on behalf of sixty-three plaintiffs against the State of Vermont and others stemming from the Jay Peak fraud. Those parties vigorously litigated the claims, resulting in years of litigation, two trips to the Vermont Supreme Court, extensive discovery and multiple mediations. The Receiver was eventually asked to participate in, and assist the parties, in attempting to resolve the dispute.

The Receiver and Special Counsel thus recommended a mediation and participated in the two mediations involving the Barr plaintiffs and the State of Vermont before the Honorable Michael A. Hanzman (Ret.), at which a settlement was reached for Sixteen Million Five Hundred Thousand Dollars (\$16,500,000.00). The Receiver and Special Counsel then took the lead in drafting the settlement documents that were later signed by the parties and filed with the Court. This settlement will provide a significant benefit to the Receivership estate—particularly those investors who have not yet obtained their green cards.

The Court preliminarily approved that settlement [DE 747] and the final hearing on the motion to approve this settlement has been scheduled for October 23,2023 at 1:30 p.m.

(c) KapilaMukamal

During the period August 1, 2022 through August 31, 2023, KM coordinated with the Jay Peak accounting and management company teams to compile the required financial data for the limited partnerships to prepare the FYE federal and state tax returns, extensions, partnership K1's, distributions and 1099 filings. In addition, KM: (i) reviewed and responded to multiple federal and

state tax agency notices; reviewed and provided guidance on tax implications from settlement matters; (ii) reviewed, analyzed and prepared projected sale price allocations and tax implications to assist the Receiver with his analysis of the sale of the Jay Peak assets; (iii) reviewed and analyzed EB-5 notices, penalties assessed and distribution worksheets; and; (iv) regularly consulted with the Receiver and the Jay Peak management team on the Receivership entities' accounting for tax preparation, tax filings, responses to tax agencies notices and assessed penalties and sale price asset allocation analysis. Further details of services provided by KM are available in the time records attached hereto and incorporated herein as Exhibit 4(c).

(d) Klasko Immigration Law Partners, LLP

During the period from August 1, 2022 through August 31, 2023, Klasko 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 Receiver and investors. Further details of services provided by Klasko are available in the time records attached hereto and incorporated herein as Exhibit 4(d).

(e) Gravel & Shea PC

During the period August 1, 2022 through August 31, 2023, the professionals at Gravel & Shea assisted the Receiver with local law issues arising in connection with the sale of assets of the Burke Mountain ski resort. In particular, Gravel & Shea has reviewed and commented on local law issues in a draft Purchase and Sale Agreement and researched and provided information in connection with certain regulatory approvals required as part of the sale (e.g. approval from the Public Utility Commission for the transfer of assets of Burke Mountain's water company). Gravel & Shea have obtained and reviewed certain agreements by and between the State of Vermont and Burke Mountain ski resort prevalent to the sale. Further details of services provided by Gravel & Shea are available in the time records attached hereto and incorporated herein as Exhibit 4(e).

VI. Memorandum of Law

The Receiver and his professionals are entitled to reasonable compensation and expenses, pursuant to the Receivership Order. Receivership courts have traditionally determined reasonableness by utilizing the familiar lodestar approach, calculating a reasonable hourly rate in the relevant market and the reasonable number of hours expended. *See, e.g., S.E.C. v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2008 WL 276026, *3 (M.D. Fla. Jan 31, 2008); *see also Norman v. Hous. Auth.*, 836 F.2d 1292, 1299-1302 (11th Cir. 1988).⁸ The hourly rates billed by the Receiver and his professionals are reasonable for professionals practicing in the Southern District of Florida. The Receiver reduced his standard rate by \$535.00 per hour and lowered the rates of the Akerman professionals anywhere from by \$100.00 an hour to \$410.00 an hour (depending on the individual's standard rate). The Receiver reduced his standard rate by \$620.00 per hour and lowered the rates of the Akerman professionals anywhere from by \$100.00 an hour to \$500.00 an hour (depending on the individual's standard rate). The LKLSG professionals also reduced their rates by \$235.00 to \$575.00 from their standard rates. The KM professionals reduced their rates by \$145.00 to \$345.00 from their standard rates. The Klasko professionals reduced their rates by \$160.00 to \$500.00 from their standard rates. Moreover, these reductions have resulted in a substantial savings to the receivership estate, in the amount of \$766,166.40 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

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

(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).

During this Application Period, the Receiver and his counsel completed the Interim Distribution in the amount of \$29,907.98 to eligible investors with allowed claims in Jay Peak Phases II-VI, and addressed any lingering administrative issues arising therefrom. In late 2022, the Receiver and his professionals completed the long-sought sale of the Jay Peak resort to a third-party company through a Court-approved auction process that netted the Receivership proceeds of \$67,290,080.04. The Receiver and his professionals were thus able to implement a further claim distribution process whereby the Receiver could administer an additional \$60,000,000.00 in interim distributions to eligible investors with allowed claims in Jay Peak Phases II-VI.

The Receiver and his professionals then focused their attention on administering and disposing of the Receivership's other main asset, the Burke Mountain ski resort. The Receiver, through his efforts, has identified a party potentially interested in serving as a stalking horse bidder for the Burke Mountain ski resort. As such, the Receiver and his professionals have commenced the process of negotiating and drafting the corresponding Asset Purchase Agreement and Bid Procedures for the sale, with the goal of completing a sale by early next year.

Finally, the Receiver and his professionals participated in two mediations involving thirty-three lawsuits on behalf of sixty-three plaintiffs against the State of Vermont and others stemming from the Jay Peak fraud during this Application Period. A settlement was reached at mediation for Sixteen Million Five Hundred Thousand Dollars (\$16,500,000.00). The Receiver and his professionals then took the lead in drafting the settlement documents that were later signed by the parties and filed with the Court. This settlement, if approved on a final basis, will provide a significant benefit to the Receivership estate—particularly those investors who have not yet obtained their green cards.

As a result of the foregoing, the Receiver and his professionals incurred fees and expenses and seek Court approval to pay the sum of \$874,151.69 in professional fees. This amount represents a discount of no less than \$766,166.40 from the professionals' standard billing rates. The Receiver also seeks the authority to reimburse the professionals the sum of \$26,709.48 in expenses, for a total payment of \$900,861.26 to the Receiver and his professionals.

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, which shall be paid from available cash to the extent such funds are in the receivership estate, 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.

Dated: October 3, 2023

Respectfully submitted,

By: /s/Michael I. Goldberg
Michael I. Goldberg, Esq.
Florida Bar No.: 886602
Email: michael.goldberg@akerman.com
Court-Appointed Receiver
201 E. Las Olas Boulevard, Suite 1800
Fort Lauderdale, FL 33301
Telephone: (954) 46-2700
Facsimile: (954) 463-2224

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on October 3, 2023, via the Court's notice of electronic filing on all CM/ECF registered users entitled to notice in this case.

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.

Exhibit 1

CERTIFICATION

The undersigned, **MICHAEL I. GOLDBERG** (the “Applicant”), hereby certifies as follows, 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.⁹

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

⁹ To be clear, Akerman does utilize contract attorneys on a discretionary basis from time to time; legal fees ultimately sought may thus be in excess of the amount paid to any contract attorney. While Applicant does not believe payment of contract attorneys falls within in the definition of services, as detailed in paragraph 6 above, Applicant discloses such information in an abundance of caution. In this instant matter a contract attorney is responsible for 27.40 hours billed for a total of \$20,550.00 in fees sought.

Exhibit 2(a)**Total Compensation and Expenses Requested**

**12th Interim Fee Application
August 1, 2022 - August 31, 2023**

Name	Specialty	Hours	Fees	Expenses	Total
Receiver and Akerman LLP	Attorneys	1,888.80	\$624,726.00	\$4,583.01	\$629,309.01
Levine Kellogg Lehman Schneider + Grossman LLP	Attorneys	169.10	\$65,392.79	\$17,358.88	\$82,751.67
KapilaMukamal	Accountants	507.70	\$178,585.90	\$4,442.31	\$183,028.21
Klasko Immigration Law Partners, LLP	Attorneys	4.10	\$1,932.00	\$77.28	\$2,009.28
Gravel & Shea PC	Attorneys	10.1	\$3,515.00	\$248.00	\$3,763.00
Total		2,579.80	\$874,151.69	\$26,709.48	\$900,861.26