

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

|                                           |   |                              |
|-------------------------------------------|---|------------------------------|
| HII MISSION TECHNOLOGIES CORP.,           | § |                              |
| <i>Interpleader Plaintiff,</i>            | § |                              |
|                                           | § |                              |
| v.                                        | § | Civil Action No. 3:25-cv-483 |
|                                           | § |                              |
| CYBERLUX CORP., <i>et al.</i> ,           | § |                              |
| <i>Interpleader Defendants/Claimants.</i> | § |                              |

**INTERPLEADER DEFENDANT’S, ROBERT W. BERLETH, AS RECEIVER,  
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Interpleader Defendant/Claimant, Robert W. Berleth, as Receiver (the “**Receiver**”), by counsel, pursuant to Fed. R. Civ. P. 56 and Local Civil Rule 56, submits this Memorandum of Law in Support of his Motion for Summary Judgment.

**INTRODUCTION**

Despite the existence of an authorized state receivership action that pre-dates this litigation, on June 24, 2025, Plaintiff HII Mission Technologies Corp. (“**HII**”) filed its Complaint for Interpleader (the “**Complaint**”) pursuant to 28 U.S.C. § 1335, requesting that this Court allow HII to interplead certain funds into this Court’s Registry that are, or may be, owed to Cyberlux, but are subject to multiple claims. After HII amended the Complaint on August 4, 2025, the present interpleader defendants consist of the following parties: (1) Cyberlux Corporation (“**Cyberlux**”)<sup>1</sup>; (2) Atlantic Wave Holdings, LLC (“**Atlantic Wave**”)<sup>2</sup>; (3) Secure Community, LLC (“**Secure Community**”); (4) Legalist SPV III, LP (“**Legalist**”); (5) United States of America (“**USA**”); (6)

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<sup>1</sup> Mark D. Schmidt (“**Schmidt**”) is CEO for Cyberlux.

<sup>2</sup> Schmidt has also served as an officer for Atlantic Wave. Attached as **Exhibit A** is a May 11, 2021 Statement of Principal Office Change signed by Mark Schmidt as President. The Court can take judicial notice of the publicly filed documents on Virginia’s State Corporation Commission website from Atlantic Wave’s May 11, 2021 filing, wherein Schmidt signs the filing as President of Atlantic Wave. *See infra* n.8.

Advanced Navigation and Positioning Corporation (“**ANPC**”); (7) the Receiver; (8) Assure Global LLC d/b/a WeShield (“**WeShield**”); (9) Roman Investments PR LLC (“**Roman Investments**”); (10) MAS USA MGT LLC (“**MAS**”); (11) Michael Sinensky (“**Mr. Sinensky**” and together with WeShield, MAS, and Roman Investments, the “**Sinensky Creditors**”); (12) Fairwinds Technologies LLC (“**Fairwinds**”); (13) Thin Air Gear, LLC (“**TAG**”); and (14) ARG Group, LLC (“**ARG**”) (together, the “**Interpleader Defendants**”). With the exception of the Sinesky Creditors, Fairwinds, TAG, and ARG who filed motions to intervene, these are parties selected by HII to be a part of this action.<sup>3</sup> But, there are a number of other creditors of Cyberlux who likely claim an interest in the funds at issue, but may not have notice of this interpleader action.

The Receiver’s interest arises from the Texas court’s appointment of him as the Receiver and then also from his efforts to ensure that there were funds available in the first instance. Indeed, without the Receiver, no creditor would be able to make a claim to the interpleaded funds HII owed to Cyberlux totaling \$25,769,369.03 (the “**Corpus**”).<sup>4</sup> The Receiver was instrumental in ensuring that the Corpus was due and owed to Cyberlux, through the Receiver, for satisfaction of Cyberlux’s requirements pursuant to the agreement between HII and Cyberlux. In fact, none of the funds would be available to any creditor, but for the Receiver’s efforts. See Berleth Decl. attached as **Exhibit B**. These efforts began in earnest on January 16, 2025, when the 129th District Court for Harris County, Texas (the “**Texas Court**”), Cause No. 2024-48085, established the

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<sup>3</sup> Notably, HII included TAG and ARG, among others, in their initial Complaint for Interpleader, but did not include TAG, ARG, and certain others in its Amended Complaint for Interpleader.

<sup>4</sup> The Corpus constitutes the amount that was due to Cyberlux under its subcontract with HII, which in turn, held a prime contract with the United States Government to support, among others, the Department of the Navy. The Corpus has since been reduced following a Garnishment proceeding in Fairfax Cir. Ct. and the payment of HII’s legal fees. The Corpus and amount deposited into this Court’s Registry, in an interest-bearing account, is **\$23,736,937.56**.

receivership for Cyberlux,<sup>5</sup> the Judgment Debtor, and appointed the Receiver via an oral order (the “**Receivership**”). Immediately upon establishing the Receivership, Cyberlux began its attempts to subvert the Receivership and filed not one, but two, Notices of Removal following appointment of the Receiver. The first removal occurred on February 12, 2025, with the Federal Court remanding the action back to the Texas Court on March 27, 2025. Yet, despite the remand order, Cyberlux filed its second Notice of Removal on April 11, 2025, which resulted in another remand order dated May 14, 2025. Then, Cyberlux filed an appeal, challenging the Receiver and the Receivership. The appeal also failed. Overall, as the Receiver sought to gain control of the assets in order to fulfill his duties and obligations, Cyberlux made every attempt to ensure it obtained control of the Corpus, which likely would lead to no creditor receiving any payment.

Because the underlying facts are not in dispute, only the proper distribution of the Corpus remains to be determined. Here, following the Receiver’s actions in securing the available funds for distribution, the Receiver maintains an interest in ensuring that all amounts due and owed to Cyberlux are appropriately distributed to Cyberlux’s creditors or, alternatively, to the Receiver for payment of Cyberlux’s debts, but not to Cyberlux directly. Thus, the Receiver is entitled to the Corpus, or at a minimum his portion of the Corpus, in the amount of \$5,934,234.39, or 25% of the remaining Corpus<sup>6</sup>, and summary judgment should be granted to him.

### **LEGAL STANDARD**

Pursuant to Federal Rule 56(a), “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” In assessing whether a movant is entitled to summary judgment, “[a] genuine

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<sup>5</sup> The Receiver was also appointed as the Receiver over Schmidt, individually.

<sup>6</sup> Twenty-five percent of the entire Corpus that was recovered amounts to \$6,442,342.25.

issue concerning a material fact only arises when the evidence, viewed in the light most favorable to the non-moving party, is sufficient to allow a reasonable trier of fact to return a verdict in that party's favor. *Rhoades v. United States Army Corps of Engineers*, No. 3:22-CV-728-HEH, 2023 WL 3981271, at \*3 (E.D. Va. June 13, 2023) (citing *JKC Holding Co. LLC v. Washington Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001)).

A simple allegation of a dispute of fact is not enough to defeat a summary judgment motion; rather, “[o]nly disputes over facts which might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The mere existence of some alleged factual dispute between the parties ... will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Hooven-Lewis v. Caldera*, 249 F.3d 259, 265 (4th Cir. 2001) (emphasis in original) (citing *Anderson*, 477 U.S. at 247–48). When the record here is viewed consistent with this standard, summary judgment in favor of the Receiver is appropriate.

### **STATEMENT OF UNDISPUTED FACTS**

Pursuant to Local Civil Rule 56(B), the Receiver lists the following material facts that the Receiver contends there is no genuine issue:

#### **Cyberlux Contract and Payment of Corpus**

1. In September 2014, the United States awarded HII a federal contract, Prime Contract No. GS00Q14OADU109; Task/Delivery Order No. 47QFCA22F00039 and Technical Direction Letter 1-023 (the “**Prime Contract**”), supporting the Department of Navy and the General Services Administration, the Federal Systems Integration and Management Center. 1st Am. Compl. ¶ 18; Berleth Decl. ¶ 6.

2. On August 29, 2023, Cyberlux, a defense contractor selling unmanned aerial vehicles, entered into Subcontract No. P000043846 (the “**Subcontract**”). 1st Am. Compl. ¶ 17; Berleth Decl. ¶ 7.

3. On May 13, 2024, the Prime Contract was terminated for convenience (a “**T4C**”), which then caused HII to terminate the Subcontract for convenience as well on May 17, 2024. 1st Am. Compl. ¶¶ 20–21; Berleth Decl. ¶ 8.

4. Consistent with 48 FAR 52.249-2, which requires the prime contractor to settle with subcontractors after a T4C, HII and Cyberlux executed Modification No. 4 to Subcontract No. P000043846 to Effectuate a Termination Settlement, effective February 26, 2025 (“**Mod. 4**”). 1st Am. Compl. ¶ 23; Berleth Decl. ¶ 9.

5. Among other provisions, Mod. 4 required Cyberlux to make shipment and delivery of certain inventory in accordance with the direction of the Government. 1st Am. Compl. ¶ 24; Berleth Decl. ¶ 9.

6. On May 28, 2025, HII received a partial payment from the Government in the amount of \$2,757,254.39 related to termination and stop work costs under Mod. 4, under which HII and Cyberlux also agreed on the amounts payable to Cyberlux under the Subcontract in connection with the T4C of the Subcontract and prior stop work orders. 1st Am. Compl. ¶ 25–26; Berleth Decl. ¶ 14.

7. On or about May 30, 2025, Cyberlux, through the Receiver’s direct efforts, completed shipment of the inventory to be shipped to the Government under Mod. 4. 1st Am. Compl. ¶ 27; Berleth Decl. ¶ 15.

8. On July 3, 2025, HII submitted an additional invoice to the Government in connection with the completed shipment by Cyberlux and Mod. 4. 1st Am. Compl. ¶ 28; Berleth Decl. ¶ 16.

9. On July 15, 2025, HII received final payment from the Government on the Prime Contract in relation to Cyberlux in the amount of \$23,012,114.64. 1st Am. Compl. ¶ 29; Berleth Decl. ¶ 17.

10. As a result, HII received a total of \$25,769,369.03, which, subject to setoff and recoupment under § 7 of Mod. 4, may otherwise be or become payable to Cyberlux under the Subcontract. 1st Am. Compl. ¶ 30; Berleth Decl. ¶ 13.

#### **Appointment of Receiver**

11. On or around August 24, 2022, Atlantic Wave and Secure Community sued Cyberlux and Schmidt, individually in Virginia for breach of contract. Berleth Decl. ¶ 10.

12. The suit resulted in an agreed final judgment in the principal amount of \$1,572,500 (the “**Virginia Final Judgment**”). Berleth Decl. ¶ 10.

13. On July 7, 2024, pursuant to the Uniform Enforcement of Foreign Judgment Act, Atlantic Wave filed a Petition to Enforce a Foreign Judgment, domesticating the Virginia Final Judgment against Cyberlux and Schmidt in the Texas Court. Berleth Decl. ¶ 10.

14. On January 16, 2025, the Texas Court established the Receivership. Berleth Decl. ¶ 10.

15. On May 22, 2025, following various unsuccessful attempts by Cyberlux to undercut the Receivership (including two unsuccessful efforts to remove the case to the Southern District of Texas), the Texas Court reduced its oral order to a written Order Appointing Receiver (the “**Order**”) (**Exhibit C**). Berleth Decl. ¶ 11.

16. As a member of both NAFER<sup>7</sup> and TATR<sup>8</sup>, Mr. Berleth is an experienced and respected receiver in state and federal courts. Berleth Decl. ¶ 3-4.

17. On May 23, 2025, the Receiver took physical possession of the Cyberlux manufacturing facility located at 21631 Rhodes Road, Spring, Texas 77388, and changed the locks to the building, took precursory inventory, and secured the entire premises. Berleth Decl. ¶ 12.

18. Working with the parties, the Receiver coordinated the final shipments of Government property over the next several weeks, with the final truck departing the manufacturing facility on May 30, 2025. Berleth Decl. ¶ 13.

19. The Receiver coordinated with HII and confirmed the total payment of \$25,769,369.03 from HII. Berleth Decl. ¶ 13.

20. Consistent with the Order, on July 17, 2025, the Receiver requested that HII seize and forward to him any funds held by HII, which funds are non-exempt assets. Berleth Decl. ¶ 19.

21. On July 22, 2025, and August 15, 2025, the Circuit Court for Fairfax County ordered the payment of \$1,444,543.11 into that court's registry, which was then paid to Atlantic Wave. [D.N. 150.]

22. HII incurred costs and attorneys' fees in connection with this matter totaling \$587,888.36, which was recouped from the Corpus. [D.N. 150.]

23. The Corpus, not inclusive of interest earned, available for distribution totals \$23,736.937.56. [D.N. 153.]

24. The Receiver has the ability to properly disburse the funds in accordance with the Order and anticipated subsequent orders from the Texas Court, which would give all creditors an

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<sup>7</sup> National Association of Federal Equity Receivers.

<sup>8</sup> Texas Association of Turnover Receivers.

opportunity to be heard and submit their claims in a timely and orderly fashion to a court of proper jurisdiction. Berleth Decl. ¶ 21.

25. During the Receivership, the Receiver has been contacted by no fewer than a dozen other creditors of Cyberlux, several of whom have existing outstanding judicial awards, and many others of whom have either pending litigation or contractual obligations with Cyberlux for payment, including employee back pay. Berleth Decl. ¶ 22.

26. To date the Receiver is aware of at least \$70 million in debt Cyberlux owes to various creditors. Despite Cyberlux’s contention otherwise in their public quarterly reports,<sup>9</sup> the only known substantial asset of Cyberlux to pay multiple creditors is the Corpus. Berleth Decl. ¶ 23.

### **ARGUMENT**

“The Texas ‘turnover’ statute allows judgment creditors to reach assets of a judgment debtor that are otherwise difficult to attach or levy on by ordinary legal process.” *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 754 (Tex. Ct. App. 2017); *see also* Order ¶ 7 (“The appointment of a Receiver to locate, marshal, and administer assets is justified because the Court believes that non-exempt assets exist which Judge Creditors are justified in believing Debtor will hide.”). “Turnover is obviously an aid to judgment creditors in obtaining satisfaction on debts.” *Sloan v. Douglass*, 713 S.W.2d 436, 441 (Tex. Ct. App. 1986). To meet the initial burden to establish entitlement to the turnover, three elements must be met: “(1) the existence of an underlying judgment, (2) that

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<sup>9</sup> The Court can take judicial notice of Cyberlux’s quarterly reports filed publicly with the Securities and Exchange Commission under Federal Rule of Evidence 201. *See Zak v. Chelsea Therapeutics Int’l, Ltd.*, 780 F.3d 597, 607 (4th Cir. 2015) (noting “courts at any stage of a proceeding may ‘judicially notice a fact that is not subject to reasonable dispute’”); *In re PEC Sols., Inc. Sec. Litig.*, 418 F.3d 379, 390 n.10 (4th Cir. 2005) (taking judicial notice of SEC filings); *Bank of Am., N.A. v. Kissi*, No. PWG-12-3266, 2015 WL 1210281, at \*9 (D. Md. Mar. 16, 2015) (taking judicial notice of party’s 10-Q at summary judgment stage).

the underlying judgment remains unpaid, and (3) that the judgment debtor owns nonexempt property.” *Custom Coils, Inc. v. Nash*, No. 12-25-00164-CV, 2026 WL 308270, at \*4 (Tex. Ct. App. Feb. 4, 2026). Those elements were met, and the Texas Court appointed the Receiver. Order ¶ 6. The turnover statute is deemed to be remedial in nature and is construed liberally to enable collection by the judgment creditor. *See Haden v. David J. Sacks, P.C.*, 332 S.W.3d 523, 530 (Tex. Ct. App. 2009) (“Because the statute is procedural and thus remedial in nature, we must adopt a construction that, in the absence of an express legislative prohibition to the contrary, will enable collection by the judgment creditor, here the law firm, against the judgment debtor, here Haden and the company.”); *see also* Order ¶ 8 (holding that a Receiver is necessary “with the power and authority to take possession of all leviable property of the Debtors”). The Receiver is entitled to take possession of Cyberlux’s non-exempt property, which primarily, if not exclusively includes, the Corpus.

# **1. The Receivership in Texas is Still in Effect.**

The Order remains the operative order that the Receiver is abiding by with respect to the Receivership in place in Texas. Cyberlux is a judgment debtor- as it relates to Atlantic Wave and numerous other creditors. The Order provides the Receiver with unique powers and demands certain actions, including the exclusive possession and custody of Cyberlux’s property and delivery of same to the Receiver, among other powers. *See* Order ¶ 10 (“Pursuant to this order, the Receiver will have a judicial lien on all non-exempt assets of the Debtor and on all non-exempt community assets of Debtor regardless of whether the Receiver takes actual possession.”). In securing assets, third parties are ordered to deliver property to the Receiver within ten working days of Receiver’s demand. Order ¶ 19(a). Included in the Order is the possession of certain property including, but not limited to, Cyberlux’s financial accounts, account receivables,

negotiable instruments, contract rights, and other property, while remaining assured that the first receivership, the Order, controls. Order ¶¶ 14, 23, 25. The Receiver made demand on HII for the Corpus and, similarly, moved this Court for an order requiring HII deposit the Corpus into this Court's Registry in July, 2025. HII did not remit the Corpus to the Receiver, and the Court denied the Receiver's motion. The Receiver attempted to work within the confines of the Order to obtain the Corpus for distribution to creditors. Nevertheless, the Order pre-dates the instant litigation and this Court should give deference and authority to the underlying Texas Court's Order—particularly when it remains operative and permits the Receiver the authority to marshal Cyberlux's resources and assets. *See generally* Order.

## **2. This Court Should Expand the Receivership.**

While the February 20, 2026, Amended (Joint) Motion to Supplement Receivership, seeking to expand the Receiver's authority was denied, the Texas Court did not terminate the Receivership or the Order. Notably, the Texas Court indicated that the issues arising from seeking permission to satisfy several judgments “are best addressed and considered in the Virginia Interpleader case.”<sup>10</sup> [D.N. 161, Ex. A.] The Order provides not only the authority for the Receiver to marshal Cyberlux's assets, but provides that “[t]he first receivership order signed controls. . . . The assets are in the control of the court for the first receivership.” Order, ¶ 23. The first receivership is the Receivership. Because there can be no serial receiverships, “[t]he Receiver may obtain permission from this and other courts to satisfy several judgments against the same debtor.”

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<sup>10</sup> The Receiver, with his knowledge of Cyberlux, the Corpus, and the various parties asserting a claim to the Corpus, as an agent of the Texas Court is in the best position to help resolve those claims. The Order permits this in either this matter, the Virginia Interpleader case, or the matter in Texas. This is particularly true when not all of Cyberlux's creditors are parties to the Virginia Interpleader case.

Order, ¶ 23 (citing *Barrera v. State*, 130 S.W.3d 253 (Tex. Ct. App. 2004)).<sup>11</sup> This Court, therefore, pursuant to Paragraph 23 of the Order, may expand the Receiver’s authority, order the Corpus delivered to the Receiver, and cause the Receiver to effectuate payment to creditors (as the Receiver has attempted to do since being appointed and since HII initiated the Virginia Interpleader action in June 2025).

Because the Order permits this Court to satisfy several judgments, the interpleader action allows all interests to be remedied. Interpleader is not an extraordinary device and “the Supreme Court has emphasized that interpleader is ‘remedial and to be liberally construed,’” and its purpose is “to ‘remedy the problems posed by multiple claimants to a single fund.’” *AmGuard Ins. Company v. SG Patel and Sons II LLC*, 999 F.3d 238, 247 (4th Cir. 2021) (quoting *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 533 (1967)); see also *Texas v. Florida*, 306 U.S. 398, 405–07 (1939) (defining interpleader’s purpose over centuries as “avoidance of the risk of loss ensuing from the demands in separate suits of rival claimants to the same debt or legal duty”). Given the connectedness between the Receivership, marshaling and ensuring Cyberlux’s assets were available, the Receiver’s goal in satisfying Cyberlux’s debts, and the Interpleader, the Receiver, similarly, is working to satisfy multiple claims to the Corpus.

As part of the Receiver’s obligations, the Order permitted the Receiver to, among other things, “locate, marshal, and administer assets.” See Order ¶ 7. Included in the Order is the explicit

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<sup>11</sup> Even if, however, the Receivership were to be terminated or otherwise end, there are two additional filings in Harris County, Texas seeking receiverships over Cyberlux—both of which would appoint Berleth as the receiver over Cyberlux to address the multitudes of other creditors. The cases are *Clayton Services, Inc. v. Cyberlux Corporation, et. al*, Cause No. 202617258, 165th District Court of Harris County, Texas, and *Voortman v. Cyberlux Corporation, et. al*, Cause No. 202618441, 152nd District Court of Harris County, Texas. Neither case has progressed to the point where the District Courts have made the appointment of a receiver. Therefore, while the Receivership is currently still pending and the Receiver has authority pursuant to the Order, notwithstanding his role in obtaining the Corpus, Cyberlux is set to continue to be under a receivership in order to repay its debts.

acknowledgement that “[t]he unique power of a Receivership derives from the doctrine of *custodia legis*. Once a turnover order containing an appointment of a Receiver is signed, all of the judgment debtor’s [Cyberlux] nonexempt property becomes property in *custodia legis*, or ‘in the custody of the law.’” Order ¶ 9 (citing *First S. Props., Inc. v. Vallone*, 533 S.E.2d 339, 343 (Tex. 1976)). More specifically, “[d]uring the pendency of a Receivership, the Receiver has exclusive possession and custody of the judgment debtor’s property to which the Receivership relates.” *Id.* In *First Southern Properties, Inc.*, the court holds “[n]o one has authority, even under a prior deed of trust or execution, to sell property held in *custodia legis* by a duly appointed receiver, unless the sale is authorized by the court in which the receivership is pending.” *Id.* at 341 (citations omitted).

Here, the Receiver’s efforts resulted in the Corpus being available to Cyberlux’s creditors in the first instance, as the Receiver’s Declaration makes plain. The Receiver was instrumental in ensuring that the Corpus was due and owed to Cyberlux for satisfaction of Cyberlux’s requirements pursuant to the agreement between HII and Cyberlux. Accordingly, the Receiver’s interest is clear and he is entitled to summary judgment for his fees and costs (25% of the remaining Corpus) in marshalling the Corpus as an available remedy to Atlantic Wave and the other creditors. However, it remains clear that he is further entitled to summary judgment for the additional authority and direction from this Court to use the Corpus to satisfy Cyberlux’s debts, or at a minimum, satisfy the outstanding judgment subject to the Receivership.

### **3. The Receiver is Entitled to his Fee.**

In addition, the Receiver is entitled to his fees and costs from the Corpus with respect to the Receivership and the entitlement of funds from the Corpus following his direct involvement in ensuring the Corpus, in its entirety, was available for the Receiver or this Court to determine how Cyberlux’s legitimate creditors would be paid. The turnover statute authorizes recovery of

reasonable costs in a turnover proceeding. Tex. Civ. Prac. & Rem. Code § 31.002(e). A receiver's fees are considered court costs, and a trial court may award reasonable receiver's fees. *Vaccaro v. Raymond James & Assocs.*, 655 S.W.3d 485, 490 (Tex. Ct. App. 2022). "Whether a receiver's fee is reasonable is determined by the value of the receiver's services, including the receiver's results." *Klinek v. LuxeYard, Inc.*, 672 S.W.3d 830, 841 (Tex. Ct. App. 2023). The Order provides that the Receiver's fees and expenses "are considered costs of the court" and entitles the Receiver to a fee of "25% of all sales of assets that come into his actual, constructive, or legal possession, and all recoveries and credits against the judgment." Order ¶ 53. The Receiver could be entitled to 33% of "collected funds should the Receiver collect the full amount of the judgment." *Id.* In *Klinek*, like this case, "[t]he plain language of the order indicates that at the time the order was signed, the court made a final determination that a twenty-five percent fee would be reasonable." 672 S.W.3d at 842. Importantly, there is a distinction between a receiver's fee and attorneys' fees. While the Receiver is a licensed attorney, the Receiver is acting as a Receiver through counsel in this case and not as an attorney. In determining the Receiver's fees, and ultimate claim against the Corpus, the Court should look to the factors in *Bergeron v. Sessions*, 561 S.W.3d 551 (Tex. Ct. App. 1997). In *Bergeron*, the Court set forth that "[a] receiver's compensation is to be determined by the value of his services." *Id.* at 554. The factors in determining value include, "the complexity and difficulty of the work," "the time spent," "the diligence and thoroughness displayed," and "the results accomplished." *Id.* at 554–55. As this Court can see, the matters involving Cyberlux are complex, required significant time, and have resulted in the Corpus being available to the Receiver and Cyberlux's various creditors. The Receiver was effective in ensuring the Corpus' availability. Because there would be no money for distribution at all but for the Receiver, and he meets the *Bergeron* factors, the Receiver is entitled to his fee in accordance with the Order. Therefore, the

Receiver is entitled to summary judgment for his fees, in the amount of 25% of the remaining Corpus, or \$5,934,234.39.

**4. Priorities.**

The Interpleader Defendants each claim an interest in the Corpus:

- a. Cyberlux claim is unknown, though presumed to be the entire Corpus;
- b. Atlantic Wave and Secure Community claim \$6,025,603.42, not inclusive of interest (per Interrogatory Answer);
- c. Legalist claims \$13,204,742.88 (per Interrogatory Answer);
- d. USA claims \$1,149,776.34, not inclusive of interest (per Interrogatory Answer);
- e. ANPC claims \$3,087,878.86 (per Interrogatory Answer);
- f. WeShield claims \$3,905,541.64 (per Interrogatory Answer);
- g. Roman Investments claims \$576,436.03 (per Interrogatory Answer);
- h. MAS claims \$215,062.95 (per Interrogatory Answer);
- i. Mr. Sinensky claims \$310,097.79 (per Interrogatory Answer);
- j. Fairwinds claims \$2,348,542.00 (per Interrogatory Answer);
- k. TAG claims \$1,385,489.46 (per Interrogatory Answer);
- l. ARG claims \$14,118,618.61 (per Complaint in Intervention of the ARG Group, LLC [D.N. 155]); and
- m. The Receiver claims \$5,934,234.39 as his fee pursuant to the Order.

In total, the Interpleader Defendants (not including the Receiver), which do not encompass all of Cyberlux's creditors, claim at least \$46,327,789.98. Including the Receiver, the claims in this Interpleader Action, total \$52,262,024.37. However, not all of the claims asserted by certain

Interpleader Defendants are valid, and certain claims have higher priority, such as the claim by the United States Government for Cyberlux's tax liability, as well as Legalist's secured claim for amounts that pre-date the Receivership. Similarly, because the Receiver acts like a trustee in a bankruptcy, his fees and costs are administrative expenses and have priority. *See* 11 U.S.C. § 507; *see e.g.* Va. Code § 55.1-324 (detailing how trustee under deed of trust shall first discharge the expenses of executing the trust, including a reasonable commission to the trustee). In a bankruptcy proceeding, "[a]dministrative expense claims . . . are entitled to payment as a second priority under the distribution scheme provided in the Bankruptcy Code." *In re Health Diagnostic Laboratory, Inc.*, 557 B.R. 885, 893 (Bankr. E.D.Va. 2016). "Courts generally agree that 'an administrative expense has two defining characteristics: (1) the expense and right to payment arise after the filing of bankruptcy, and (2) the consideration supporting the right to payment provides some benefit to the estate.'" *Id.* (quoting *CIT Commc'n Fin. Corp. v. Midway Airlines Corp. (In re Midway Airlines Corp.)*, 406 F.3d 229, 237 (4th Cir. 2005)). Here, the Receiver's right to payment arises from the Order, which is a post-judgment order, and the consideration for the Receiver's fee is his role in securing the Corpus. In fact, in Paragraph 53, the Order provides that "[t]he Receiver's fees and expenses are considered costs of court." *Vaccaro v. Raymond James & Assocs.*, 655 S.W.3d 485, 490 (Tex. Ct. App. 2022). *See Hill v. Hill*, 460 S.W.3d 751, 760 n.6 (Tex. Ct. App. 2015) (in case involving § 64.001 receiver, noting that receiver's fees are entitled to priority over other creditors (citing *Jordan v. Burbach*, 330 S.W.2d 249, 252 (Tex. Ct. App. 1959))). Ultimately, the Corpus is sufficient to provide payment to Legalist and its secured claim that pre-dates the Receivership, to the United States Government for tax payments, and to the Receiver for his fee. Should the Court not grant summary judgment providing the Corpus to the Receiver for distribution to Cyberlux's

creditors, the Receiver proposes the following with respect to the distribution and validity of claims:

- a. USA for the full amount: \$1,149,776.34.
  - i. This would leave approximately \$22,587,161.22 of the Corpus.
- b. Legalist's secured claim for the amount owed as of May 22, 2025<sup>12</sup>: \$7,313,627.17.
  - i. This would leave approximately \$15,273,534.05 of the Corpus.
- c. The Receiver's fees, as administrative fee with priority over unsecured creditors pursuant to the Order and substantially similar to 11 U.S.C. § 507(a)(2): 25% of the Corpus or \$5,934,234.39.
  - i. This would leave approximately \$9,339,299.66 of the Corpus.  
However, should the Court order the entire Corpus, or the amount remaining after payments to the USA and Legalist's claim as of May 22, 2025 (approximately \$15,273,534.05), the Receiver will take a pro-rata portion in connection with the claims set forth in (d) and (e) below.<sup>13</sup>
- d. Unsecured, current party, non-insider claims. All legitimate and should be paid pro-rata:

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<sup>12</sup> May 22, 2025 is the date the Order was signed establishing the Receivership. Any action taken after this date would have required authority from the Receiver. Nevertheless, given Legalist and Cyberlux still have a business relationship and Cyberlux continues to make public disclosures in connection with obligations to the Securities and Exchange Commission, such quarterly reports indicate that Legalist and the other insider creditors should not have any issue collecting from Cyberlux.

<sup>13</sup> The Receiver, similarly, will report to either this Court, or the Texas Court, as this Court directs, for recommendations of distributions for creditors, including the Receiver's fees, with an opportunity for each creditor to object.

- (1) ANPC: \$2,926,814.39.
- (2) Thin Air Gear, LLC: \$1,385,489.46.
- (3) Fairwinds Technologies: \$2,348,542.00.
- (4) ARG Group (agreed reduction to commission on actual sales, not contracted amount): \$4,200,000.00.
- (5) Catalyst Machineworks, LLC (Phillip Tucker and Neill Whiteley): \$2,676,378.58.

e. Unsecured, non-party<sup>14</sup> creditors, non-insider claims. Should these non-parties intervene, the claims are legitimate, as they represent claims for services related to the Subcontract or services to Cyberlux and should be paid pro-rata with paragraph 4 creditors:

- (1) Aerotek, Inc.: \$235,411.27
- (2) Clayton Services: \$786,155.07
- (3) Northwind Axis Advisory: \$36,691.95
- (4) Marlin Leasing Corp: \$36,009.40
- (5) 3rd Gen. Development: \$342,478.34

The remaining claims represent Legalist's remaining balance of \$5,891,115.71, which is money lent and interest earned following the Receivership, as well as a number of insiders or invalid claims, as the agreements made with Cyberlux were done outside the Receiver's knowledge or approval, and without authority by Cyberlux pursuant to the Order. While in Receivership, a number of parties entered into agreements, or caused judgments and security agreements to be entered. Similarly, certain Interpleader Defendants are "insiders" as defined by

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<sup>14</sup> The Receiver expects certain of these non-parties to file a Motion to Intervene.

the bankruptcy code. “The bankruptcy code defines insider, in pertinent part, as an ‘affiliate, or insider of an affiliate as if such affiliate were the debtor.’ 11 U.S.C.A. § 101(31)(E). An affiliate, in turn, is an ‘entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor.’ 11 U.S.C.A. § 101(2)(A).” *Butler v. David Shaw, Inc.*, 72 F.3d 437, 441 (4th Cir. 1996). And, as the Fourth Circuit states in *Dornier*, “[i]n many cases, an insider will be the only party willing to make a loan to a struggling business, and recharacterization should not be used to discourage good-faith loans.” *In re: Dornier Aviation (North America), Inc.*, 453 F.3d 225, 234 (4th Cir. 2006). Here, many of the claimants have an interest in Cyberlux, or alternatively, Cyberlux and/or Schmidt have an interest in them. For example, Schmidt was President of Atlantic Wave until at least September 2021, and likely maintains, or maintained, an ownership in Atlantic Wave.

Lastly, given the amount of claims and priority of certain Interpleader Defendants, namely the Receiver, the United States, and a portion of Legalist’s claim, Cyberlux’s entitlement to any of the Corpus falls to the last position.

### **5. The Receiver’s Position.**

As set forth above, in the Order, and the Receiver’s time with Cyberlux and the various creditors, the Receiver is entitled to not only his fee, but is also in the best position to handle the Corpus. The Order pre-dates the instant litigation and permits this Court, or any court, the authority to expand the Receivership and allow the Receiver to satisfy the claims of creditors. The Receiver has caused the Corpus to be available, and despite constant litigation across the country, has stopped Cyberlux from getting its hands on the Corpus. Through all Cyberlux’s filings and attempts to obtain the Corpus and rid the Receiver, the Receiver has worked diligently for the creditors to ensure the Corpus’ availability. For over fifteen (15) months, the Receiver has gained

detailed knowledge regarding Cyberlux and its creditors, legitimate and otherwise. As a matter of law, the Order provides the means and parameters for the Receiver to distribute the Corpus. The Receiver is prepared to take the Corpus and ensure the legitimate creditors receive their share. However, the Order and the actions taken by the Receiver to allow the Corpus to be available provide the Receiver a priority claim for his fees and costs, akin to a bankruptcy trustee.

### **CONCLUSION**

The record in the instant action, and status of the Receiver under Texas law, demonstrates that the Receiver has priority to receive the Corpus for distribution to creditors pursuant to the receivership, or, at a minimum, his share of the Corpus for fees and costs in the amount of \$5,934,234.39. For the reasons set forth herein, and during any oral argument, the Receiver is entitled to summary judgment.

Dated: April 15, 2026

ROBERT W. BERLETH, as RECEIVER

/s/ Robert N. Drewry

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2026, the foregoing was electronically filed with the Clerk of Court using the CM/ECF System, which will then send the document and notification of such filing (NEF) to all counsel of record.

/s/ Robert N. Drewry