

**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<sup>1</sup>  
AnC BIO VT, LLC,<sup>2</sup>**

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

<sup>2</sup>See 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*, dated September 7, 2018 [ECF No. 493].

**Additional Receivership Defendants**

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**RECEIVER'S TENTH INTERIM STATUS REPORT**

Michael I. Goldberg, in his capacity as Court-appointed Receiver, pursuant to the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver ("the Receivership Order") [ECF No. 13], respectfully files his Tenth Interim Status Report, covering the period from August 1, 2021 through April 30, 2023 ("the Reporting Period").

**I. Introduction**

During the Reporting Period, the Receiver and his team of professionals made significant progress towards winding down the Receivership and maximizing the value of the estate's remaining assets for the benefit of defrauded Jay Peak investors. More specifically, in late 2022, the Receiver completed the long-sought sale of the Jay Peak resort to a third-party company through a Court-approved auction process that netted the Receivership proceeds of \$67,290,080.04. Very recently the Court approved the Receiver's unopposed motion to distribute the bulk of those proceeds to eligible investors with allowed claims in Jay Peak Phases II-VI. Earlier in the Reporting Period, the Court approved a first interim distribution to the same group of investors. Completing the resort sale has allowed the Receiver and his team to wind down significant operations and focus their attention on administering and disposing of the Receivership's remaining assets.

With regard to the other main holding of the Receivership, the Burke Mountain ski resort, the Receiver has continued to work to increase the resort's value to position it to achieve the maximum amount possible in a sale contemplated to take place later this year. Working closely with Leisure Hotels, LLC, the Court-approved management company operating Burke Mountain,

and Burke Mountain's general manager, the Receiver has improved Burke Mountain's financial outlook for 2023 and 2024 notwithstanding numerous operational challenges during the Reporting Period. As a result of these efforts, and as described in more detail below, the Receiver has begun the process of attempting to sell Burke Mountain, with the goal of completing a sale by the end of 2023.

In addition, as more fully detailed herein, the Receiver and his immigration counsel continued to work and communicate with investors regarding pending I-829 petitions and other immigration developments. Finally, the Receiver received substantial proceeds from the sale of a large piece of property and settlement of a claim against a third-party broker-dealer achieved before the Receiver had to file a lawsuit (thereby minimizing the expenses to the Receivership estate) that enabled the Receiver to pay off certain creditors, continue operating the Jay Peak and Burke Mountain resorts, and increase distribution amounts to defrauded investors.

## **II. Background**

On April 12, 2016, the Securities and Exchange Commission filed a complaint in the United States District Court for the Southern District of Florida against the Receivership Defendants,<sup>3</sup> the Relief Defendants,<sup>4</sup> Ariel Quiros, and William Stenger (collectively "the Defendants") [ECF No. 1]. The complaint alleged that Quiros and Stenger, in violation of federal securities laws, utilized the Receivership Defendants and the Relief Defendants in furtherance of

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<sup>3</sup> The "Receivership Defendants" are Jay Peak, Inc. "Jay Peak," Q Resorts, Inc., Jay Peak Hotel Suites L.P. ("Phase I"), Jay Peak Hotel Suites Phase II L.P. ("Phase II"), Jay Peak Management, Inc., Jay Peak Penthouse Suites L.P. ("Phase III"), Jay Peak GP Services, Inc., Jay Peak Golf and Mountain Suites L.P. ("Phase IV"), Jay Peak GP Services Golf, Inc., Jay Peak Lodge and Townhouse L.P. ("Phase V"), Jay Peak GP Services Lodge, Inc., Jay Peak Hotel Suites Stateside L.P. ("Phase VI"), Jay Peak Services Stateside, Inc., Jay Peak Biomedical Research Park L.P. ("Phase VII"), and AnC Bio Vermont GP Services, LLC.

<sup>4</sup> The "Relief Defendants" are Jay Construction Management, Inc., GSI of Dade County, Inc., North East Contract Services, Inc., and Q Burke Mountain Resort, LLC.

a fraud on the investors who participated in limited partnerships the Defendants offered under the federal EB-5 Immigrant Investor Program. *Id.*

The first six limited partnerships, called Phases I-VI, raised funds to develop and expand the Jay Peak ski resort and accompanying facilities in Jay, Vermont. *Id.* The seventh limited partnership, Phase VII, raised funds to purchase land and develop a biomedical research facility in Newport, Vermont, known as the AnC Bio Project. An eighth limited partnership, which was not originally part of the Receivership estate, but which was added later pursuant to the Court's order, used investor funds to develop and expand the Burke Mountain resort in East Burke, Vermont. *Id.*; *see also* ECF No. 60.

Simultaneously with filing the complaint, the SEC asked the Court to enter a temporary restraining order and a preliminary injunction against the Defendants, preventing them from, among other things, transferring or dissipating their assets [ECF No. 4]. The SEC also asked the Court to appoint a Receiver over all the Defendants except Quiros and Stenger [ECF No. 7]. The Court granted both motions, entering a temporary restraining order and asset freeze against Quiros and Stenger, and appointing Michael Goldberg as the Receiver over the remaining Defendants [ECF Nos. 11 and 13].

On April 22, 2016, the Court entered an Order expanding the Receivership to include two other entities associated with the Burke Mountain EB-5 project and ski resort [ECF No. 60]. On Sept. 7, 2018, the Court entered an Order granting the Receiver's motion to clarify that AnC Bio VT, LLC, was included in the Receivership or expand the Receivership to include that entity *nunc pro tunc* to the beginning of the Receivership [ECF No. 493].

After approximately 18 months of litigation with Quiros, both Quiros and Stenger agreed to resolve the SEC's cases against them. On February 5, 2018, the Court entered a Final Judgment

against Quiros pursuant to which he agreed to be liable for \$81,344,166 in disgorgement, \$2,515,798 in prejudgment interest on disgorgement, and a \$1,000,000 civil penalty [ECF No. 450, as amended by ECF No. 474]. In satisfaction of that Final Judgment, Quiros turned over a limited amount of cash and transferred several properties to the Receiver, as well as his interest in the Jay Peak resort. A separate Final Judgment against Stenger ordered him to pay a \$75,000 civil penalty and no disgorgement [ECF No. 451]. Stenger has paid the civil penalty.

### **III. Actions The Receiver Took During The Reporting Period**

#### *A. The Sale Of The Jay Peak Resort*

As the Receiver set forth in previous reports, he retained Houlihan Lokey Capital, Inc. in January 2019 to assist him with marketing and selling the Jay Peak resort [ECF Nos. 520 and 522]. Working with Houlihan Lokey, the Receiver directly marketed the resort to more than 165 parties, including strategic buyers, financial buyers, family companies, and high net worth individuals. However, following the COVID-19 pandemic and the shutdown of the Jay Peak and Burke Mountain resorts in March 2020, the Receiver and Houlihan Lokey concluded that 2020 would not be a good time to pursue selling Jay Peak due to vast uncertainty in the resort market, primarily because of the lack of travel.

Once Jay Peak was able to partially reopen in late 2020 and more fully open in 2021 and 2022, the Receiver and Houlihan Lokey resumed the sale process. Before and during the Reporting Period, 57 of the aforementioned 165 parties executed the requisite non-disclosure agreements and received access to a comprehensive virtual data room and a Confidential Information Memorandum. Fifteen of those parties submitted proposals to purchase Jay Peak during the Reporting Period, the highest and best of which came from Pacific Group Resorts, Inc.

In August 2022, the Receiver filed a motion asking the Court to approve an Asset Purchase

Agreement with Pacific Group and an ensuing competitive bidding/auction procedure to finalize the resort sale, which the Court approved [ECF Nos. 726 and 727]. The auction yielded a final sale price of \$76 million to Pacific Group, which the Court also approved in September 2022 [ECF Nos. 731-734]. The sale closed on November 1, 2022, which resulted in the Receiver obtaining net proceeds of \$67,290,080.04 [ECF No. 739].

*B. Operation Of The Burke Mountain Resort*

The Burke Mountain resort is a mid-size ski resort located on Burke Mountain in northeast Vermont. The resort has 116 hotel rooms, and is marketed for skiing, snowboarding, and mountain bike riding. The resort also has indoor and outdoor venues available to rent for private events.

For the 2022-23 ski season, early season snowmaking in Northeast Vermont was less than ideal, but the resort was able to open in November of 2022 for only the third time in two decades. This created early season enthusiasm, but ultimately the weather was not favorable for the balance of the ski season. Measurable snow was not present until mid-January of 2023, and typical snowfall did not occur until March of 2023. So while the season saw the highest snowfall in the past three seasons at Burke Mountain, it still marked the fourth straight year of below-average snowfall.

In addition, the Receiver was forced to close Burke Mountain for a week in February 2023 due to a failure of the hotel heating system precipitated by record low temperatures on February 4 and 5. The heating system failure resulted in a major water incident that continues to impact resort operations. When the hotel re-opened after a week, roughly 70 percent of rooms were off the market during the critical month of February. The result included mass cancellations and impacts on all resort revenue centers for the remainder of the Reporting Period. As of April 30, repairs continue and available rooms have increased to 104 out of 116. The Receiver expects all rooms will be available by mid-June. Minor damage also impacted the base lodge but impacts to revenue

and the guest experience were minimal. The Receiver expects insurance will cover the substantial losses Burke Mountain suffered as a result of this incident. Ski operations ceased on April 9, 2023.

Looking ahead, there are no major events currently planned at Burke Mountain for this summer. Management is undertaking several lift and snowmaking capital improvements to increase efficiency and reliability.

The Receiver is continuing to attempt to sell the resort. The Receiver has received an initial offer, and expects to file a motion with the Court in the next month recommending an identical sales process to the Jay Peak sale – a “stalking horse” bid, followed by an auction and a subsequent motion asking the Court to approve a final sale. The Receiver hopes to conclude the Burke Mountain sale process by the end of 2023, and to subsequently propose a distribution of the sale proceeds to defrauded Burke Mountain EB-5 investors similar to the two Jay Peak distributions.

*C. Interim Distributions To Defrauded Jay Peak Investors*

The Receiver proposed two separate interim distributions of proceeds to Jay Peak investors during the Reporting Period. The first distribution came in 2022. As set forth in the Ninth Interim Status Report [ECF No. 699], the Receiver in 2021 finalized a settlement with the former counsel for Quiros, the Receivership Defendants, and some of the Relief Defendants (prior to the Court appointing the Receiver), whom the Receiver had sued [ECF No. 667]. *Goldberg v. Mitchell Silberberg & Knupp, LLP*, Case No. 1:19-cv-21862-MGC (S.D. Fla.). The settlement, which the Court approved [ECF No. 690], resulted in the law firm and others paying \$32,500,000, the majority of which came to the Receiver.

As a result of the settlement, the Receiver during the Reporting Period filed a motion with the Court seeking to distribute \$20,000,000 of the settlement proceeds to numerous investors in

Phases II-VII [ECF No. 706, dated Dec. 16, 2021].<sup>5</sup> The motion proposed distributing the funds according to a formula that depended on whether investors had received approval of their I-829 (permanent green card) petitions from the U.S. Customs and Immigration Service (“USCIS”). *Id.* After a hearing the Court granted the Receiver’s motion in part, approving the distribution of \$19,500,000 in proceeds according to the Receiver’s formula, but deferring ruling on the Receiver’s proposal to distribute \$500,000 of the proceeds to Phase VII investors for partial reimbursement of their \$50,000 administrative fees [ECF No. 709].

Following Court approval of the distribution, the Receiver and his counsel developed and distributed an Interim Distribution Claim form. The form required eligible investors to elect a certain claim status, which then would determine the amount of their interim distribution. However due to difficulties with the original formula and subsequent legislation affecting the EB-5 program, the Receiver ultimately decided it would be more practical and efficient to distribute the \$19,500,000 on a *pro rata* basis to all eligible Phase II-VI investors,<sup>6</sup> regardless of their I-829 status. Consequently, the Receiver filed a motion to modify the interim distribution formula [ECF No. 718], which the Court approved on May 9, 2022 [ECF No. 719]. The Receiver subsequently made the distribution.

Recently, the Receiver filed a second motion to distribute \$60,000,000 from the sale of the

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<sup>5</sup> Phase I investors were ineligible for this distribution and the subsequent proposed distribution described below because Jay Peak’s former principals had unilaterally converted their Jay Peak shares into debt through issuance of promissory notes before the Court appointed the Receiver. With Court approval, the Receiver paid off all the Phase I investor promissory notes of \$500,000 each with funds from the Receiver’s \$150 million settlement with Raymond James early in the Receivership.

<sup>6</sup> The only portion of the interim distribution proposed to go to Phase VII investors was the \$500,000 for partial reimbursement of the administrative fee, which the Court deferred ruling on. Previously in the case, with Court approval, the Receiver either returned Phase VII investors’ \$500,000 investments or placed those investors who agreed into another EB-5 project that would enable them to pursue their I-829 petition approvals and potentially have their \$500,000 returned from that project.



Jay Peak resort on a *pro rata* basis to Phase II-VI investors with allowed claims [ECF No. 743]. Phase I and VII investors are not part of the proposed distribution for the same reasons as set forth above. The Court entered an Order approving the motion on May 3, 2023 [ECF No. 744], and the Receiver is in the process of distributing the \$60,000,000 to the defrauded investors. The combined almost \$80,000,000 being distributed to the 529 Phase II-VI investors represents approximately \$151,000 of their original \$500,000 investment. The Receiver anticipates being able to make a further distribution before year end.

*D. Sale Of The Bogner Property*

On May 2, 2022, the Receiver filed a motion with the Court seeking approval to sell a 25.1-acre piece of property (that included a 46,000 square foot industrial warehouse) in Newport, Vermont for \$950,000 (“the Bogner Property”) [ECF No. 717]. Relief Defendant GSI of Dade County, Inc., one of Quiros’ companies, had purchased the Bogner Property in 2011, and this was the property where the Defendants purportedly intended to construct the biomedical research facility for which they sold investments in Phase VII.

As detailed in numerous prior filings, due to the fraudulent nature of the Phase VII offering, the Defendants did little work on developing the biomedical facility. They did hire general contractor Peak CM to provide preconstruction services such as design, site clearance, labor, and materials. Peak CM commenced its work in October 2015, and stopped in March 2016 after the Defendants failed to pay for the work already done. As a result, Peak CM had a claim of lien against the Bogner property totaling \$2,170,649 [ECF No. 218]. The Receiver and Peak CM ultimately reached a settlement regarding the claim, which, among other things, reduced the outstanding claim to \$1,064,029, to be paid from the sale of the Bogner Property [ECF No. 462]. The Court approved the settlement [ECF No. 467].

The Receiver began marketing the Bogner property in 2018, originally listing the price as \$1,995,000. He later reduced the price to \$1,495,000. However, the highest and best offer the Receiver received over several years was the \$950,000 of which the Receiver ultimately sought Court approval in May 2022 [ECF No. 717]. There were several problems with the property, including that the industrial building required substantial mold and asbestos mitigation and the heating system required a complete overhaul or replacement. *Id.* Those repairs were estimated to cost at least \$1,000,000. Furthermore, the Receiver had paid property taxes, insurance, and other carrying costs of approximately \$400,000 while attempting to sell the property. *Id.*

As a result, the Receiver sought Court approval to sell the Bogner Property “as is” for \$950,000. The Court approved the sale [ECF No. 720], and the sale ultimately went through on Sept. 27, 2022. The Receiver used the proceeds to pay the carrying costs, and the remainder went to satisfy Peak CM’s claim in full (even though the proceeds that went to Peak CM were less than the company’s \$1,064,029 claim, Peak CM accepted the proceeds as payment in full due to the only source of payment being the sale proceeds) [ECF No. 717].

*E. Settlement With Merrill Lynch*

As set forth in numerous prior interim status reports and motions, the Receiver investigated claims the Receivership Defendants potentially had against numerous third parties who had done business with Quiros, Stenger, and the other Defendants prior to the commencement of this case. The Receiver ultimately filed several lawsuits against third parties, which resulted in substantial recoveries for the benefit of the Receivership estate and defrauded investors.

Among the potential claims the Receiver investigated were those against brokerage firm Merrill Lynch Pierce Fenner & Smith, where Quiros maintained brokerage accounts on behalf of the Defendants for a portion of the fraudulent period. Both the Receiver and the State of Vermont

felt they had claims against the brokerage firm involving its oversight of the Defendants' accounts, and entered into settlement discussions with the firm hoping to avoid filing lawsuits. After two years of on-again, off-again discussions and a robust exchange of documents, the Receiver and the State of Vermont reached agreement with Merrill Lynch on a settlement.

The Receiver filed a motion seeking approval of the settlement on January 6, 2022 [ECF No. 710]. Under terms of the settlement, Merrill Lynch agreed to pay \$4,000,000 to the Receiver, and an additional \$500,000 to the State. *Id.* In exchange, the Receiver sought an order from the Court barring all future claims against Merrill Lynch by any party stemming from the facts and conduct relating to Quiros and the Defendants in this case. *Id.* The motion further explained that the \$4.5 million would be used as follows: (1) the Receiver's special counsel would receive a contingency fee of \$1,160,000;<sup>7</sup> (2) \$2,135,000 would be paid to Raymond James under terms of that firm's prior \$150,000,000 settlement with the Receiver;<sup>8</sup> and (3) the \$500,000 paid to the State of Vermont, the \$400,000 returned to the Receivership from special counsel, and the remaining \$305,000 (a total of \$1,205,000) would be kept in a restricted account for later distribution to investors [ECF No. 710].

Following notice to investors, creditors and any other potentially affected parties and a hearing, the Court approved the settlement without any objections on March 2, 2022 [ECF Nos. 711 and 713-716].

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<sup>7</sup> The special counsel was actually entitled to a contingency fee of \$1,560,000 under terms of the Court-approved fee agreement, but generously agreed to donate \$400,000 of that back to the Receivership estate.

<sup>8</sup> As part of a broad settlement with the Receiver, Raymond James agreed to pay \$150,000,000 to the Receivership in exchange for several conditions, one of which was that the firm would be entitled to 75 percent of certain other recoveries the Receiver obtained from third parties. The Merrill Lynch settlement was one of those recoveries [ECF No. 710]. As set forth in many prior pleadings, the Raymond James settlement was extremely beneficial to the Receivership in that it allowed the Receiver to: continue operating the Jay Peak and Burke Mountain resorts; finish construction of Phase VI; reimburse certain investors their principal \$500,000 investment; and pay off some creditors, among other things.

F. Working With Immigration Counsel

The Receiver and his immigration counsel, Klasko Immigration Law Partners, LLP, have continued to work on a number of immigration issues to assist individual investors with their I-526 and I-829 petitions, work with the Vermont Regional Center in its appeal of the USCIS' termination of its EB-5 Regional Center status, and analyze the effect of changes in the EB-5 law, among other things. More specifically, Klasko has:

- Developed template response forms for Jay Peak and EB-5 investors and their attorneys who either had USCIS issue a Notice of Intent to Deny or a Request for Evidence concerning their I-829 petitions;
- Prepared template motions to reopen for use by Burke Mountain EB-5 investors and their attorneys who had their I-526 petitions for conditional residence either denied or revoked by USCIS;
- Communicated with investors and their attorneys on the status of all I-526 and I-829 petitions;
- Assisted the Vermont Regional Center with its appeal of USCIS' decision to revoke the State of Vermont's status as an EB-5 regional center;
- Advised the Receiver of the effect of the Jay Peak and potential Burke Mountain sales on investors' EB-5 status;
- Advised the Receiver on the effect of the two interim distributions on investors' EB-5 status; and
- Advised the Receiver and investors on the effect of redeployment of investor funds into other EB-5 projects.

Regarding the Vermont Regional Center, after almost three years of litigation over the USCIS' proposed revocation, including an unsuccessful administrative appeal by the State of Vermont, the USCIS during the Reporting Period granted the State's motion to reconsider its termination of the State's Regional Center status. The decision was based on several factors, according to the USCIS, including the State's enhanced oversight of its EB-5 projects, the State's

investigation of the Jay Peak fraud and subsequent enforcement actions against Quiros and other former Jay Peak principals, the economic benefit the Jay Peak projects provided to the State despite the fraud, and the State's decision to wind down its Regional Center operations. As a result of the wind-down and Congress passing the EB-5 Reform and Integrity Act of 2022, the State is not sponsoring any new EB-5 projects or investors. The State continues to await guidance of the USCIS on how the wind-down will affect its support of existing EB-5 projects, including Jay Peak and Burke Mountain.

In the meantime, Jay Peak and Burke Mountain investors can continue to pursue their green cards through I-526 and I-829 petitions, although the USCIS has for the most part been denying the remaining I-829 petitions of both projects' investors or asking for more evidence to support the petitions. Investors are attempting to persuade the USCIS to reconsider those decisions. In the interim, the USCIS has not instituted any Notices to Appear or other actions that would lead to removal proceedings for any investors who have had their I-829 petitions denied.

#### G. Receiver's Fee Applications

During the reporting period, the Receiver filed his Tenth and Eleventh Interim Application For Allowance and Payment of Professionals' Fees and Reimbursement of Expenses, covering the periods of Sept. 1, 2020 through July 31, 2021 and Aug. 1, 2021 through July 31, 2022 [ECF Nos. 700 and 735]. The Court approved both fee applications [ECF No. 701 and 736].

### **IV. Litigation Update**

#### A. USA v. Quiros, et al., Case No. 5:19-cr-76 (D. Vt.)

On May 21, 2019, a grand jury in the District of Vermont returned an indictment against Quiros, Stenger, William Kelly, and Jong Weon Choi in connection with the facts giving rise to the SEC's case. *United States v. Quiros*, Case No. 5:19-cr-76 (D Vt.). Prior to the Reporting

Period, Quiros, Stenger, and Kelly had all pleaded guilty to various counts of the indictment and were awaiting sentencing. During the Reporting Period, all three Defendants were sentenced.

On April 15, 2022, Stenger was sentenced to 18 months in prison followed by three years of supervised release, and ordered to pay \$250,000 in restitution to the Receiver, based on one count of making false statements. On April 20, 2022, Kelly was sentenced to 18 months in prison followed by three years of supervised release, and ordered to pay \$8,338,600 in restitution to the Receiver (jointly and severally with Quiros), based on charges of conspiracy to commit wire fraud and concealing material facts. Finally, on May 2, 2022, Quiros was sentenced to five years in prison followed by three years of supervised release, and ordered to pay \$8,338,600 in restitution to the Receiver (jointly and severally with Kelly), based on charges of conspiracy to commit wire fraud, money laundering, and concealing material facts.

Choi, apparently a South Korean citizen residing in that country, was never able to be extradited or arrested, and the indictment against him was ultimately dismissed. The case has concluded.

*B. Goldberg v. Kelly, Case No. 17-cv-62157 (S.D. Fla.)*

The Receiver filed a complaint against Kelly, the former owner of Relief Defendants North East Contract Services, Inc. Case No. 17-cv-62157 (S.D. Fla.). The claims against Kelly arose from improper payments he and his company received from another Receivership Defendant in connection with the AnC Bio project. The Receiver asserted Kelly improperly diverted those funds for his own uses. The District Court originally stayed the case pending the resolution of the Vermont criminal case against Kelly, but once that case was resolved the Court lifted the stay and ordered the case to proceed. Shortly after that, the Receiver and Kelly agreed to settle the proceedings, pursuant to which the Receiver filed a Stipulation of Dismissal with Prejudice and

the Court dismissed the case [ECF Nos. 83 and 84].

**V. Financial Affairs<sup>9</sup>**

*A. Bank Accounts*

Preparation of the Standard Fund Accounting Report (“SFAR”) for the period of Aug. 1, 2021 through April 30, 2023, is underway. The Receiver will file a copy of the SFAR together with cash flow statements for the operating Receivership entities with the Court upon their completion in the next several weeks.

*B. Burke Mountain Resort Finances*

Burke Mountain’s most recent fiscal year ended in September of 2022 with \$9.2 million in total sales, 2.4 percent ahead of budget, with hotel sales comprising \$3.2 million and ski operations accounting for \$3.1 million of this total. Hotel occupancy for the fiscal year hit 41 percent, and the resort’s earnings before interest, taxes, depreciation and amortization represented Burke Mountain’s best performance to date.

In spite of the less-than-ideal conditions, resort revenue heading into the critical month of February 2023 was ahead of budget. Lodging numbers from October 2022 through January 2023 were very strong, with the highest average occupancies for the period since Burke Mountain opened in 2016.

Skier visits, even with historically poor December and February results, were at a three-year high. Four of the six months of the ski season exceeded 18-year visit averages. Thus, the two poor performance months of December and February severely cut into what could otherwise have been a much bigger ski season.

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<sup>9</sup> Because this Receivership involves operating entities, the confidentiality of the Receivership entities’ financial data is important. Accordingly, the Receiver has not attached detailed financial statements to this report, but has instead provided a general summary. Should the Court want to review the detailed financial data, the Receiver shall provide the information to the Court in-camera.

Looking ahead, pass sales for the 2023-24 season are trending above last year, with unit bookings 17 percent ahead and projected revenue 21 percent ahead. Summer lodging looks strong but fewer weddings during the summer season will undoubtedly impact occupancy rates. Bookings for summer 2024 weddings are looking stronger than for 2023.

## **VI. Remaining Operations and Recommendations**

The Receiver continues to utilize the skills of his professionals, including his general counsel Akerman LLP; special litigation and conflicts counsel Jeffrey Schneider and Levine Kellogg Lehman Schneider & Grossman LLP; and immigration counsel H. Ron Klasko and Klasko Immigration Law Partners. Soneet Kapila, CPA, and the accounting firm Kapila Mukamal provide accounting, forensic, and tax work for the Receiver. Downs Rachlin Martin PLLC, the largest law firm in Vermont, is assisting the Receiver in land use matters.

### **A. Website/Ongoing Communications**

The Receiver continues to communicate with government officials, creditors, contractors and interested parties. The Receiver continues to respond to inquiries, usually through e-mail and telephone calls. The Receiver and his staff continue to respond to inquiries from investors, creditors and other interested parties. The Receiver continues to maintain a toll-free investor hotline at (800) 223-2234, an email address for general inquiries [jaypeak@akerman.com](mailto:jaypeak@akerman.com), and a website [www.JayPeakReceivership.com](http://www.JayPeakReceivership.com), to provide up to date information for investors and interested parties. The Receiver has posted copies of court filings, correspondence with investors and other pertinent information on the website. The Receiver has also prepared and posted numerous updates on his website, including letters to investors. The Receiver will continue to utilize the website as the primary method of communicating with investors, creditors and other interested parties throughout the receivership.



B. Recommendations

The Receiver continues to secure and maintain the assets of the Receivership Entities, analyze the use of the individual partnership funds and respond to inquiries from the investors, creditors and other interested parties. The Receiver anticipates taking the following actions: (i) continuing to operate and maintain Burke Mountain until the best course of disposition is determined so that each investor obtains the highest possible return on their investment and receives an unconditional green card; (ii) providing information to investors to satisfy their EB-5 job creation requirements; (iii) continuing to pay the allowed claims of creditors and investors; (iv) responding to inquiries from investors, creditors, government officials and interested parties; and (v) providing updates through the receivership website.

May 30, 2023

Respectfully submitted,

/s/ Michael I. Goldberg

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on this 30<sup>th</sup> day of May 2023 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.