

**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 FOR ENTRY OF AN ORDER
CLARIFYING THAT ANC BIO VT, LLC IS INCLUDED IN**

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

**THE RECEIVERSHIP, OR IN THE ALTERNATIVE TO EXPAND THE
RECEIVERSHIP TO INCLUDE ANC BIO VT, LLC
AND SUPPORTING MEMORANDUM OF LAW**

Michael I. Goldberg (the “Receiver”), the Court-appointed Receiver, through undersigned counsel, hereby files this Motion for Entry of an Order Clarifying that AnC Bio VT, LLC is Part of the Receivership or in the Alternative to Expand the Receivership to Include AnC Bio VT, LLC (the “Motion”). In support of this Motion, the Receiver states as follows:

Preliminary Statement

Prior to the receivership, AnC Bio VT, LLC held itself out as an agent or sponsor of Defendant Jay Peak Biomedical Research Park L.P. and its general partner, AnC Bio Vermont GP Services, LLC and actively participated in the plans to build a biomedical facility in Newport, Vermont. In addition to the \$500,000 capital contribution to Jay Peak Biomedical Research Park L.P., the offering documents for participation in Jay Peak Biomedical Research Park L.P. required investors to pay a nonrefundable administration fee of \$50,000 to AnC Bio VT, LLC. The Receiver is aware that AnC Bio VT, LLC had two bank accounts with People’s United Bank. The Bank has frozen the two accounts, but has refused to turn over the funds in the bank accounts to the Receiver, because it has taken the possession that AnC Bio VT, LLC is not part of the receivership.

The Receiver believes that AnC Bio VT, LLC falls within the parameters of the “subsidiaries, successors and assigns” of the receivership entities, so the Receiver should be entitled to take all actions set forth in the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver with respect to AnC Bio VT, LLC, including, but not limited to taking control of AnC Bio VT, LLC’s bank accounts. In the event AnC Bio VT, LLC is not presently included in the receivership, the Receiver requests the Court

expand the receivership to include AnC Bio VT, LLC as though it was originally part of the receivership. Otherwise, the funds held in the bank accounts would remain frozen and the Receiver would need to file a lawsuit to recover the funds, which would be an unnecessary expense to the receivership estate.

Background

1. On April 12, 2016, the Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of Florida (the “Court”) against the Receivership Defendants,² the Relief Defendants,³ William Stenger (“Stenger”) and Ariel Quiros (“Quiros”).

2. The Complaint alleged that Quiros and Stenger, in violation of federal securities laws, controlled and utilized the various Receivership Entities in furtherance of a fraud on the investors who participated in limited partnerships offered under the federally created EB-5 visa program. The first six offerings (the “Jay Peak Partnerships”) were associated with the construction, renovation and expansion of the Jay Peak ski resort. The seventh offering raised funds to construct a biomedical research facility in Newport, Vermont.

3. On April 13, 2016, upon the SEC’s Motion for Appointment of Receiver [ECF No. 7], the Court entered an Order [ECF No. 13] appointing Michael I. Goldberg as the Receiver over the Receivership Defendants and the Relief Defendants (the “Receivership Order”).

² The “Receivership Defendants” are 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 Townhouse L.P., Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P., Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P., and AnC Bio Vermont GP Services, LLC.

³ 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. and Q Burke Mountain Resort GP Services, LLC were added as “Additional Receivership Defendants”. The Receivership Defendants, Relief Defendants, and Additional Receivership Defendants are collectively referred to as the “Receivership Entities.”

4. The Court appointed Michael Goldberg the Receiver over the “Corporate Defendants and Relief Defendants, their subsidiaries, successors and assigns”. See Receivership Order at Page 2. For the reasons set forth herein, the Receiver believes this designation includes AnC Bio VT, LLC.

5. AnC Bio VT, LLC (“AnC Bio VT”) is a Vermont-based limited liability company, which was formed in 2009. Prior to the receivership, Ariel Quiros and William Stenger were the members of AnC Bio VT.⁴

6. According to the Memorandum of Understanding Between State of Vermont Agency of Commerce and Community Development (the “ACCD”) and AnC Bio VT, AnC Bio VT was organized for the purpose of creating an EB-5, Alien Entrepreneur investment project within the ACCD Regional Center and managing and operating the investment project in conformance with the Immigration & Nationality Act.

7. Defendant Jay Peak Biomedical Research Park L.P. (“Phase VII”) is a Vermont limited partnership. Commencing in November 2012, Phase VII raised approximately \$84.53 million from 169 investors through an EB-5 offering of limited partnership interests to purchase land in Newport, Vermont to construct the biomedical research facility (the “AnC Bio Project”).

8. Defendant AnC Bio Vermont GP Services, LLC (“AnC Bio GP” and with Phase VII, the “AnC Bio Entities”) is a Vermont limited liability company and the general partner of Phase VII. Prior to the receivership, its members were Quiros and Stenger.

9. In various offering documents and literature, AnC Bio VT, LLC is identified as the general developer, sponsor or agent of the AnC Bio Entities. According to the Offering Memorandum for Phase VII, AnC Bio VT or its subsidiary would enter into a Joint Venture

⁴ In various promotional materials published and circulated by Quiros and Stenger, AnC Bio VT has also been referred to as AnC Bio Vermont, LLC; AnCBioVT; AnCBio Vermont LLC; AnCBio VT LLC; and AnCBioVermont.

Agreement with Phase VII for the manufacture and distribution of artificial organs, cell based therapy medicine and medical devices as part of the AnC Project.

10. Moreover, the Offering Memorandum provides that an entity will be named to oversee construction of the AnC Bio Project. AnC Bio VT was the entity named to conduct this oversight. (AnC Bio VT subsequently designated Relief Defendant North East Contract Services, LLC (“NECS”) to conduct oversight operations in its behalf pursuant to the Agreement, dated January 30, 2013 between AnC Bio VT, AnC Bio GP and NECS.)

11. As described in the Offering Memorandum, Subscription Agreement, and Consent to Limited Partnership Agreement, the investors were required to make a \$500,000 capital contribution to participate in Phase VII and a nonrefundable administration fee of \$50,000 payable to AnC Bio VT, as the “Joint Venturer” to partially reimburse AnC Bio VT for administrative costs and expenses incurred by AnC Bio VT in connection with development of the AnC Project.

12. AnC Bio VT has two checking accounts with People’s United Bank; one account is described as an operating account and the other, as an expense reserve account. At the commencement of the receivership, People’s United Bank informed the Receiver that there was a total of approximately \$92,000 in the two bank accounts. People’s United Bank frozen the bank accounts, but refused to transfer the funds to the Receiver, because People’s United Bank has taken the position that AnC Bio VT is not part of the receivership estate.

13. The Receiver believes that AnC Bio VT falls within the definition of the “Corporate Defendants and Relief Defendants, their subsidiaries, successors and assigns” as defined in the Receivership Order. If not, the Receiver seeks to expand the receivership estate to

include AnC Bio VT and the Receiver be directed to take all action set forth or contemplated in the Receivership Order with respect to AnC Bio VT.

Memorandum of Law

Pursuant to the Receivership Order, the Receiver is authorized to take immediate possession of the property, assets and estates of every kind that either belonged to or where in the possession of the Receivership Entities. See Order at ¶ 1. In addition, the Receiver is authorized to investigate the manner in which the Receivership Entities conducted their affairs and to institute any actions or legal proceedings that benefit the Receivership Entities, their investors and other creditors. *Id.* ¶ 2. Importantly, the Receiver is empowered to take action to reclaim “wrongfully, illegally, or otherwise improperly transferred monies or other proceeds directly or indirectly traceable from investors” in the Receivership Entities, including monies traceable to officers, directors, employees, affiliates, subsidiaries, or other persons purporting to act in concert or participation with the Receivership Entities. *Id.* The Receiver has located bank accounts with funds held in the name of AnC Bio VT. These funds are traceable to officers, directors, employees, affiliates, subsidiaries, or other persons purporting to act in concert or participation with the Receivership Entities and should be included in the receivership estate.

AnC Bio VT’s role with the AnC Bio Entities is similar to the role Jay Peak, Inc. engaged in with the Jay Peak Partnerships. The Offering Memorandums for the Jay Peak Partnership identifies Jay Peak, Inc. as the sponsor or agent of the Jay Peak Partnerships. Likewise, the Offering Memorandum for Phase VII identifies AnC Bio VT as the sponsor or agent of the AnC Bio Entities. Jay Peak, Inc. entered into agreements and construction contracts on behalf of the Jay Peak Partnerships. AnC Bio VT entered into agreements on behalf of the AnC Entities, including the contract dated on or about October 1, 2012, where AnC Bio VT, LLC, as an agent

of the AnC Entities, retained PeakCM, LLC to supply design services, labor and materials for construction of the AnC Project. Jay Peak, Inc. received a \$50,000 administrative fee from the Phase I – Phase VI investors. The Phase VII investors were directed to pay a \$50,000 administrative fee to AnC Bio VT. Jay Peak, Inc. is a named defendant and the Receiver has access to the bank accounts held in the name of Jay Peak, Inc. Moreover, the Receiver's accountants prepare tax returns on behalf of Jay Peak, Inc. Considering the parallel roles of Jay Peak, Inc. and AnC Bio VT, the Receiver should have access to AnC Bio VT's bank accounts as though it is part of the receivership estate.

This Court's equitable powers are broad and, as a result, the Court has "wide discretion to determine relief in an equity receivership." *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citing *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). A court-appointed receiver is a well-established equitable remedy available in SEC enforcement proceedings for injunctive relief. *See e.g., SEC v First Financial Group of Texas*, 654 F.2d 429, 438 (5th Cir. 1981). Indeed, the appointment of a receiver is particularly appropriate in cases where a defendant, through its management, has defrauded investors. *Id.* Although this Court has already appointed the Receiver over the Receivership Entities, that appointment should be expanded to include AnC Bio VT because certain of the funds raised from the Phase VII were transferred to AnC Bio VT. The expansion of the receivership estate to include AnC Bio VT is well within this Court's inherent powers.

WHEREFORE, the Receiver respectfully requests the Court enter an Order in the form attached hereto as **Exhibit "A"** clarifying that AnC Bio VT is included in the receivership estate, or expand the receivership to include AnC Bio VT, LLC as an additional receivership defendant

as though it was originally included in the receivership, and to grant such further relief as is just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that counsel for the Receiver has conferred with counsel for the Securities and Exchange Commission and Defendant Ariel Quiros, who have no objection to the Motion and counsel for William Stenger, who takes no position on the Motion.

Respectfully submitted,

By: /s/ Michael I. Goldberg
Michael I. Goldberg, Esq.
Florida Bar No. 886602
Email: michael.goldberg@akerman.com
Joan M. Levit, Esq.
Florida Bar No. 987530
Email: joan.levit@akerman.com

AKERMAN LLP
Las Olas Centre II, Suite 1600
350 East Las Olas Blvd.
Fort Lauderdale, FL 33301-2229
Telephone: (954) 463-2700
Facsimile: (954) 463-2224

Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this September 6, 2018 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

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 Nogues, 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

Mark P. Schnapp, Esq.

Email: schnapp@gtlaw.com

Mark D. Bloom, Esq.

Email: bloomm@gtlaw.com

Danielle N. Garno, Esq.

E-Mail: garnod@gtlaw.com

GREENBERG TRAUIG, P.A.

333 SE 2nd Avenue, Suite 4400

Miami, Florida 33131

Telephone: (305) 579-0500

Attorney for Intervenor, Citibank N.A.

Melissa Damian Visconti, Esquire

Email: mdamian@dvllp.com

DAMIAN & VALORI LLP

1000 Brickell Avenue, Suite 1020

Miami, Florida 33131

Telephone: 305-371-3960

Facsimile: 305-371-3965

Co-Counsel for Ariel Quiros

J. Ben Vitale, Esq.

Email: bvitale@gurleyvitale.com

David E. Gurley, Esq.

Email: dgurley@gurleyvitale.com

GURLEY VITALE

601 S. Osprey Avenue

Sarasota, Florida 32436

Telephone: (941) 365-4501

Attorney for Blanc & Bailey Construction, Inc.

Stanley Howard Wakshlag, Esq.

Email: swkshlag@knpa.com

KENNY NACHWALTER, P.A.

Four Seasons Tower

1441 Brickell Avenue

Suite 1100

Miami, FL 33131-4327

Telephone: (305) 373-1000

Attorneys for Raymond James & Associates

Inc.

EXHIBIT A

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 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***

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

THIS MATTER came before the Court without hearing upon the Motion for Entry of an Order Clarifying that AnC Bio VT, LLC² (“AnC Bio VT”) is Part of the Receivership or in the Alternative to Expand the Receivership to Include AnC Bio VT, LLC (the “Motion”) [ECF No. ___] filed by the Court-appointed receiver, Michael I. Goldberg (the “Receiver”). The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission and Defendant Ariel Quiros have no objection and counsel for William Stenger takes no position on the relief requested in the Motion, and finding that the Receiver has made a sufficient and proper showing in support of the relief requested,

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. The Motion is **GRANTED**.
2. Although AnC Bio VT is part of the receivership estate, in the abundance of caution, the Court explicitly expands the receivership, *nunc pro tunc*, to include AnC Bio VT:
 - a. Michael Goldberg is hereby appointed the Receiver over AnC Bio VT, its subsidiaries, successors and assigns and is hereby authorized, empowered and directed to take all action set forth in or contemplated by the Order Granting Plaintiff Securities and Exchange Commission’s Motion for Appointment of Receiver (the “Receivership Order”) [ECF No. 13] with respect to AnC Bio VT;
 - b. The Receivership Order [ECF No. 13] shall apply to AnC Bio VT as if AnC Bio VT was originally included in the Receivership Order; and
 - c. Other than as set forth herein, the Receivership Order shall remain in full force and effect.

² AnC Bio VT, LLC is also known as AnC Bio Vermont, LLC; AnCBioVT; AnCBio Vermont LLC; AnCBio VT LLC; and AnCBioVermont.

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6. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in Chambers at Miami, Florida this ____ day of September
2018.

DARRIN P. GAYLES
UNITED STATES DISTRICT COURT JUDGE

Copies to:
Counsel of Record