

CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC
and SECURE COMMUNITY, LLC,

Plaintiff/Judgment-Creditor

v.

CYBERLUX CORPORATION and
MARK D. SCHMIDT, Individually,

Defendant/Judgment Debtors.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

**CYBERLUX CORPORATION AND MARK D. SCHMIDT'S EMERGENCY
MOTION TO STAY OR OTHERWISE SUSPEND
ORDER APPOINTING RECEIVER**

COME NOW, Cyberlux Corporation and Mark D. Schmidt ("Cyberlux"), and file their Emergency Motion to Stay or Otherwise Suspend Enforcement of the Court's May 22, 2025 Order Appointing Receiver (the "Turnover Order") based upon the tender¹ of sufficient funds to satisfy the judgment upon which the receiver was appointed. In support thereof, Cyberlux respectfully shows:

1. Sufficient funds to satisfy the Judgment were tendered to the Receiver.

The Court's Turnover Order is limited to the recovery of \$2.11 million in favor of Plaintiffs. On June 5, 2025, counsel for Legalist SPV III, LP ("Legalist"), counsel for Judgment Debtors, and the Receiver held a teleconference during which Legalist advised the Receiver that it was exercising its contractual right to act as attorney-in-fact for Cyberlux and would issue a protective advance pursuant to an existing credit agreement between Cyberlux and Legalist, for more than is required to satisfy the judgment that is the

¹ In general, 'an unconditional offer by a debtor or obligor to pay another ... a sum not less in amount than that due on a specified debt or obligation' is a tender of payment." *Bluntson v. Wuensche Servs., Inc.*, 374 S.W.3d 503, 507 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (citing *Baucum v. Great Am. Ins. Co. of New York*, 370 S.W.2d 863 (Tex. 1963)).

subject of the Turnover Order, and the Receiver's appointment.² During that call, Legalist indicated that its protective advance would be an amount sufficient to satisfy the outstanding judgment, and would be a total of no less than \$2,755,100.³

The total of Legalist's protective advance included funds representing:

- \$2,111,086.01, the amount of the judgment listed in the Court's Order Appointing Receiver (the "Turnover Order").⁴
- \$75,652.07, interest on the \$2,111,086.01 from 2/18/2025, the date specified in the order.⁵
- \$546,684.52, representing 25% of \$2,186,422.60 (principal balance and interest in the Court's Turnover Order).
- \$21,677.50, representing attorneys' fees incurred by Atlantic Wave. The Southern District of Texas ordered Cyberlux and Schmidt to pay Atlantic Wave, and this amount represents the total amount submitted by Atlantic Wave's counsel.⁶

At the end of the call, the Receiver indicated he would provide his office's wire instructions so Legalist could effectuate the transfer.⁷ The Receiver has not provided those instructions.⁸

² See Declaration of A. Pennetti, at ¶ 5, attached as **Exhibit A**; Declaration of Legalist counsel, J. Prostok, attached as **Exhibit B**.

³ Exhibit B, at ¶ 5.

⁴ For the reasons described in Defendants Written Objections to the Court's Turnover Order, the Judgment balance (and any interest flowing therefrom) is incorrect and should be modified or corrected.

⁵ Interest was calculated from this date because the "judgment balance" in the Turnover Order appears to be inclusive of interest.

⁶ See Exhibit A, at ¶ 7.

⁷ *Id.*, at ¶ 6.

⁸ Exhibit B, at ¶ 7.

2. The Receiver is acting beyond his authority to interfere with accounts receivable flowing from Cyberlux's U.S. Government subcontract.

Cyberlux previously represented to the Court various details surrounding its U.S. Government subcontract with HII Mission Technologies Corp. ("HII"). Consistent with Cyberlux's representations to the Court, the drones and drone equipment in Cyberlux's leased facility in Spring, Texas were inspected by the United States Government and shipped to the Government's preferred destination. This means that Cyberlux will be awaiting payment on a \$25 million account receivable (subject to reductions described in the subcontract modification). The final shipment occurred the week of May 26, 2025.⁹ The Receiver's staff were present and were permitted to observe these activities.¹⁰

Even though Legalist tendered more than enough funds to satisfy Plaintiffs' judgment to the Receiver, the Receiver is currently demanding that a debtor of Cyberlux, HII, pay the total of Cyberlux's account receivable (~\$25 million) directly to the Receiver. As stated above, not only has the Receiver been tendered – and refused – an amount in excess of the judgment upon which he was appointed, but that judgment is, at most, \$2.7 million, more than \$20 million less than what the Receiver is seeking to levy upon. This indisputably exceeds the scope of the Receiver's authority under § 31.002(b)(3), which is limited to the extent required to satisfy the judgment. **The Receiver is taking actions outside the scope of the Turnover Order, and outside the law with respect to § 31.002(b)(3).**

⁹ Exhibit A., at ¶ 9.

¹⁰ *Id.*, at ¶ 9.

3. The Receiver is attempting to sell Cyberlux’s wholly-owned subsidiary, Datron World Communications, and is engaging unsecured creditors regarding claims unrelated to the judgment.

The Court appointed the Receiver pursuant to Texas Civil Practice & Remedies Code § 31.002(b)(3).¹¹ The Receiver was **not** appointed under the General Receivership Statute,¹² as a bankruptcy trustee, or to act as a rehabilitative receiver. As discussed below, the Receiver’s authority under 31.002 is limited to **satisfying a judgment** for judgment creditor(s), and **only** the judgment creditor(s) that are parties to the action.

A trial court’s authority to appoint a receiver is limited to appointing a receiver “with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor **to the extent required to satisfy the judgment.**” TEX. CIV. PRAC. & REM. CODE. § 31.002(b)(3).

A turnover order becomes “immediately moot when the judgment which it was issued to enforce was satisfied.” *Bennett/Nguyen Joint Venture v. Coghlan*, No. 01-10-00575-CV, 2011 WL 2732435, at *1 (Tex. App.—Houston [1st Dist.] July 14, 2011, no pet.).

Since Legalist has tendered funds sufficient to satisfy the judgment, the Turnover Order is immediately nullified and the receivership must be dissolved. In this instance, however, even after Legalist tendered funds sufficient to satisfy the judgment **and pay the Receiver**, the Receiver continues to try and seize assets that have a total value in excess of the judgment amount.

¹¹ Turnover Order, at ¶ 8 (“A Receiver is necessary in this case pursuant to the Texas Turnover Statute . . .”).

¹² Texas Civil Practice and Remedies Code section 64.001(a)(2).

Upon information and belief, the Receiver solicited—and even after Legalist’s tender, continues to solicit—offers and is engaging in negotiations with third parties in an attempt to sell Cyberlux’s wholly-owned subsidiary, Datron World Communications (“Datron”). Datron is an operating business with several active contracts. The Receiver’s actions, if allowed to continue, will severely damage the value of the Datron asset.

The Receiver also continues to engage various third parties, including unsecured creditors, making attempts to act as if he has been appointed as a quasi-bankruptcy trustee, which he is not.

The Receiver was present at the January 16, 2025 hearing on Judgment Creditors’ Application for Turnover, and he is aware that Cyberlux continues to operate its business as a going concern. Nevertheless, the Receiver’s actions indisputably exceed his authority and are interfering with and harming Cyberlux’s business. A stay of enforcement should be issued given that Legalist tendered funds sufficient to satisfy the judgment.

4. The Court should stay or suspend enforcement of the Turnover Order immediately, pending dissolution of the receivership.

The funds tendered to the Receiver are being held in the IOLTA trust account of Vartabedian Hester & Haynes LLP, counsel for Legalist.¹³ Legalist has made clear that it wishes to pay the Receiver to satisfy the judgment and terminate the receivership.

When a judgment is satisfied, a turnover order is of no further force and effect. *Pandozy v. Beaty*, 254 S.W.3d 613, 617 (Tex. App.—Texarkana 2008, no pet.). In other words, a turnover order becomes “immediately moot when the judgment which it was issued to enforce was satisfied.” *Bennett/Nguyen Joint Venture v. Coghlan*, No. 01-10-

¹³ Exhibit B, at ¶ 6.

00575-CV, 2011 WL 2732435, at *1 (Tex. App.—Houston [1st Dist.] July 14, 2011, no pet.).

After a judgment is satisfied, the trial court may conduct limited proceedings to conclude the receivership and discharge the receiver. *Hill v. Hill*, 460 S.W.3d 751, 767 (Tex. App.—Dallas 2015, pet. denied).

At this time, Cyberlux submits that the Turnover Order should be stayed pending this Court's review of Defendants' objections (i.e., to make necessary correction to the judgment amount and removal of Schmidt from the Turnover Order), reviewing the Receiver's accounting and approving the Receiver's compensation, dissolving the receivership, apportioning costs, ensuring excess funds are relinquished to Cyberlux, discharging the Receiver, and entering a Satisfaction of Judgment and release of all liens pertaining to this matter.

Because funds sufficient to satisfy the judgment, interest, the Receiver's fee, and attorneys' fees awarded to Atlantic Wave have been tendered, there is nothing more to do but to find that the judgment was satisfied, return any excess tendered, and terminate the receivership.

CONCLUSION

Cyberlux asks that the Court stay or suspend enforcement of the Turnover Order until the Court may make necessary corrections to the Turnover Order, review and approve the Receiver's compensation, and take other necessary actions to discharge the Receiver and enter a Satisfaction of Judgment. Cyberlux prays for all further relief to which it is entitled.

Respectfully submitted,

/s/ Alexander J. Pennetti

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*Attorneys for Defendants Cyberlux
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Unofficial Copy Office of Marilyn Burgoon, Clerk

CERTIFICATE OF CONFERENCE

On June 5, 2025, the undersigned attended a teleconference with the Receiver, during which funds sufficient to satisfy the judgment were tendered to the Receiver. The Receiver has refused to accept these funds. Following that call, the undersigned learned that the Receiver's efforts to interfere with Cyberlux's business operations, chiefly by taking custody of funds in excess of the judgment amount owed, and making attempts to sell Cyberlux's wholly-owned subsidiary. Further conference is not practical because it would likely result in further activities by the Receiver, which will cause additional harm to the company, which continues to operate as a going concern.

/s/ Alexander J. Pennetti

Alexander J. Pennetti

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on June 6, 2025.

/s/ Alexander J. Pennetti

Alexander J. Pennetti

Unofficial Copy Office of Mattyn Briggs District Clerk

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Filing Description: 20250606 Cyberluxs Motion to Stay or Suspend

Enforcement of Turnover Order

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