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Attys Seek \$2.5M Fees For Jay Peak-Linked Malpractice Case

By **Nathan Hale**

Law360 (February 1, 2021, 9:54 PM EST) -- Attorneys who helped investors land an \$8 million settlement in a malpractice suit against their former counsel in litigation over the failed Jay Peak EB-5 immigrant investor project have asked a Florida federal court to approve distribution of \$2.45 million in attorney fees.

In their motion Friday, the law firms Cheffy Passidomo PA, Hanley Law and the Barr Law Group specified how they would divide the attorneys' fund established in the deal between the 25 investors and lawyers Edward J. Carroll and Mark H. Scribner and their firms, seeking to demonstrate the value of their work and convince U.S. District Judge Darrin P. Gayles to approve the payments.

Judge Gayles last month **granted a request for preliminary approval** of the settlement filed by Michael I. Goldberg, the court-appointed receiver for about two dozen entities related to the Jay Peak ski resort in Vermont. In his motion, Goldberg noted that the immigrant investors' action had gone into "meaningful" discovery, and early last year the parties to the private malpractice litigation asked him to get involved to help settle it. The resulting settlement agreement was reached after a few months of negotiations, he said.

In Friday's motion, the three firms elaborated on their work for the investors. They said they participated in depositions of all 25 plaintiffs as well as Carroll and Scribner. They also retained three experts who were deposed by the defendants' counsel. Additionally, they engaged in written discovery, substantial motion practice and two mediations, they said.

"Attorneys' fees for plaintiffs' counsels' hourly fees to date and the rate of the contingency fee arrangements between plaintiffs and plaintiffs' counsel in this case both exceed the total attorneys' fees fund provided for by the settlement agreement," the firms said.

Following Judge Gayles' preliminary approval of the settlement, the three firms submitted a letter to the receiver's counsel saying they had agreed that the

Barr Law Group should be paid \$1.47 million, and Cheffy Passidomo and Hanley Law should each be paid \$490,000.

The group of investors filed their suit, *Cason et al. v. Carroll et al.*, in Vermont federal court in February 2018, and a slightly different group filed an amended complaint in August 2019, according to the settlement approval motion. The investors brought claims for legal malpractice, breach of fiduciary duty, breach of contract, and breach of good faith and fair dealing, alleging that Carroll and Scribner misled them and withheld information and were conflicted because they had represented some of the investors and Jay Peak receivership entities at the same time.

"Defendants were aware, or should have been aware, of information suggesting that Jay Peak was being severely mismanaged, including that investor funds were being misappropriated to backfill shortfalls in the projects," the investors claimed, accusing the Jay Peak-linked attorneys of "designing and executing" the very fraud that injured the investors.

Among the damages the investors sought was disgorgement of the attorney fees they paid to Carroll and Scribner's firm, according to the motion.

After the parties failed to resolve the case in mediation in April 2019, they called upon the receiver to help negotiate a settlement.

In the motion for settlement approval, the receiver told Judge Gayles that the agreement "provides outstanding recoveries for the Cason plaintiffs," noting that after payments to the plaintiffs and attorney fees, the receivership entities would still recover \$5.2 million to be distributed to other investors and would obtain a "bar order" barring all nongovernmental claims that could be filed between the receiver and Carroll and Scribner's former firms.

Judge Gayles said he "preliminarily finds that the settlement is fair, adequate and reasonable, is a prudent exercise of the business judgment by the receiver, and is the product of good faith, arm's length, and non-collusive negotiations between the Cason plaintiffs, the attorneys, and the receiver," but added that he would hold off on issuing a final ruling on the terms of the settlement agreement — including the bar order — until after a final approval hearing in the matter.

The Jay Peak litigation consisted of a U.S. Securities and Exchange Commission action and the investor action, over what the SEC described in its **2016 complaint** as a "massive eight-year fraudulent scheme in which the Miami owner and the chief executive of a Vermont ski resort have systematically looted more than \$50 million of the more than \$350 million that has been raised from hundreds of foreign investors through the U.S. Citizenship and Immigration Service's EB-5 Immigrant Investor Program."

Miami businessman Ariel Quiros, Jay Peak's owner, **settled with the SEC** in February 2018, agreeing he was liable for \$81 million in disgorgement and

agreeing to pay a \$1 million civil penalty and forfeit about \$417,000 in cash. He was also permanently banned from participating in the EB-5 immigrant investment program in any capacity.

Counsel for the receiver declined to comment on the fees motion, and the investors' law firms did not immediately respond to requests for comment Monday. Counsel information for Carroll and Scribner was not available Monday.

The investors are represented by Russ Barr of the Barr Law Group, Louis D. D'Agostino of Cheffy Passidomo PA and Sara Hanley of Hanley Law.

Goldberg is represented by Jeffrey C. Schneider of Levine Kellogg Lehman Schneider & Grossman LLP.

Counsel information for Carroll and Scribner was not immediately available.

The case is SEC v. Ariel Quiros et al., case number 1:16-cv-21301, in the U.S. District Court for the Southern District of Florida.

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