

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 EXTEND THE DEADLINE TO FILE
QUARTERLY APPLICATIONS FOR PROFESSIONAL COMPENSATION**

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

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: {38730924;1}]

CASE NO.: 16-cv-21301-GAYLES

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" and together with Receivership Defendants, the "Receivership Entities") files this Motion to Extend Deadline to File Quarterly Applications for Professional Compensation ("Motion"), and in support, states as follows:

I. Preliminary Statement

The order appointing the Receiver requires all professionals to file fee applications every quarter. However, as the Court is aware based on the evidence presented at the Preliminary Injunction hearing, the Receivership Entities are in an extremely tight cash situation and need every dollar of available cash to fund their operations. The Receiver and his professionals recognize the importance that all available cash be directed to fund the Receivership Entities' operations in order for them to survive, and accordingly, have agreed to defer their request for fees until such time as the estate has sufficient cash to pay them. Therefore, the Receiver seeks to extend the deadline for professionals to file fee applications as such exercise would needlessly require professionals to incur additional expense at a time when the estate is unable to pay them. The Receiver is hopeful that the estate will soon have some liquidity and that fee applications can be filed at that time.

II. Background

1. 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 “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, 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. Michael Goldberg is the court-appointed receiver pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver, dated April 13, 2016 [ECF No. 13] (the "Receivership Order").

3. The Receivership Order authorizes the Receiver to employ legal counsel accountants and other professionals as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Receivership Defendants and exercising the power granted by the Receivership Order, subject to approval by the Court at the time the Receiver accounts to the Court for such expenditures and compensation. *See* Receivership Order at ¶ 4.

4. The Receiver has retained Akerman LLP as his legal counsel, Levine Kellogg Lehman Schneider + Grossman LLP as special litigation and conflicts counsel and Kapila Mukamal as forensic and general accountants. The Receiver has also retained Canadian counsel to assist in recovering funds located in Canada.

5. Paragraph 14 of the Receivership Order addresses compensating the Receiver and his professionals, and provides:

“The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or

{38730924;1}

control of or which may be received by the Corporate Defendants and Relief Defendants; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court ...”

See Receivership Order at ¶ 14.

6. The Receivership Order directs the Receiver and his counsel to file “no less than quarterly an application for reasonable compensation ...” *See* Receivership Order at ¶ 14. The conclusion of the first quarter (three month period) since the commencement of the receivership is July 31, 2016. Thus, pursuant to the Receivership Order, it is time for the Receiver and his professionals to file an application for compensation (“Fee Application”). The Receiver does not possess sufficient excess funds to compensate the professionals at this time and seeks to extend period of time for filing a Fee Application.²

7. The main assets of the Receivership Entities are comprised of the hotel, ski resort and related facilities located in Jay, Vermont (“Jay Peak Resort”). Certain of the Receivership Entities own a smaller ski resort located in Burke, Vermont where construction of the hotel has been completed, but the facility has not yet opened (“Burke Resort”).

8. The Receiver has worked diligently to secure, maintain and preserve the value of the assets of the Receivership Entities. This includes maintaining and operating the Jay Peak Resort, and maintaining the Burke Resort which is scheduled to open shortly.

9. The timing of this receivership was not ideal from a cash flow perspective. More specifically, this receivership commenced at the very start of the off season. Typically, the Jay Peak Resort loses money in the off season. Thus, the Receiver has been forced to utilize the

² This relief does not include Leisure Hotels & Resorts who is compensated for operating the Jay Peak Resort pursuant to the terms of the Management Agreement, approved by the Court on July 11, 2016, *nunc pro tunc* to the date of the Receiver’s appointment. *See* ECF No. 186.

CASE NO.: 16-cv-21301-GAYLES

minimal funds left in the Receivership Entities' bank accounts to supplement the Jay Peak Resort's losing operations and to maintain the Burke Hotel.³

10. Moreover, in June, the State of Vermont issued an order directing that the aerial tram which transports skiers to the top of the Jay Peak mountain be repaired and upgraded. The tram is essential for the survival of the Jay Peak Resort, and accordingly, the Receiver was forced to incur an additional approximate \$5,000,000 expense to repair it further exasperating the Jay Peak Resort's liquidity shortfall.⁴

11. The results of these expenditures is that there are presently not sufficient funds to pay the Receiver's professionals. There is no sense in expending additional costs to the receivership estate to prepare fee applications at this juncture. The Receiver hopes there will be sufficient funds in the near future garnered from settlements or the sale of receivership assets to compensate his professionals.

12. No party will be prejudiced by the Court granting the relief requested herein. In fact, the proceeds from the Receivership Entities' bank accounts will be exclusively used to maintain and preserve the Receivership Entities' assets for the benefit of the investors and other creditors.

13. Pursuant to Local Rule 7.1(a)(1)(J), is it not necessary to incorporate a memorandum of law into a motion for extension of time when good cause is set forth in the motion. For the reasons set forth herein, good cause exists to extend the quarterly deadline to file a Fee Application until such time as the Receiver believes there are sufficient funds available

³ On April 22, 2016, the Court authorized the Receiver to loan up to \$750,000 from the Receivership Entities bank accounts Receivership Defendants and/or Relief Defendants to Q Burke Mountain Resort Hotel and Conference Center LP to insure and preserve the Burke Resort so the Burke Resort can later be opened for operation or sold. *See* ECF No. 61.

⁴ On June 3, 2016, the Court authorized the Receiver to execute a the Passenger Tramway Modification Agreement to commence repairs and upgrades to the aerial tram. *See* ECF No. 158. The total price of the upgrades to the aerial tram is \$4,900,000, with 50% of the costs due on or before August 1, 2016.

{38730924;1}

CASE NO.: 16-cv-21301-GAYLES

to compensate him and his professionals or otherwise petitions the Court for an award of reasonable compensation.

14. A proposed order extending the deadline is attached hereto as Exhibit 1.

WHEREFORE, the Receiver requests the Court enter an order extending the deadline for the Receiver and his professionals to file their first quarterly application for reasonable compensation and granting such further relief as is just and equitable.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for all interested parties. Counsel for the SEC, Defendants Ariel Quiros and William Stenger and Raymond James and Associates, Inc. indicated that their clients do not object to the relief requested in this Motion. Counsel for Citibank, N.A. takes no position on the Motion.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this July 22, 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:

Robert K. Levenson, Esq.
Senior Trial Counsel
Florida Bar No. 0089771
Direct Dial: (305) 982-6341
Email: levensonr@sec.gov
almonte@sec.gov, gonzalezlm@sec.gov,
jacqmeinv@sec.gov

Christopher E. Martin, Esq.
Senior Trial Counsel
SD Florida Bar No.: A5500747
Direct Dial: (305) 982-6386
Email: martinc@sec.gov
almonte@sec.gov, benitez-perelladaj@sec.gov

SECURITIES AND EXCHANGE
COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154
Attorneys for Plaintiff

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

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

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

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

Scott B. Cosgrove, Esq.
Email: scosgrove@leoncosgrove.com
James R. Bryan, Esq.
Email: jbryan@leoncosgrove.com
Leon Cosgrove, LLC
255 Alhambra Circle
Suite 800
Coral Gables, Florida 33133
Telephone: (305) 740-1975
Facsimile: (305) 437-8158
Attorney for Ariel Quiros

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

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

CASE NO.: 16-cv-21301-GAYLES

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

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

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.,
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

**ORDER GRANTING RECEIVER'S MOTION TO EXTEND DEADLINE
TO FILE QUARTERLY APPLICATIONS FOR PROFESSIONAL COMPENSATION**

¹ See Order Granting Receiver's Motion to Expand Receivership dated April 22, 2016 [ECF No.: 60].
{38736868;1}

CASE NO.: 16-cv-21301-GAYLES

THIS MATTER comes before the Court upon receiver, Michael I. Goldberg's (the "Receiver") Motion to Extend Deadline to File Quarterly Applications for Professional Compensation [ECF No. ____] (the "Motion");

WHEREAS, the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver, dated April 13, 2016 [ECF No. 13] (the "Receivership Order"), provides that the Receiver and his counsel shall file with the Court no less than quarterly an application for reasonable compensation;

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

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

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

1. The Motion is **GRANTED**.
2. The quarterly deadline to file applications for reasonable compensation designated in the Receivership Order is extended until such time as the Receiver believes there are sufficient funds available to compensate the Receiver and his professionals or otherwise petitions the Court for an award of reasonable compensation.

DONE AND ORDERED in Chambers at Miami, Florida this ____ day of July, 2016.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:

Counsel of Record