

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-CV-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al.*,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC., *et al.*,

Relief Defendants.

**MOTION BY LEON COSGROVE AND MITCHELL SILBERBERG & KNUPP TO
MODIFY ASSET FREEZE THAT THE SEC AND THE RECEIVER DO NOT OPPOSE**

After substantial negotiations and with the agreement of Plaintiff Securities and Exchange Commission and Receiver Michael I. Goldberg, León Cosgrove, LLC (“LC”), and Mitchell, Silberberg & Knupp, LLP (“MSK”), move the Court to modify the asset freeze to allow payment of attorneys’ fees to LC and MSK under the Interim Funding Agreement (“IFA”) between Defendant Ariel Quiros (“Quiros”) and Ironshore Indemnity, Inc. (“Ironshore”). As described in more detail below, this motion does not seek the actual payment of any fees under the IFA. Rather, through modification of the asset freeze, it clears the way for LC and MSK to receive payments that Ironshore approves under the IFA (after Quiros has an opportunity to object, if relevant, outside this litigation). It also will allow MSK and LC to discontinue their involvement in this matter. More specifically, LC, MSK, the SEC, and the Receiver have agreed to the following:

1. The Court’s Order Granting Plaintiff Securities and Exchange Commission’s

Motion for Temporary Restraining Order, Asset Freeze, and Other Emergency Relief (“Asset Freeze Order”) [DE No. 11 and 238] shall be modified, but only so as to allow payments to LC and MSK not to exceed \$1 million under the IFA. To be clear, if the Court approves this motion, it will not be ordering Ironshore to pay any amount and will not preclude Quiros from objecting, if relevant, outside this litigation to payment by Ironshore to LC and MSK. The Court would only be modifying the Asset Freeze so that it is not an obstacle to such payment.

2. If the Court grants this motion, LC, MSK, the SEC, and Receiver have further agreed:

- That LC and MSK will withdraw their pending Motion to Modify the Asset Freeze [DE No. 284] with prejudice. By this motion, and contingent upon Court approval of item number 1 above, LC and MSK hereby request that the Court withdraw their Motion to Modify the Asset Freeze (DE No. 284).
- LC and MSK will not file any further motions seeking to modify the asset freeze.
- LC and MSK will withdraw with prejudice their pending appeal in the United States Court of Appeals for the Eleventh Circuit of the Court’s denial of LC and MSK’s motion to intervene to modify the asset freeze (Eleventh Circuit Case No. 17-12143). Following this Court’s approval of this motion, LC and MSK will immediately takes steps to dismiss that appeal with prejudice.

3. Pursuant to Southern District of Florida Local Rule 7.1(a)(3), undersigned counsel conferred with the SEC and the Receiver, who agree to the relief LC and MSK seek in this

motion. Undersigned counsel also sought the consent of Defendant Ariel Quiros by request to his counsel. Despite taking the position in this case “that that payment of defense costs under an insurance policy may be made free of the asset freeze, both generally and in the instant case,” [DE 408 at 6], Quiros’s counsel has not yet provided Quiros’s position on this motion. However, LC and MSK note that if the Court grants this motion, it will not abridge Quiros’ opportunity to object in any way. First, the SEC, which first sought and received Court approval for the Asset Freeze, does not object to the narrow modification LC and MSK seek. Nor does the Receiver. Second, as noted above, the Court would not actually be directing any payment of attorneys’ fees to LC and MSK under the IFA if it approves this motion. If Quiros objects to the payment of such fees under the IFA, he will have ample opportunity to lodge his objections, if relevant, with Ironshore before Ironshore pays any fees and address the factual and legal issues concerning payment outside this litigation, where it belongs.

Finally, this motion is made in an attempt to resolve these issues without the need for further litigation, and is without prejudice to the rights of LC, MSK, the SEC, and the Receiver, to make any arguments in the pending appeal or regarding the pending motion to modify the asset freeze [DE 284] should that become necessary if the Court does not grant this motion.

WHEREFORE, LC and MSK respectfully request that this Court GRANT the instant Partially Unopposed Motion to Modify Asset Freeze Order to authorize Ironshore to pay LC and MSK an amount not to exceed \$1 million under the IFA. Contingent on the Court’s approval of the motion, LC and MSK further request that the Court allow LC and MSK to withdraw their prior Motion to Modify the Asset Freeze (DE No. 284) with prejudice.

Dated: September 22, 2017

Respectfully submitted,

By: s/ Scott B. Cosgrove

Scott B. Cosgrove
Florida Bar No. 161365
James R. Bryan
Florida Bar No. 696862
León Cosgrove, LLC
255 Alhambra Circle, Suite 800
Coral Gables, Florida 33133
Telephone: (305) 740-1975
Facsimile: (305) 437-8158
Email: scosgrove@leoncosgrove.com
Email: jbryan@leoncosgrove.com
Email: anoonan@leoncosgrove.com

David B. Gordon (*formerly admitted pro hac vice*)
12 East 49th Street
30th Floor
New York, NY 10017
Telephone: (212) 509-3900
Facsimile: (212) 509-7239
Email: dbg@msk.com

John S. Durrant (*formerly admitted pro hac vice*)
11377 W. Olympic Blvd.
Los Angeles, CA 90064
Telephone: (310) 312-3187
Facsimile: (310) 312-3100
Email: jsd@msk.com

Former Counsel for Defendant Ariel Quiros

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this on September 22, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in the manner stated in the service list attached.

s/ Scott B. Cosgrove _____
Scott B. Cosgrove

SERVICE LIST
US District Court, Southern District of Florida
Case No.: 16-cv-21301-DPG

Securities and Exchange Commission v. Ariel Quiros, et al.

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

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

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

Counsel for Plaintiff

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

Counsel for William Stenger

Michael I. Goldberg
AKERMAN LLP
350 E. Las Olas Blvd., Suite 1600
Ft. Lauderdale, Florida 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
Email: michael.goldberg@akerman.com

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

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

Counsel for Court-Appointed Receiver

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

Counsel for Receiver

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

Counsel for Intervenor, Citibank NA.

J. Ben Vitale
David E. Gurley
GURLEY VITALE
601 S. Osprey Avenue
Sarasota, Florida 32436
Telephone: (941) 365-4501
Email: bvitale@gurleyvitale.com
Email: dgurley@gurleyvitale.com

Counsel for Blanc & Bailey Construction, Inc.

Haas A. Hatic
GREENSPOON MARDER, P.A.
200 East Broward Blvd.
Suite 1500
Fort Lauderdale, FL 33301
Telephone: 954-491-1120
Email: haas.hatic@gmlaw.com

Counsel for North East Contract Services, Inc.