

CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC § IN THE DISTRICT COURT
and SECURE COMMUNITY, LLC., §
Plaintiffs, Judgment-Creditors, §
v. § 129TH JUDICIAL COURT
CYBERLUX CORPORATION and §
MARK D. SCHMIDT, individually, § IN AND FOR
Defendants, Judgment-Debtors. § HARRIS COUNTY, TEXAS

**RESPONSE TO DEFENDANT'S OBJECTIONS,
EMERGENCY MOTION FOR STAY, and
RECEIVER'S REQUEST FOR SANCTIONS**

NOW COMES, the Receiver ROBERT BERLETH, with the Receiver's Response to Defendant's Objections, Defendant's Emergency Motion for Stay, and respectfully requests an Order for Sanctions against counsel for Cyberlux, Mr. Alexander Pennetti, TX SBN:24110208, and for good cause shows the following:

SUMMARY

Cyberlux, a defense contractor with at least ten litigations for failure to pay debts, finds itself under receivership in Harris County, Texas. Cyberlux is expecting a ~\$25 million final payment from the federal government following a "termination of convenience" of a defense contract. The Receiver is poised to collect the funds and distribute it to the Judgment Creditors in this and other cases. Cyberlux now desperately seeks to stay the receivership via emergency motions, be paid by the federal government, and assumptively abscond with the funds without paying legitimate judgments and other debts. The Receivership should remain in place to prevent pilfering of the funds and corporate assets.

EXHIBITS LIST

1. Memorandum Opinion on Second Remand
2. Legalist UCC Form 1
3. Aerotek, Inc. Final Judgment
4. Thin Air Inc. Final Judgment
5. RB Capital Partners Original Petition
6. Catalyst Machineworks, Inc. Demand Letter
7. ANPC Original Petition
8. Defendant's Motion with Service List
9. Virginia Final Order
10. Transcript of October 28, 2024 hearing
11. Virginia Order for Attorney's Fees
12. 129th Order Compelling Depositions

PROCEDURAL HISTORY

For brevity, only the procedural history in Harris County, Texas is included below:

1. On July 7, 2024 Plaintiff, Atlantic Wave Holdings, LLC, hereinafter "Atlantic Waves" filed a Petition to Enforce a Foreign Judgment with an exemplified judgment from Virginia, Cause no. 23-07422, styled *Atlantic Waves Holdings, LLC, et. al. v. Cyberlux Corporation, et. al.* in the Circuit Court of Richmond Virginia.

2. Battle ensued. Over the next several months no motion went unanswered. Multiple letters, lengthy exhibits, motions to quash, and extensive briefing was filed by the Defendant. During this time, several motions to vacate the foreign judgment and stay proceedings were made to the 129th Harris County and the Virginia court. **All were denied or tabled.**

3. On January 9, 2025 a Motion to Appoint Receiver was filed by Atlantic Wave. The 129th held an oral hearing which started at 2:00 p.m., and lasted well into the evening. Judge Gomez orally granted the motion at the conclusion of the hearing, with a signed order supposedly to follow.

4. Before the 129th could enter a signed order appointing receiver, Cyberlux removed the case to federal court.¹ The removal was filed on February 12, 2025. There is no federal question in the domestication of a foreign judgment and the court correctly found that even if there were, the removal was untimely. Chief Judge Lee Rosenthal remanded the case to the 129th on March 27, 2025.

5. A renewed motion to appoint a receiver was brought, but again before the 129th could issue a signed order—and desperate for any delay possible—Cyberlux removed the same case to the same federal court for the second time in two months.² The second removal was filed on April 11, 2025. This time, federal district court Chief Judge Rosenthal saw the removal for what it was—delay. Finding “There is no evidence that the receiver tried to seize and sell U.S. government property, or that the state court would allow him to do so. **Cyberlux had no objectively reasonable basis to remove again.**” The Federal court awarded attorneys fees to Atlantic Wave (yet to be paid) and remanded the case on May 14, 2025.

¹ Cause No. 4:25-cv-00626, in the Southern District of Texas, styled *Atlantic Wave Holdings, LLC et al v. Cyberlux Corporation et al.*

² Cause No. 4:25-cv-01689, in the Southern District of Texas, styled *Atlantic Wave Holdings, LLC et al v. Cyberlux Corporation et al.*

6. On May 22, 2025, Mr. Robert Berleth was appointed Receiver by the Court. The Order Appointing Receiver is based upon the standard order used by Mr. Berleth in Harris County, around the state, and in Federal court. Judge Rosenthal, Judge Gomez, and Judge Payne (55th District Court) have all signed very similar orders appointing Mr. Berleth as receiver. In fact, Cyberlux argued to Judge Rosenthal the proposed order “[w]as ‘excessively broad,’ ‘extreme and improper,’ and ‘unconscionable.’ ”(Exh. 1 at pg. 4). In a complete retort, Judge Rosenthal found exactly the opposite, stating in her memorandum opinion:

“It is clearly none of those things.”

7. On May 23, 2025, the Receiver took physical possession of the Cyberlux manufacturing facility located at 21631 Rhodes Road, Spring, Texas 77388. The Receiver changed the locks to the building and secured the entire premises.

8. Working with the parties and counsel, the Receiver coordinated the final shipment of government property over the next week. At all times during the week, the Receiver personally, or his staff, were present to observe the inventory and shipping of products by Cyberlux. The final truck departed the manufacturing facility on May 30, 2025.

9. The Receiver has coordinated with HII Mission Technologies Corp (“HII”) through their counsel, Greg Jackson at Arcadi Jackson, and confirmed final payment of **\$25,795,303.38** (the “Funds” or “Corpus”) from HII Mission Technologies Corp. (“HII”) is anticipated through the federal government soon. A full settlement agreement and release will accompany the payment from HII. The

Receiver will then have the ability to properly disburse the funds in accordance with anticipated subsequent orders from the 129th District Court. This will give all creditors an opportunity to be heard and submit their claims in a timely and orderly fashion to a court of proper jurisdiction.

10. 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. See Exhibits 2 through 7. There are many others—**specifically employees owed back pay.**

11. To date the receiver is aware of at least \$40 million in debt Cyberlux owes to various creditors. The only known substantial asset of Cyberlux is the Corpus of the HII payment. If the receivership is stayed, Cyberlux would gain access to these funds to do with as they please. Based upon their litigation history, Cyberlux has a pattern of avoiding paying debts. Here, they seek to do no differently.

ARGUMENTS & AUTHORITIES

A. Response to Cyberlux's Objections and Emergency Motion for Stay

12. This is at least the third "Emergency" motion to stay filed by Cyberlux for enforcement of this valid Virginia judgment. see exhibit 8- Agreed Virginia Final Judgment. **All have failed.**

13. In August, 2024, Cyberlux sought to stay collections in the Virginia court with a similar Emergency Motion now before this Court. The Virginia judge was

not persuaded by Cyberlux's arguments they were "about to pay". The result of Cyberlux's Emergency Motion in Virginia resulted in an order to pay \$9,392.50, "based solely on Attorney's Fees incurred in Defending against the 'Defendant's Emergency Motion for Declaratory Relief". See Exhibit 11- Order Awarding Attorney's Fees. The fees have not been paid.

14. On October 28, 2024, Mr. Pennetti himself failed to persuade Judge Gomez to stay this collection, citing a "pending appeal" --which was subsequently never filed (emphasis added). See exhibit 10- Oral Transcript of October 28, 2024, at page 14.

THE COURT: I would be willing to consider something like that but not sort of this ambiguous you have this stuff out there. I don't really know what's going on and we filed this. So if you truly have something that's currently set, you have security that's been filed, and, you know, it's going to get heard in the near term, I can appreciate -- I don't mind bridging until that's resolved one way or the other but **what I'm not willing to do is stay enforcement of the judgment simply because something has been filed somewhere that says, hey, please don't enforce the judgment.**

15. Then, Cyberlux removed the case to the Southern District of Texas--**twice.**

16. Now, in this emergency motion to stay, Mr. Pennetti again argues "pending funding" from Legalist. At no point in Mr. Pennetti's argument does he claim to have the funds (i.e. in the Thompson Coburn IOLTA), nor does he assert Cyberlux has tried to pay the funds. This "Emergency" motion is merely more of the same empty promises of an uncertain payment and emergency requests to stop valid collections in a receivership.

17. The Receiver has directly spoken with Legalist, and the lender is less than enthusiastic about lending *more* funds to a debtor in such dire straits, especially given the amounts already owed to Legalist (over \$8 million). Legalist is also deeply concerned about the multiple other final judgments pending enforcement. Even if Legalist were to loan funds to get Cyberlux out of the current collection, the next judgment creditor(s) would simply begin collections with a new receivership.

18. If Legalist were truly interested in loaning the money to Cyberlux to resolve the Atlantic Waves debt, they easily could have done it *prior* to the receivership, thus saving themselves considerable expense and trouble. The receiver asserts Legalist has no intention of further lending to Cyberlux and this is simply another “emergency” motion with empty promises.

B. Court’s and Receiver’s Responsibilities to Other Outstanding Debts

19. Pursuant to the Order Appointing Receiver Paragraph 22, the Receiver may obtain permission for this and other courts to satisfy several judgments against the same debtor. *Barrera v. State*, 130 S.W.3d. 253 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

20. In fact, the Receiver and this Court must give credence to valid and existing judgments from other jurisdictions. “Courts must grant full faith and credit to orders from other states.” See, e.g., *Peden v. Pohl*, App. No. 01-08-00373-CV, 2009 Tex. App. LEXIS 7115 (Tex. Sep. 10, 2009) (“The Ohio injunction against

suits in other states that may interfere with the receivership process is entitled to full faith and credit in Texas.”); see also *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 795 (Tex. 1992); see also *State of Washington v. Williams*, 584 S.W.2d 260, 261 (Tex. 1979) (“The general rule is that a judgment rendered by a court of one state is ... entitled to recognition, force or effect, ... to the same extent as it has by law or usage in the courts of the state where the judgment was rendered.”). Full faith and credit are not a suggestion, but a constitutional command, designed to foster unity and prevent the chaos that would inevitably ensue if states were free to disregard valid legal judgments of their sister states. The Seventh District Court of Appeals stated that:

Our United States Constitution requires each state to give full faith and credit to the public acts, records, and judicial proceedings of every other state. U.S. CONST. art. IV, § 1; *Dalton v. Dalton*, 551 S.W.3d 126, 135 (Tex. 2018). This means a valid judgment from one state must be enforced in other states regardless of the laws or public policy of the other states. *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 794 (Tex. 1992); *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 484 (Tex. App.-Houston [14th Dist.] 2004, pet. denied) (op. on reh'g) (stating that “Texas is required to enforce a valid judgment from another state”).

In re Oltivero, 07-24-00022-CV (Tex. App. Jan 07, 2025).

21. Other states have similarly granted full faith and credit to injunctions entered by sister states prohibiting suits that may interfere with the receivership process. See, e.g., *Brown v. Link Belt Div. of FMC Corp.*, 666 F.2d 110 (5th Cir. 1982) (Louisiana federal court upheld injunction by Illinois receivership court);

State ex rel. Low v. Imperial Ins. Co., 140 Ariz. 426, 682 P.2d 431, 439 (Ariz. Ct. App. 1984) (injunction by California receivership court); *Integrity Ins. Co. v. Martin*, 105 Nev. Page 4 of 7 June 4, 2025 16, 769 P.2d 69, 70 (Nev. 1989) (injunction by New Jersey receivership court); *Nasef v. U & I Invs., Inc.*, 755 P.2d 136, 138 (Or. Ct. App. 1988) (injunction by Indiana receivership court).

22. In the case at hand, there are at least four valid existing UCC's and final judgments, from other states and federal courts. Each requires the Receiver's attention prior to terminating the receivership. See Exhibits 2 through 7. At least two new lawsuits have been filed against Cyberlux during the Receivership. The Receiver intends to ask this court to supplement the Order Appointing Receiver to add the additional judgments in series, but the Receiver needs time to verify the amounts, validity, and explore settlement with the various other creditors. The Court would also need time to evaluate each claim, and provide guidance to the Receiver regarding distribution of funds.

C. Attorney's Fees for this Motion are already Presumed at \$5,000

23. The Order Appointing continues at paragraph 54, "If Receiver has to defend against a motion to vacate, a motion to replace receiver, or any similar motion to this Court, upon proof and notice of the same, the Receiver shall be entitled to additional attorney's fees from debtor or debtor's counsel by fees or

sanction. The Receiver will presumptively be awarded \$5,000.00 or attorney's fees as proven at the time under *Rohrmoos Ventures*.”³

24. The Virginia court granted attorney's fees in the amount of \$9,392.50 for defending against a very similar motion. Given that counsel For Cyberlux waited until after 6:00 p.m. on Friday afternoon to file an emergency motion set for hearing at 8:30 a.m. the following Monday morning, it was extremely inconvenient and difficult for the Receiver to prepare a response and proposed order for the court to review in time for the hearing. The Receiver asks for the presumptive fee of \$5,000 to be paid by counsel for Cyberlux. While the client may have asked for the motion to be filed, counsel is the one that made it extremely inconvenient for the Receiver to respond and attend the hearing. The current proceedings are only one part of a long-lived, multi-front chess match among Cyberlux and their Creditors. Similar to filing two removals of the same post-judgment case to federal court, this is simply more gamesmanship by counsel—and counsel should pay for it.

D. Request for Sanctions by Enjoining Counsel from such Emergency Filings

25. Pursuant to the Order Appointing Receiver, the Court ordered that “every person with actual notice of [the Order Appointing Receiver] is ordered not

³ *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 490 (Tex. 2019) “To assist district courts in awarding attorney's fees, the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), set out twelve factors that a court should consider in determining a reasonable fee.”

to interfere...with the Receiver in the performance of Receiver's duties." See Order Appointing Receiver page 6, para. 20.

26. The Court ordered that "every person with actual notice of [the Order Appointing Receiver] is ordered not to interfere...with the Receiver in the performance of Receiver's duties." See Order Appointing Receiver page 6, para. 20. Mr. Pennetti's surreptitious filings directly violate the Court's Order Appointing Receiver by interfering with the Receiver's duties. Late-night "Emergency" filings are *status quo* from Cyberlux, and solely intended to dramatically increase the cost, difficulty, and inconvenience to the Receiver.

27. Rule 21(b) mandates that notice of any court proceeding "must be served upon all other parties...." Tex. R. Civ. P. 21(b). If a party fails to notice other parties, the court may impose appropriate sanctions available under Rule 215-2b. Tex. R. Civ. P. 21b. The imposition of sanctions pursuant to both Rule 21b is within the discretion of the trial court. See Tex. R. Civ. P. 21b.

28. Now, in violation of the Order Appointing Receiver and Rule 21b, Mr. Pennetti conducts more gamesmanship to advance his client's interest. Specifically, Thompson Coburn attorney, Alex Pennetti, filed a Motion to Stay Receivership **without notifying the court appointed Receiver** through the e-file system. Despite speaking with the Receiver directly several times since filing, Mr. Pennetti never brought up the Motion or his hearing set *in a different court* three days later. On Friday, June 6, 2025, Mr. Pennetti sent a courtesy copy of

another pending Motion, but there was no mention of the emergency motion, nor did he provide a copy to the Receiver by email.

29. Lying to the court about service is not Mr. Pennetti's first foray into mistruths in this case. To wit:

(Exh. 10) Transcript of October 28, 2024 hearing, Page 8, Line 8:

THE COURT: Has it been stayed? I mean has it been stayed in Virginia?

MR. PENNETI: Those -- all those litigations, yes, the stay has occurred in Virginia. There's no -- the collection -- there's no activity in the collection suit. Then you've got the three other lawsuits.

THE COURT: So the enforcement of this judgment that they domesticated has been stayed in Virginia?

MR. PENNETI: That's correct.

30. Due to Mr. Pennetti's violations of Rule 21b, lack of candor to the court, and continued interference with the Order Appointing Receiver, the Receiver requests that Alex Pennetti be sanctioned \$7,500.00 for his misconduct. Furthermore, to avoid such actions Receiver requests that Alex Pennetti as well as all counsel for Cyberlux be enjoined from filing any emergency motions in this case without express prior written permission from Judge Gomez.

PRAYER

31. The Receiver asks the Court to order the following:

- a. Defendant's Objections to the Order Appointing Receiver be
OVERRULED,
- b. Defendant's Emergency Motion to Stay Receivership be DENIED, and

- c. Mr. Alex Pennetti as well as all counsel for Cyberlux in Texas be enjoined from filing any emergency motions in this case without express prior written permission from Judge Gomez.
- d. Pursuant to the Order Appointing Receiver, at paragraph 54, Defendant's counsel Thompson Coburn be ordered to pay attorney's fees in the amount of \$5,000 to the Receiver within ten calendar days of the date of this order.
- e. Receiver's motion for attorney's fees and sanctions be GRANTED.
- f. Mr. Alex Pennetti, TXSBN: 24110208, jointly and severally with Thompson Coburn, be ordered to pay the sanctions to the Receiver directly within ten calendar days of the date of this order in the amount of \$7,500.
- g. The Receivership is to continue in all other aspects.

Respectfully submitted by:



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APPOINTED RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on Sunday, June 8, 2025, a true and correct copy of the above and foregoing was forwarded to all counsel of record via certified mail, return receipt requested, regular mail, e-mail and/or facsimile. Electronic records were also forwarded in accordance with local rules through the E-file or CM/ECF system.

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