

**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.

**LEÓN COSGROVE LLC AND MITCHELL SILBERBERG & KNUPP LLP'S
OBJECTION TO MOTION TO WITHDRAW DEFENDANT ARIEL QUIROS'S
MOTION FOR EXPEDITED CLARIFICATION OR MODIFICATION OF ASSET
FREEZE ORDER**

Leon Cosgrove LLC ("LC") and Mitchell Silberberg & Knupp LLP ("MSK"), former counsel to Defendant Ariel Quiros, have a financial interest in whether Mr. Quiros's cost of

defense advanced through a Directors and Officer's insurance policy belonging to Mr. Quiros's company (QResorts) violates this Court's asset freeze. LC's and MSK's interest derives from an agreement LC secured with Ironshore Indemnity, Inc. ("Ironshore"), which provides that Ironshore would pay certain approved law firms (including LC and MSK) to defend Mr. Quiros in several actions. Months after this agreement was procured, however, the Receiver and SEC took the position that Ironshore could not pay defense costs without violating this Court's asset freeze.

LC and MSK filed the Motion For Expedited Clarification or Modification of Asset Freeze Order (ECF 288) on March 13, 2017; it was subsequently set for hearing on March 29, 2017. On Saturday, March 25, 2017, without prior notice to LC or MSK, new counsel appeared for Mr. Quiros (ECF 294). Days later, on March 27, 2017, and again without consulting with LC or MSK, new counsel requested to continue the hearing on the Motion for Clarification (ECF 295), and the hearing was continued to April 12, 2017 (ECF 296).

Then, on March 31, 2017, Mr. Quiros's new counsel filed the Motion To Withdraw The Motion For Clarification (ECF 299), thus risking leaving unsettled whether Ironshore's payment to LC and MSK would violate asset freeze. And immediately after withdrawing the Motion for Clarification, new counsel filed an Agreed Motion To Modify Asset Freeze Order (ECF 300), which asked the Court to confirm that Ironshore could pay new counsel without violating the asset freeze. The Court issued an order granting the Agreed Motion, stating:

The Asset Freeze Orders [ECF Nos. 11 and 238] are modified to authorize Ironshore Indemnity, Inc. to pay \$100,000 to Damian & Valori LLP, without prejudice to Damian & Valori LLP's ability to request the payment of additional defense costs under the Policy at a later date.

(ECF 302).¹ The Court's Order did not address the Motion For Clarification, nor did it take the April 12, 2017 hearing off calendar. LC and MSK request that the Court leave the April 12 hearing on calendar and allow them to be heard on the Motion For Clarification as both firms (and others) have a financial interest in whether payment by Ironshore would violate the asset freeze. Thus, also on March 31, 2017, LC and MSK filed a Motion To Intervene For The Limited Purpose Of Addressing Use Of Insurance Proceeds At The April 12, 2017 Hearing (ECF 303).

As discussed in the Motion To Intervene, LC and MSK have worked tirelessly for Mr. Quiros, and have incurred almost \$3 million in legal fees. LC and MSK thus have an interest in the proceeds of the insurance policy, and they have repeatedly informed new counsel of this fact. Now, however, it appears that new counsel has reached an agreement with the SEC and the Receiver to allow new counsel, alone, to be paid from insurance proceeds. This is manifestly unjust. Due process mandates that LC and MSK be given an opportunity to be heard before their rights are so impaired.²

LC and MSK therefore ask that the Court (1) grant their Motion To Intervene, for the reasons set forth therein, (2) permit LC and MSK to address whether Ironshore's payment to them violates the asset freeze, and (3) allow the April 12, 2017 hearing to proceed as currently scheduled.

¹ Mr. Quiros also failed to inform this Court that LC filed a charging lien filed in *Ariel Quiros v. Ironshore Indemnity, Inc.*, No. 16-cv-25073-MGC (S.D. Fla.). The payment of any money by Ironshore to any firm or person associated with Mr. Quiros is subject to LC's lien interest.

² Shortly after filing his Motion To Withdraw (ECF 299), Mr. Quiros filed docket entry 301, which was a motion to withdraw both the Motion To Withdraw (ECF 299) and the Motion For Clarification (ECF 288).

Dated: April 3, 2017

Respectfully submitted,

By: /s/ Scott B. Cosgrove
SCOTT B. COSGROVE, ESQ.
scosgrove@leoncosgrove.com
JAMES R. BRYAN, ESQ.
jbryan@leoncosgrove.com

LEÓN COSGROVE, LLC
255 Alhambra Circle, Suite 800
Coral Gables, FL 33133
Telephone: (305) 740-1975
Facsimile: (305) 437-8158

DAVID GORDON (admitted pro hac vice)
dbg@msk.com
12 East 49th Street
30th Floor
New York, NY 10017
Telephone: (212) 509-3900
Facsimile: (212) 509-7239

JOHN DURRANT (admitted pro hac vice)
jsd@msk.com
11377 W. Olympic Blvd.
Los Angeles, CA 90064
Telephone: (310) 312-3187
Facsimile: (310) 312-3100