

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,

Additional Receivership Defendants¹

RECEIVER'S MOTION TO MODIFY THE PRELIMINARY INJUNCTION
AND/OR RECEIVERSHIP ORDER TO AUTHORIZE A
STIPULATED WRIT OF ATTACHMENT FOR THE

¹See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [DE 60].

**STATESIDE CONTRACTOR AND SUBCONTRACTORS
TO PRESERVE THEIR LIEN RIGHTS² AND MEMORANDUM OF LAW**

Michael I. Goldberg (the “Receiver”), in his capacity as the court-appointed Receiver for Defendants, 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., and AnC Bio Vermont GP Services, LLC (collectively, “Receivership Defendants”) and Relief Defendants Jay Construction Management, Inc., GS1 of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC (collectively, “Relief Defendants”) files this Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Stateside Contractor and Subcontractors to Preserve their Lien Rights (the “Motion”).

BACKGROUND

The Receivership Case

1. On April 12, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint [D.E. 1] (“Complaint”) in the United States District Court for the Southern District of Florida (the “Court”) against the Receivership Defendants, the Relief Defendants, William Stenger (“Stenger”) and Ariel Quiros (“Quiros” and with the Receivership Defendants, Relief Defendants and Stenger, the “Defendants”), the principal of the Receivership Defendants,

² The Receiver is currently conferring with the contractors who have worked on the biomedical research park and the Q Burke Mountain Resort Hotel & Conference Center and anticipates filing similar motions to preserve their lien rights.

alleging that the Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making false or materially misleading representations to investors.

2. The SEC alleged that Quiros and Stenger obtained and improperly utilized funds from foreign investors who made investments through the U.S. government's EB-5 investor program.

3. The scheme orchestrated by Quiros and managed by Stenger involved securities offerings made on behalf of seven limited partnerships connected to Defendant Jay Peak, Inc.

4. The first six offerings were associated with construction and renovation at the Jay Peak ski resort and its accompanying facilities. A seventh offering solicited funds for what was purportedly going to be a biomedical research facility.

5. On April 12, 2016, upon the SEC's Emergency *Ex Parte Motion* for Temporary Restraining Order, Asset Freeze and Other Relief [D.E. 4] (the "Asset Freeze Motion"), the Court entered an Order granting the Asset Freeze Motion [D.E. 11].

6. On April 13, 2016, upon the SEC's Motion for Appointment of Receiver [D.E. 7], the Court entered an Order [D.E. 13] appointing Michael Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the "Receivership Order").

7. On April 21, 2016, upon the SEC's Unopposed Motion for an Order of Preliminary Injunction and Other Relief against the Receivership Defendants [D.E. 49], the Court entered an Order granting a Preliminary Injunction against the Receivership Defendants and the Relief Defendants [D.E. 52] (the "Preliminary Injunction").

The Stateside Project

8. Between October 2011 and December 2012, Defendant Jay Peak Hotel Suites Stateside L.P. ("Stateside L.P.") raised \$67 million from 134 investors through an EB-5 offering

of limited partnership interests to build an 84-unit hotel, 84 vacation rental cottages, a guest recreation center, and a medical center. The Defendants have built the hotel and have partially completed the cottages (“Stateside Cottages”). Work has not yet begun on the recreation and medical centers.

9. By contract dated on or about June 9, 2015 (“Contract”), Jay Peak, Inc. and Stateside L.P. retained D.E.W. Construction Corp. (“DEW”) to supply labor and materials for the Stateside Cottages project, located off of Stoney Path Road at the Jay Peak resort in Jay, Vermont. Currently, the Stateside Cottages project is located on land owned by Jay Peak, Inc.; once completed, Jay Peak, Inc. would subdivide the land on which the project was built and convey it to the Stateside L.P.

10. DEW retained subcontractors and suppliers (together “Stateside Subcontractors”) to supply labor and materials to the Stateside Cottages project per the Contract, the terms of which were incorporated into their subcontracts.

11. Representatives of DEW and the Stateside Subcontractors have met with the Receiver and demanded payment. However, due to the diversion of funds and mismanagement, the Stateside L.P. currently lacks sufficient funds to pay DEW and the Stateside Subcontractors. DEW and the Stateside Subcontractors seek to preserve their lien rights under Vermont law.

Vermont Contractors Lien Laws

12. Under Vermont's contractor's lien statute, 9 V.S.A. § 1921 *et seq.*, a contract that is made to improve real property, furnish labor, or provide materials creates a contractor's lien upon the property. 9 V.S.A. § 1921(a). Within “180 days from the time when payment became due for the last of such labor performed or materials furnished” a contractor is required to record a notice of memorandum of lien in the town clerk's office where the land is located. 9 V.S.A.

1921(c). The lien recording "shall charge such real estate with such lien as of the visible commencement of work or delivery of material...." See 9 V.S.A. § 1923.

13. Within 180 days of such lien recording or 180 days from the time payment became due, the contractor is required to commence an action to perfect the contractor's lien by securing an attachment on the real property that is the subject of the lien. 9 V.S.A. § 1924. See V.R.C.P. 4.1 and 12 V.S.A. §§ 3291-3295 (Attachment of Real Property). See also *The Official Unsecured Creditors' Comm. of the Rainbow Trust v. Moulton Constr., Inc., (In re the Rainbow Trust)*, 216 B.R. 77, 83 (2d Cir. BAP 1997) citing *Glinka v. Hinesburg Sand & Gravel, Inc. (In re APC Construction, Inc.)*, 132 B.R. 690, 694 (D. Vt. 1991) ("Obtaining a judicial order for a writ of attachment within the three month period [now 180 days by statutory amendment] prescribed under § 1924 perfects the lien and is a requisite to preserving the statutory lien The failure to perfect a recorded notice of lien by obtaining a writ of attachment means the lien is lost").

14. In the event a Writ of Attachment is not obtained with the time limitations provided by the statutes, the lien is deemed to have expired. *Filter Equipment Co., Inc. v. International Business Machines Corp.*, 142 Vt. 499, 502, 458 A.2d 1091 (1983) ("[T]he property involved must be actually attached within the three-month period, and ... it is not enough that the suit be merely commenced.")

Relief Requested

15. The Preliminary Injunction and/or the Receivership Order as written, prevents DEW and the Stateside Subcontractors from preserving their lien rights.

16. In order to protect DEW and the Stateside Subcontractors and to provide an orderly procedure to evaluate the validity of their claims, the Receiver respectfully requests the

Court to authorize a Stipulated Writ of Attachment for DEW and for the Stateside Subcontractors to perfect their lien rights, subject to further review and confirmation by the Receiver of the validity, priority, scope and amount of their Claims.

LEGAL ARGUMENT

The Preliminary Injunction includes an asset freeze, which provides that until further Order of the Court, the Receivership Defendants and the Relief Defendants:

“are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located”

See Preliminary Injunction, at Page 5.

Moreover, the Court retains jurisdiction as follows:

“IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction over this matter and Defendants and Relief Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.”

See Preliminary Injunction, at Page 9.

The Receivership Order provides, amongst other things:

During the period of this receivership, all persons ... with actual notice of this Order, are enjoined ... from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Corporate Defendants and Relief Defendants.

See Receivership Order, at ¶ 15 and

No ... person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets of the Corporate Defendants and Relief Defendants to the Receiver’s control without the permission of this Court.

See Receivership Order, at ¶ 21).

District courts have broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). "The power of a district court to impose a receivership or grant other forms of ancillary relief . . . derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court of the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The court may therefore employ "reasonable procedures" to serve this purpose. *Id.*

In order to protect DEW and the Stateside Subcontractors and to provide an orderly procedure to evaluate the validity of their claims, the Receiver believes that the Preliminary Injunction and/or the Receivership Order should be modified to authorize the execution of a Stipulated Writ of Attachment to permit DEW and the Stateside Subcontractors to preserve their rights. The Stipulated Writ of Attachment is attached hereto as Exhibit 1. The Receiver is not waiving any rights by agreeing to this procedure, but rather it preserves the status quo.

The modification only allows perfection of the liens before they expire and will not allow DEW or the Stateside Subcontractors to enforce or in any other respect act upon their liens absent further Order of the Court. The modification will preserve all rights of the Receiver to object to claims, amounts, validity, timeliness, priority and any other objection to a contractor's claim. The Receiver recommends that all liens filed should be treated *pari passu* to avoid a race to the courthouse. This will give the Receiver enough time to evaluate the claims and liens and attempt to formulate a payment plan acceptable to DEW and the Stateside Subcontractors. Finally, the Court should reserve jurisdiction to determine the validity of claims and liens and

priority thereof as well as authorize a payment plan in the event an agreement cannot be reached.

A proposed Order is attached hereto as Exhibit 2.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3), the Receiver has contacted counsel for the SEC and counsel for Defendants Quiros and Stenger. Counsel for the SEC has no objection to the relief requested. At the time this Motion was filed, the Receiver had not yet heard back from counsel for Quiros and Stenger.

WHEREFORE, the Receiver requests the Court modify the Preliminary Injunction and/or the Receivership Order to authorize a Stipulated Writ of Attachment to preserve the contractor's lien rights of DEW and the Stateside Subcontractors, and grant such other relief as is just and equitable.

Respectfully submitted,

AKERMAN LLP

350 E. Las Olas Boulevard, 16th Floor

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 24, 2016 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:

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COMMISSION**

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EXHIBIT 1

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.,
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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,

Additional Receivership Defendants¹

STIPULATED WRIT OF ATTACHMENT

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

WHEREAS, by Order of this Court (“District Court”) filed April 13, 2016, the District Court appointed Michael Goldberg as receiver (“Receiver”) to take possession of, *inter alia*, all real property of Defendant, Jay Peak, Inc., with title to such property being vested by operation of law in the Receiver.

WHEREAS, under 28 U.S.C. § 754, the Receiver is vested with complete jurisdiction and control over the real and personal property of Jay Peak, Inc.

WHEREAS, Jay Peak, Inc. and Jay Peak Hotel Suites Stateside, L.P. (“Stateside L.P.”) contracted with D.E.W. Construction Corp. (“DEW”) to supply labor and materials (“Contract”) to a project known as Stateside Cottages (“Project”), located off of Stoney Path Road in Jay, Vermont (“Project Parcel”).

WHEREAS, DEW retained the subcontractors and suppliers (together “Subcontractors”) listed on the attached Schedule A to supply labor and materials to the Project per the Contract, the terms of which were incorporated into their subcontracts.

WHEREAS, the Project Parcel currently is owned by Jay Peak, Inc., until such time as the Project becomes completed, at which time the Project Parcel may be subdivided and conveyed to the Stateside L.P. .

WHEREAS, under Vermont's contractor's lien statute, 9 V.S.A. § 1921 *et seq.*, a contract that is made to improve real property, furnish labor, or provide materials creates a contractor's lien upon the property.

WHEREAS, DEW and the Subcontractors may have construction liens for the labor and materials supplied to the Project (“Contractor Liens”), which may expire if not perfected by a Writ of Attachment recorded in the land records for the Town of Jay, Vermont.

WHEREAS, by order filed May ___, 2016, the Court modified the Preliminary Injunction and/or Receivership Order to allow for a period of time to perfect the Contractor Liens for the Project.

NOW THEREFORE, by the Receiver’s jurisdiction and control over the Project Parcel and as approved by the District Court, the Receiver hereby stipulates to a Writ of Attachment to attach the

Project Parcel, which is a portion of the lands and premises of Jay Peak, Inc., located on Stoney Path Road and Route 242 in Jay, Vermont 05859, and described more particularly as follows:

Being a portion of land now owned by Jay Peak, Inc. with Tax ID # #148268.01-1, encompassing 2,488 acres, with the attached portion being the area of a development project known as Stateside Cottages located off Stoney Path Road, Jay, VT (the "Stateside Cottages Property").

The Stateside Cottages Property is a portion of the same land and premises conveyed to Jay Peak, Inc. by Warranty Deed of Saint-Sauveur Valley Resorts, Inc. f/k/a Saint-Sauveur Valley Resorts, Inc., Station Touristique Mont Saint-Sauveur, Inc. dated June 20, 2008 and recorded on June 25, 2008 in Volume 60, Page 296 of the Jay land records and also recorded at Book 43, Pages 511-518 of the Town of Westfield Land Records.

Also being a portion of the land and premises conveyed to Jay Peak, Inc. by Warranty Deed from the State of Vermont dated August 31, 2010 and recorded on May 26, 2011 in Volume 67, Page 270 of the Jay land records.

This Stipulated Writ of Attachment is to the values set forth in the attached Schedule A for the Subcontractors and Schedule B for DEW, to be held to satisfy any judgment for damages and costs that may be recovered by DEW and the Subcontractors listed in such Schedules in any action against Jay Peak, Inc. to recover sums due for the Project. This Stipulated Writ of Attachment is intended to perfect any Contractor Liens held by the Contractors listed in Schedules A and B, pending a final judgment or other resolution of their claims. DEW and the Subcontractors reserve the right to claim additional amounts owed by contract and/or under the Prompt Payment Act, 9 V.S.A. § 4001 *et seq.*, including, but not limited to, interest, penalties, attorney's fees, and damages. The Receiver reserves all rights to object to the validity, priority, scope and extent of the liens and/or the claimed amounts due including, but not limited to, interest, penalties, attorney's fees, and damages at the appropriate time. The District Court retains jurisdiction over the final determination of the claims, liens and any payments thereto.

Dated _____, 2016.

By:

SCHEDULE A

Subcontractor Schedule of Amounts Owed

Each subcontractor reserves the right to claim and seek additional amounts that may be owed including, but not limited to, interest, penalties, attorney's fees or damages.

SUBCONTRACTOR	CONTRACT AMOUNT OWED (Including Retainage)
Dale E.Percy	\$134,350.16
International Landscape*	\$1.00
Harrison Concrete	\$58,218.50
Tanner Masonry*	\$1.00
Jeffords Steel	\$6,330.60
Northeast Frame to Finish	\$53,432.00
Reap Construction	\$115,073.72
Nicom	\$3,586.50
Kilbury*	\$1.00
Murphy's Cell Tech	\$58,561.64
Kelley Brothers	\$139,684.78
Colchester Contracting	\$77,605.84
Cluba Painting	\$15,093.10
Chimney Sweep	\$26,157.45
Joanne's Vacuum	\$3,850.00
Howarth Group	\$217,008.50
North Country Fire Protection	\$20,517.00
Mike's Electric	\$49,645.90
	\$925,687.69

* Each subcontractor marked with an asterisk reserves any rights that may exist related to amounts owed, intending to perfect any Contractor Lien that may exist.

SCHEDULE B

**D.E.W. Construction Corp.
Schedule of Amounts Owed**

D.E.W. Construction Corp. amount owed (Including Retainage)	\$2,198,201.10
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D.E.W. Construction Corp. reserves the right to claim and seek additional amounts that may be owed including, but not limited to, interest, penalties, attorney's fees or damages.

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

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ARIEL QUIROS,
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Relief Defendants.

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

Additional Receivership Defendants¹

**ORDER GRANTING RECEIVER'S MOTION TO MODIFY THE
PRELIMINARY INJUNCTION AND/OR RECEIVERSHIP ORDER
TO AUTHORIZE A STIPULATED WRIT OF ATTACHMENT
FOR THE STATESIDE CONTRACTOR AND SUBCONTRACTORS
TO PRESERVE THEIR LIEN RIGHTS**

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].
{38313517;1}

THIS MATTER comes before the Court upon receiver, Michael I. Goldberg's (the "Receiver") Motion to Modify the Preliminary Injunction and/or Receivership Order to Authorize a Stipulated Writ of Attachment for the Stateside Contractor and Subcontractors to Preserve Their Lien Rights [D.E. ___] (the "Motion");

WHEREAS, the Receiver believes it is necessary for the Court to modify the Preliminary Injunction [D.E. 52] and/or the Receivership Order [D.E. 13] to the extent necessary to permit contractors to perfect their lien rights under 9 V.S.A. § 1921 et seq., subject to the Receiver's confirmation of the validity and extent of the amounts owed to the contractors.

WHEREAS, the Court has been advised that all parties consent to the Motion and the relief requested therein; and

WHEREAS, the Court finds that the Receiver has made a sufficient and proper showing in support of the relief requested;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. The Preliminary Injunction and the Receivership Order are modified to authorize a Stipulated Writ of Attachment in order to preserve the lien rights of D.E.W. Construction Corp. ("DEW") and DEW's subcontractors and suppliers (together "Stateside Subcontractors") under 9 V.S.A. § 1921 et seq.
3. DEW and the Stateside Subcontractors are not authorized to obtain a final judgment, enforce or in any other respect act upon their liens absent further Order of this Court.
4. The Receiver is not waiving any rights by agreeing to this procedure, but rather to preserve the status quo. The Receiver's right to object to claims, amounts, validity, timeliness, priority and any other objection to the Stateside Subcontractors claims are reserved.

CASE NO.: 16-cv-21301-GAYLES

5. Accordingly, the entry of this Order does not ratify the amounts owed to DEW and the Stateside Subcontractors as listed in the Schedules attached to the Stipulated Writ of Attachment, or their right to receive payment of interest, penalties, attorney's fees or damages.

6. Upon the Court approving the amounts of DEW and of the Stateside Subcontractors' claims, DEW and the Stateside Subcontractors shall release all claims on past due amounts and warrant the work they provided, as appropriate.

7. Other than as set forth herein, the Receivership Order shall remain in full force and effect.

8. This Court shall retain jurisdiction of this matter for all purposes, including but not limited to determining the validity of claims and liens and priority thereof as well as authorize payment plan in the event an agreement cannot be reached..

DONE AND ORDERED in Chambers at Miami, Florida this ___ day of May, 2016.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:

Counsel of Record