

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

HII MISSION TECHNOLOGIES CORP.,

Interpleader Plaintiff,

v.

Civil Action No.: 3:25-cv-483

CYBERLUX CORPORATION, et al.,

Interpleader Defendants/Claimants.

MEMORANDUM IN SUPPORT OF HII'S MOTION FOR RELIEF IN INTERPLEADER

HII Mission Technologies Corp. ("HII"), by counsel, states as follows in support of its Motion for Relief in Interpleader:

I. INTRODUCTION

This is an interpleader action concerning amounts otherwise payable to Cyberlux Corporation ("Cyberlux") by HII pursuant to Cyberlux and HII's Subcontract (defined below), but subject to the claims of multiple Cyberlux creditors. HII seeks entry of an order: (i) directing HII to deposit \$23,736,937.56 (the "Disputed Funds") into the Court's registry, (ii) discharging HII from any and all liability related to the Received Funds (defined below), (iii) enjoining prosecution of any claims or actions against HII related thereto, and (iv) dismissing HII from this action with prejudice.

II. BACKGROUND

HII incorporates by reference its previously filed First Amended Complaint for Interpleader ("First Amended Complaint" or "FAC") (ECF No. 41), and all exhibits submitted therewith, as if set forth full herein.

A. The Subcontract and Mod. 4

Effective August 29, 2023, HII's predecessor in interest and Cyberlux entered into Subcontract No. P000043846 (the "Subcontract"). FAC ¶ 17. On May 13, 2024, the contracting officer for the Prime Contract (as defined in the FAC) terminated for convenience the portion of the Prime Contract scope of work relevant to the Subcontract. FAC ¶ 20. In accordance with the Subcontract's applicable terms and conditions, on May 17, 2024, HII terminated for convenience the Subcontract. FAC ¶ 21. Subsequently, HII and Cyberlux executed Modification No. 4 to Subcontract No. P000043846 to Effectuate a Termination Settlement ("Mod. 4") effective February 26, 2025, which governs the parties respective duties and obligations on and after that effective date. FAC ¶ 23.

Under Section 7 of Mod. 4, Cyberlux agreed to indemnify and hold HII harmless from damages, expenses, liabilities, and losses, including without limitation any attorneys' fees and other out-of-pocket expenses, incurred by HII in connection with any threatened, pending, or completed inquiries, claims, actions, suits, or proceedings relating to Cyberlux's liabilities to its creditors, even if Cyberlux disputes liability to such creditors. FAC ¶ 34.

Additionally, under Section 12 of the Subcontract, Cyberlux must indemnify and hold harmless HII:

from and against any and all claims, damages, losses, liabilities or expenses (including reasonable attorney's fees, consultant fees, and expert witness fees) arising out of or relating to any third party claims, causes of action, lawsuits, or other proceedings . . . regardless of legal theory, to the extent such Claims arise from [Cyberlux]'s (or any of [Cyberlux]'s subcontractors, suppliers, employees, agents, or representatives) . . . intentional misconduct, negligence, or fraud . . . or . . . violation of applicable law or regulation.

Subject to HII's indemnification rights under Section 7 of Mod. 4, HII received a total of \$25,769,369.03 from the Government related to the Subcontract (the "Received Funds").

Section 5 of Mod. 4 outlines the conditions and procedure under which HII may become liable to pay Cyberlux some or all of the Received Funds. The purpose of the conditions and procedure was to insulate HII from competing claims of creditors of Cyberlux – an entity that was, at the time, already facing multiple judicial proceedings from creditors seeking to enforce their alleged rights. Section 5(e) of Mod. 4 provides that: “HII will promptly notify Cyberlux after HII receives payment from the Government with respect to any Cyberlux invoice.” FAC ¶ 33. Upon occurrence of that event, Section 5(f) of Mod. 4 provides that “[w]ithin 2 business days after receiving HII’s first notification in Section 5(e), Cyberlux shall provide (i) a certified statement of amounts it then owes to Legalist, Atlantic Wave Holdings, Secure Community, and Thin Air Gear, and any other creditors of Cyberlux identified by HII, and (ii) a completed and signed version of Attachment B to this Agreement from each such creditor.”¹ *Id.* That section also provides that “HII shall have the right to identify additional Cyberlux creditors and to require the same information, including a completed and signed version of Attachment B, for any such additional Cyberlux creditors.” *Id.*

Section 5(g) of Mod. 4, in turn, provides that “HII will pay to Cyberlux amounts properly due under Cyberlux’s invoice no later than 5 business days after receiving payment from the Government, provided that the conditions in Section 5(f) have been satisfied.” *Id.* The conditions in Section 5(f) include the executed creditor releases. But Section 5(g) also provides HII with a specific agreed-upon path to satisfy its obligations with respect to Received Funds in the event the conditions in Section 5(f) have not been satisfied:

[i]f a creditor refuses to provide consent or to hold HII harmless for making payment to Cyberlux, HII may choose in its sole discretion to: (i) withhold such

¹ Attachment B to Mod. 4 includes a release of HII from the creditor of Cyberlux executing the same. HII never received executed Attachment B’s from any creditor other than Thin Air Gear, LLC.

payment (or a reasonable portion thereof, to be determined in HII's sole discretion) unless and until that condition is satisfied, (ii) make payment to Cyberlux notwithstanding that condition has not been satisfied, or (iii) *interplead the funds otherwise payable to Cyberlux (or a reasonable portion thereof, to be determined in HII's sole discretion), in which case HII will be deemed to have satisfied its payment obligations with respect to the interpleaded funds.*

(emphasis added).

On July 15, 2025, HII received final payment from the Government on the Prime Contract as relevant to Cyberlux in the amount of \$23,012,114.64. FAC ¶ 29. As a result, HII is in receipt of a total of \$25,769,369.03 (the Received Funds), which, subject to HII's right of recoupment under Section 7 of Mod. 4 and/or Section 12 of the Subcontract, may otherwise be or become payable to Cyberlux under the Subcontract. FAC ¶ 30. Based on the terms of the Subcontract, as amended by Mod. 4, HII would otherwise be under an obligation to pay Cyberlux the Disputed Funds, which is an amount equal to the Received Funds less: (a) recoupment and/or setoff of amounts (including attorneys' fees) which Cyberlux owes to HII pursuant to Section 7 of Mod. 4 and otherwise (now \$587,888.36) and (b) \$1,444,543.11 interpleaded by HII into the Circuit Court of Fairfax County (the "Fairfax Circuit Court") pursuant to the Fairfax Circuit Court's July 22, 2025 order on Atlantic Wave Holdings, LLC and Secure Community, LLC (together, "Atlantic Wave")'s Garnishment Summons. FAC ¶ 37.

B. Cyberlux Creditor Proceedings

Since February 26, 2025, multiple Proceedings have been commenced and have continued relating to Cyberlux's liabilities to its creditors, including Proceedings by creditors asserting alleged rights with respect to the Received Funds. As a result, HII has been forced to incur significant attorneys' fees and expenses to participate in those Proceedings and protect its own rights under the Subcontract. The following is a summary of such Proceedings.

On March 11, 2025, Atlantic Wave served a garnishment summons on HII, commencing Case No. CL2025-3413 in the Circuit Court of Fairfax County, Virginia. *See* (ECF No. 41-4). By the garnishment summons, Atlantic Wave sought to obtain an order directing HII to deposit \$1,444,543.11 of the Received Funds into the Circuit Court of Fairfax County, Virginia, for the benefit of Atlantic Wave. *See* (ECF No. 41-4). In response, HII filed a detailed Answer and Plea of Nonjoinder concerning absent necessary parties (like Legalist) potentially exposing HII to double or inconsistent liabilities. HII counsel also attended multiple hearings in the matter and coordinated the ultimate interpleader deposit of \$1,444,543.11.

On May 22, 2025, in *Atlantic Wave Holdings, LLC and Secure Community, LLC v. Cyberlux Corporation and Mark Schmidt*, Cause No. 2024-48085 the 129th Judicial District Court in Harris County, Texas entered an Order Appointing Robert W. Berleth, as receiver for Cyberlux (the “Receiver”), pursuant to Texas Civil Practice and Remedies Code § 31.002. Over the following weekend, the Receiver changed the locks and took possession of Cyberlux’s warehouse facility in Texas. The Receiver’s takeover of Cyberlux’s business and premises occurred as HII (through Cyberlux) was making the final deliveries of inventory from the Texas warehouse facility to the Government in accordance with the termination of the Prime Contract and the Subcontract. The Receiver also claimed a direct interest in any Received Funds payable to Cyberlux. By letter dated June 4, 2025 (attached as **Exhibit 1**), the Receiver took the position that “Payments from HII to Cyberlux will only be recognized if the payment is processed by the Receiver.” Ex. 1. He argued that “failure to comply with the Receiver’s levy may result in HII being ordered to pay the funds twice,” that “[i]t is disputable that HII is a party to the receivership case; however, being a party to the litigation is irrelevant,” and that, “HII is obligated to forward any funds held or paid to Cyberlux to the Receiver.” *Id.*

On or about September 26, 2025, HII was served with a complaint and summons (attached as **Exhibit 2**) for a Proceeding originally filed by James Curtin in this Court and then transferred to the U.S. District Court for the Middle District of North Carolina. Mr. Curtin alleged that HII was liable for the acts and omissions of Cyberlux and its agents with respect to the Subcontract. Specifically, Mr. Curtin alleged that “HII undertook express contractual obligations to exercise oversight, enforce compliance with applicable federal laws and regulations . . . and monitor the performance and conduct of its subcontractor.” Curtin Am. Compl. ¶ 39. Curtin alleged that HII, as a “steward of taxpayer funds,” breached a fiduciary duty owed to Curtin, the U.S. government, the public, and foreseeable persons. *Id.* Mr. Curtin claimed that HII “enable[ed] Cyberlux’s continued misconduct,” *Id.* and contracted with an “unqualified subcontractor” and did not perform proper oversight of Cyberlux’s actions in violation of federal law. *Id.* ¶ 9 (alleging “violations and potential violations of: 41 U.S.C. § 4712 (whistleblower protection for contractor employees), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1001 (false statements), 18 U.S.C. § 1512 (obstruction of justice and witness tampering) . . .”); ¶ 23 (“Plaintiff’s investigation revealed that Defendants engaged in a pattern of conduct to defraud investors and regulators . . .”); ¶ 24 (“Plaintiff also identified evidence that Defendants engaged in fraud against the U.S. government and violations of federal procurement/export control regulations . . .”) ¶ 49. According to Mr. Curtin, these alleged breaches by HII “directly enabled” Cyberlux and Chuck Watts to commit “retaliatory acts against Plaintiff, including the public doxxing of Plaintiff and interference with Plaintiff’s business relationships, which foreseeably caused reputational and economic harm.” *Id.* ¶ 39. In response, HII, by and through Kaufman & Canoles, P.C., filed a motion to dismiss and related briefing. By letter dated September 23, 2025 (attached as **Exhibit 3**), HII demanded indemnity from Cyberlux for the defense of the Curtin litigation.

On November 10, 2025, HII was served with a garnishment summons (attached as **Exhibit 4**) issued on behalf of Advanced Navigation and Positioning Corporation (“ANPC”) in the Circuit Court of Fairfax County, Virginia. By the garnishment summons, ANPC sought to obtain an order directing HII to deposit \$2,926,814.39 of the Received Funds into the Circuit Court of Fairfax County, Virginia, for the benefit of ANPC. *See* (ECF No. 136-2). In response, and in light of this pending interpleader action, HII negotiated a stay of the garnishment proceedings pending the outcome of this action with respect to the Received Funds. The ANPC garnishment proceeding has been stayed pending this action pursuant to the order attached as **Exhibit 5**.

C. Procedural History of this Action

In addition to the above Proceedings, and in light of the competing and mounting creditor claims to the Received Funds, HII commenced this action on June 24, 2025 to interplead those portions of the Received Funds actually payable to Cyberlux. On August 4, 2025, HII filed a First Amended Complaint (ECF No. 41) seeking interpleader relief under 28 U.S.C. § 1335. HII named as party defendants: Cyberlux, Legalist SPV III, LP, the Receiver, ANPC, Atlantic Wave Holdings, LLC (“Atlantic Wave”), Secure Community, LLC (“Secure”), and the United States.

Each of Thin Air Gear, LLC, Assure Global, LLC d/b/a WeShield, Roman Investments PR LLC, MAS USA MGT LLC, Michael Sinensky, and Fairwinds Technologies LLC filed motions to intervene. (ECF Nos. 54, 58, 70, and 114). By Order dated January 9, 2026, the Court granted the motions to intervene of Assure Global, LLC d/b/a WeShield, Roman Investments PR LLC, MAS USA MGT LLC, Michael Sinensky, and Fairwinds Technologies LLC. By Order dated January 22, 2026, the Court granted Thin Air Gear, LLC’s Motion to Intervene. (ECF No. 132).

Other than Cyberlux², all originally named defendants have filed an answer. Cyberlux moved to dismiss the action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. On January 9, 2026, the Court denied Cyberlux's motion to dismiss, finding that HII properly pleaded a claim for interpleader relief under 28 U.S.C. § 1335. (ECF No. 126).

III. LEGAL STANDARD

“An interpleader action typically involves two stages.” *Allstate Life Ins. Co. v. Ellett*, No. 2:14cv372, 2015 U.S. Dist. LEXIS 13526, at *4 (E.D. Va. Feb. 4, 2015) (citing *In re “Paysage Bords De Seine,” 1879 Unsigned Oil Painting on Linen by Pierre-Auguste Renoir*, 991 F. Supp. 2d 740, 743 (E.D. Va. 2014)). “First, the court must determine whether the plaintiff ‘has properly invoked interpleader, including whether the court has jurisdiction over the suit, whether the stakeholder is actually threatened with double or multiple liability, and whether any equitable concerns prevent the use of interpleader.’” *Id.* (quoting *United States v. High Tech. Prods., Inc.*, 497 F.3d 637, 641 (6th Cir. 2007)).

“Once a court determines that interpleader is appropriate, the court ‘may discharge the plaintiff from further liability,’ and may enter an injunction restraining the claimants from litigating related actions in state or federal court.” *Id.* (quoting 28 U.S.C. § 2361). “In the second stage, ‘a scheduling order is issued and the case continues between the claimants to determine their respective rights.’” *Id.* at *4-5 (quoting *Metro. Life Ins. Co. v. Vines*, No. WDQ-10-2809, 2011 U.S. Dist. LEXIS 55881, 2011 WL 2133340, at *2 (D. Md. May 25, 2011)).

² Cyberlux appears to be in default under Rule 12(a)(4)(A).

IV. ARGUMENT

A. **The Court has Jurisdiction over this Statutory Interpleader Action.**

As the Court has already concluded, it has jurisdiction pursuant to 28 U.S.C. § 1335. (ECF No. 126, at 11). “Under statutory interpleader, district courts have original jurisdiction over actions if: (1) the amount in dispute exceeds \$500; (2) there are two or more adverse claimants of diverse citizenship; and (3) the plaintiff deposits the money or property in dispute into the registry of the court or posts an adequate bond.” *Id.* at *5 (E.D. Va. Feb. 4, 2015).

Here, (1) the obligation in dispute exceeds \$500. (2) There are two or more adverse claimants of diverse citizenship. *See* (ECF No. 126, at 11). Lastly, (3) HII seeks to deposit the Disputed Funds into the Court.³ To do so requires a court order. *See* Standing Order RE: Deposit and Investment of Registry Funds (E.D. Va. Apr. 1, 2017) (“No money shall be sent to the Court or its officers for deposit into the Court’s registry without a court order signed by the presiding judge in the case or proceeding.”), *available at* <https://www.vaed.uscourts.gov/sites/vaed/files/SO%20040117.pdf>; *see also* Fed. R. Civ. P. 67(a).

In accordance with the Court’s April 1, 2017 Standing Order, interpleader funds must be deposited in a Disputed Ownership Fund within the Court Registry Investment System unless otherwise ordered by the Court. Because the amount in dispute exceeds \$500, two or more claimants have minimal diversity, and HII is seeking to deposit the Disputed Funds into the Court, this Court has jurisdiction over this interpleader action.

³ In statutory interpleader actions “presiding courts begin handling them before jurisdiction has been perfected. But this oddity is well recognized, and courts invite plaintiffs to perfect jurisdiction in these cases as a matter of course.” *Lincoln Nat’l Life Ins. Co. v. Steen*, Civil Action No. 5:21-cv-00042, 2021 U.S. Dist. LEXIS 210480, at *5-6 (W.D. Va. Nov. 1, 2021) (holding jurisdictional requirement met when stakeholder moved to deposit disputed funds with court).

B. HII Is Entitled to Recoup Its Attorneys' Fees and Costs from the Received Funds.

In determining the portion of the Received Funds payable to Cyberlux and, therefore, subject to interpleader here, HII is entitled to deduct the attorneys' fees and costs it incurred in connection with creditor Proceedings, pursuant to § 7 of Mod. 4.

Specifically, Cyberlux agreed in Mod. 4 to indemnify and hold HII harmless from and against any and all expenses, including attorneys' fees and other out-of-pocket expenses incurred or suffered by HII in connection with Cyberlux's creditors, even if Cyberlux disputes such liabilities. FAC ¶ 34. Mod. 4 states in relevant part:

7. **Indemnity.** Cyberlux hereby agrees to indemnify and to hold HII, its affiliates, parent, and subsidiaries, and their directors, officers, shareholders, agents, and employees (each, an "Indemnified Party") harmless from and against any and all damages, expenses, liabilities, and losses (including without limitation attorneys' fees and other out-of-pocket expenses, internal charges, judgments, taxes, and amounts paid or to be paid in settlement) incurred or suffered by the Indemnified Party in connection with any "Proceeding" (as hereinafter defined), but excluding all expenses, liabilities, and losses to the extent that they are determined by the final judgment of a court of competent jurisdiction to have resulted from the willful misconduct of HII. The Parties further agree, with respect to such indemnification, as follows:
- a. For purposes of this Section 7 the term "Proceeding" shall mean any threatened, pending or completed inquiry, claim, action, suit, or proceeding arising out of or relating to (i) Cyberlux's liabilities to its creditors, even if Cyberlux disputes such liabilities or (ii) any defect or inaccuracy in Cyberlux's certifications made pursuant to this Agreement.
 - b. An Indemnified Party shall notify Cyberlux of any Proceeding for which the Indemnified Party may assert a claim against Cyberlux pursuant to this Section 7. The applicable Indemnified Party shall have the sole right to elect to defend any such Proceeding or require Cyberlux to defend any such Proceeding on the Indemnified Party's behalf and at Cyberlux's sole expense.
 - c. For clarity, with respect to any Proceeding that is known by the Indemnified Party as of the date of execution of this Agreement, Cyberlux's indemnification obligations hereunder apply but do not include any attorneys' fees or expenses incurred by the Indemnified Party prior to the execution of this Agreement.
 - d. This Section 7 shall survive the expiration or termination of this Agreement.

(emphasis added). Thus, HII is entitled to recoup or setoff the amounts owed to it under the indemnification provisions of the Subcontract (specifically, § 7 of Mod. 4) before calculating the receivable owing to Cyberlux under Mod. 4. *See generally Nat'l Bank & Trust Co.*, 196 Va. at 695 ("Recoupment . . . is the right . . . to cut down or diminish the claim of the plaintiff in consequence of his failure to comply with some provision of the contract sought to be enforced, or because he has violated some duty imposed upon him by law in the making or performance of the contract.");

Dowell v. G & G Motorcycles, Inc., No. 3:14cv263, 2014 U.S. Dist. LEXIS 165452, at *3 (E.D. Va. Nov. 24, 2014) (quoting Black's Law Dictionary (9th ed. 2009)) (“[R]ecoupment is ‘the getting back or regaining of something, especially expenses’ and ‘the withholding, for equitable reasons, of all or part of something that is due.’”); *Richmond v. Chesapeake & Potomac Tel. Co.*, 205 Va. 919, 925 (1965) (addressing common law recoupment).

As a result, the Disputed Funds – which constitute the net receivable owing to Cyberlux after accounting for amounts owed to HII and amounts already paid by HII from the Received Funds – is the proper amount to deposit in interpleader. In other words, the Disputed Funds constitute the maximum amount that Cyberlux or its creditors would be entitled to seek to recover from HII or the Received Funds.

This is consistent with the interpleader statute, which expressly allows interpleader of an amount representing a receivable or contractual obligation. The statute affords interpleader relief with respect to “any obligation written or unwritten to the amount of \$500 or more.” 28 U.S.C. § 1335(a). And the statute allows for the deposit of “the amount due under such obligation.” 28 U.S.C. § 1335(a)(1). Here, the Disputed Funds constitute the maximum amount “due” to Cyberlux under the Subcontract.

Likewise, Cyberlux’s creditors’ rights with respect to the Received Funds cannot exceed the rights of Cyberlux. The rights of an assignee of an account receivable (like Legalist or allegedly Atlantic Wave/Secure) “are subject to all terms of the agreement between the account debtor [HII] and assignor [Cyberlux] and any defense or claim in recoupment arising from the transaction that gave rise to the contract.” Va. Code Ann. § 8.9-404(a); *see also First Nat’l Bank v. Master Auto Serv. Corp.*, 693 F.2d 308, 312 (4th Cir. 1982) (addressing former UCC provision); *Bank of Am., N.A. v. Trinity Lighting, Inc.*, No. 10 C 2250, 2011 U.S. Dist. LEXIS 88016, at *5-8 (N.D. Ill. Aug.

9, 2011); *see also Nat'l Bank & Tr. Co. v. Castle*, 196 Va. 686, 696 (1955) (“[Prime contractor] was entitled to be discharged of his liability to [his subcontractor]’s materialmen before he was required to pay anything to [subcontractor] under the contract. Since [subcontractor] never had any enforceable right against [prime contractor], the assignee [of the account debt] stood in no better position, and hence acquired no rights against [prime contractor].”)

As noted, HII has been dragged into a number of Proceedings with respect to Cyberlux’s alleged liabilities to its creditors since February 26, 2025, requiring HII to engage legal representation in multiple jurisdictions and with respect to numerous legal claims, as further detailed below. Ultimately, given the mounting creditor Proceedings, HII was left with little choice but to commence this interpleader action to obtain final resolution and discharge with respect to the Received Funds and the competing creditor claims. As expressly contemplated in Mod. 4, the Court should determine that HII’s recoupment of its attorneys’ fees and expenses from the Received Funds, for the purpose of calculating the Disputed Funds to be deposited with the Court, is appropriate and proper.⁴

C. HII’s Attorneys’ Fees and Expenses Were Incurred in Connection with Cyberlux’s Alleged Liabilities to its Creditors.

As detailed in the declarations and/or affidavits of Clark Belote, Scott Freling, and Greg Jackson (attached as **Exhibits 6, 7, and 8 respectively**), HII incurred a total of \$587,888.36 of

⁴ Even if HII did not have an express contractual right to recover its attorneys’ fees and costs (it does), HII would be entitled to seek an equitable award of attorneys’ fees under Rule 54 or otherwise. A federal district court has discretion to award attorneys’ fees to a stakeholder in an interpleader action in equity. *Jefferson Pilot Fin. Ins. Co. v. Buckley*, No. 3:04CV783, 2005 U.S. Dist. LEXIS 44067, at *6 (E.D. Va. Jan. 13, 2005); *see also Life Ins. Co. of the Sw. v. Coleman*, No. 3:14-cv-799-JAG, 2015 U.S. Dist. LEXIS 40341, at *7 (E.D. Va. Mar. 30, 2015) (“The plaintiff in an interpleader action can recover ‘reasonable’ fees.” (quoting *Sun Life. Assur. Co. of Canada v. Bew*, 530 F. Supp. 2d 773, 777-78 (E.D. Va. 2007)); *Hartford Life & Accident Ins. Co. v. Massengale*, Civil Action No. 3:22cv596, 2023 U.S. Dist. LEXIS 199796, at *9 (E.D. Va. Sep. 19, 2023) (allowing stakeholder plaintiff to move for its attorneys’ fees). HII reserves the right to seek such an award if necessary and appropriate.

attorneys' fees and costs in connection with creditor-related "Proceedings" (as defined in Mod. 4) through January 23, 2026.⁵ HII is entitled to recoup these expenses from the Received Funds.

Specifically, Mod. 4 defines a "Proceeding" to include "any threatened, pending or completed inquiry, claim, action, suit, or proceeding arising out of or relating to . . . Cyberlux's liabilities to its creditors, even if Cyberlux disputes such liabilities . . ." Mod. 4 became effective February 26, 2025, and Cyberlux agreed to "indemnify and to hold HII . . . harmless from and against any and all damages, expenses, liabilities, and losses (including without limitation attorneys' fees and other out-of-pocket expenses, internal charges, judgments, taxes, and amounts paid or to be paid in settlement) incurred or suffered by the Indemnified Party in connection with any 'Proceeding.'" Mod. 4 § 7.

Since February 26, 2025, multiple Proceedings related to Cyberlux's alleged liability to its creditors have required significant attention from and direct involvement by HII, and HII has employed counsel in multiple jurisdictions to address these distinct actions and legal issues.

Kaufman & Canoles, P.C. has been HII's primary counsel for all Virginia and North Carolina matters related to Cyberlux, including prosecuting this interpleader action, responding to multiple garnishment proceedings commenced by Cyberlux creditors, and monitoring active Cyberlux litigation with Atlantic Wave and Secure in the Circuit Court of the City of Richmond. Covington & Burling LLP has served primarily as government contracts and creditor rights counsel to HII, handling all issues arising out of implementation of Mod. 4 and the close out of the termination of the Subcontract, and various creditor rights issues arising in connection with claims asserted by Cyberlux creditors. Finally, Arcadi Jackson LLP has served as counsel for HII on

⁵ HII does not presently seek, but reserves the right to seek, additional fees and costs incurred after this date if the motion becomes contested or otherwise involves or causes additional unanticipated expenses.

matters related to Texas litigation (including the receivership) and Texas law issues. These sets of counsel have provided necessary services to HII with respect to the specific Proceedings described below.

First, HII engaged counsel to address the Atlantic Wave garnishment summons served on HII, which commenced Case No. CL2025-3413 in the Circuit Court of Fairfax County, Virginia. *See* (ECF No. 41-4). That garnishment proceeding required detailed pleading practice, written discovery and disputes related thereto, negotiation of a protective order, and attendance at hearings in Fairfax Circuit Court on July 11, 2025 and August 15, 2025.

Next, HII engaged Texas counsel to address the Receiver's appointment and subsequent actions and litigation in Texas. Following his appointment, the Receiver changed the locks and took possession of Cyberlux's warehouse facility in Texas, during the time in which Cyberlux and HII were making the final deliveries of inventory to the Government pursuant to the termination of the Prime Contract and the Subcontract – a condition to HII's receipt of the Received Funds. The Receivership Proceeding in Texas required consultation and coordination with HII's counsel to ensure performance of the Prime Contract could be completed, and to research and analyze HII's rights and obligations with respect to the Receivership. The Receiver, Atlantic Wave, and Cyberlux actively litigated multiple appeals in Texas state courts concerning Atlantic Wave's judgment, the Receiver's scope of authority and appointment, and the Receiver's receipt of approximately \$3,000,000 on behalf of Cyberlux. HII's Texas counsel actively monitored the cases for impact on HII and this proceeding.

HII also fielded and addressed the claims made by the Receiver to a direct interest in the Received Funds, including his contentions that "Payments from HII to Cyberlux will only be recognized if the payment is processed by the Receiver," Ex. 1, and that HII was bound by the

Texas litigation and/or could be pulled into the Texas litigation. The Receiver continued to assert these arguments in numerous filings in multiple Texas proceedings. Responding to the contentions, his attempts to pull HII into the Texas litigation, and his campaign to gain control of the Disputed Funds required extensive analysis of Texas law. The Receiver's efforts to orchestrate a purported "global" settlement amongst several creditors of Cyberlux resulted in many communications directed to HII, and corresponding legal work in assessing and responding to the same.

The *Atlantic Wave* litigation in Harris County became contentious due to the Receiver's bald assertions about his authority over HII and his right to receive all of the Disputed Funds, despite his limited receivership power as to the single judgment at issue in the case. Cyberlux filed with the Texas Court of Appeals both a petition for writ of mandamus (01-25-0045-CV) and an interlocutory appeal (01-25-00454-CV) to the Order Appointing Receiver. Additionally, a separate case was filed in Texas by another creditor of Cyberlux's in which the Receiver sought to be appointed.⁶

In June and July of 2025, HII drafted and finalized its complaint to commence the interpleader action, including analysis and due diligence of the proper claimants to be named as parties in the same. Specifically, HII circulated letters to all known creditors Cyberlux to confirm the basis for any potential claims to the Received Funds. Since the filing of this action, counsel has addressed multiple motions to intervene, multiple motions to compel deposit, and Cyberlux's motion to dismiss. *See* (ECF Nos. 25, 29, 31, 33, 38, 54, 58, 85, 114).

On or about September 26, 2025, James Curtin sued HII in federal court. Mr. Curtin alleged a number of claims against HII in connection with the Subcontract, seeking \$20,000,000 in

⁶ The case was initially filed in Harris County, Texas, then removed by Cyberlux to federal court in the Southern District of Texas at *Tucker v. Cyberlux*, No. 4:25-cv-02770. Thereafter, the case was transferred to the United States District Court for the Middle District of North Carolina.

damages. Mr. Curtin likewise sued Cyberlux, claiming to be owed damages from Cyberlux – i.e., that he was a creditor of Cyberlux and that Cyberlux was liable for tortious interference, civil conspiracy, and violation of federal laws. Again, HII was forced to incur the expense of counsel (Kaufman & Canoles, P.C.) to defend against the claims, including filing a motion to dismiss that remains pending in the Middle District of North Carolina.⁷

Lastly, on November 10, 2025, ANPC served HII with a garnishment summons issued in the Circuit Court of Fairfax County, Virginia. Based on the potential impacts to this action and HII’s rights and remedies under 28 U.S.C. § 2361, HII utilized counsel to negotiate a stay of that Proceeding pending the outcome of this interpleader action.

Each of these Proceedings reasonably required HII to engage legal counsel to monitor, analyze, preserve, and protect HII’s interests, rights, and obligations under the Subcontract and Mod. 4. As a result, between February 26, 2025 and January 23, 2026, HII incurred the following attorneys’ fees and expenses in connection with the Proceedings:

Kaufman & Canoles, P.C.	\$176,098.46
Covington & Burling LLP	\$207,347.50
Arcadi Jackson LLP	\$204,442.40
Total	\$587,888.36

The attorneys’ fees and expenses incurred by HII were billed by outside counsel in accordance with their standard fee arrangements with HII (*see* Exs. 6, 7, 8), and are precisely the

⁷ HII remains entitled to recover any future fees incurred in connection with the Curtin litigation from Cyberlux. Notwithstanding, HII seeks to extricate itself from further proceedings regarding the Received Funds and to provide Cyberlux’s creditors an opportunity to seek resolution with Cyberlux.

fees and expenses covered under § 7 of Mod. 4.⁸ As a result, HII is entitled to deduct these attorneys' fees and expenses from the Received Funds through its right of recoupment before depositing the balance in interpleader.⁹

D. Upon Deposit of the Disputed Funds, HII is Entitled to Dismissal, Discharge and Injunctive Relief.

28 U.S.C. § 2361 provides that, “[i]n any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court.” “Section 2361 also explicitly authorizes the district court to discharge an interpleader plaintiff ‘from further liability’ and to enforce its interpleader judgment with permanent injunctions and other orders.” *AmGuard Ins. Co. v. SG Patel & Sons II LLC*, 999 F.3d 238, 245 (4th Cir. 2021); *see also Am. United Life Ins. Co. v. Mays*, No. 2:17cv99, 2017 U.S. Dist. LEXIS 120031, at *12 (E.D. Va. July 31, 2017) (enjoining claimants from instituting or prosecuting proceedings against interpleader plaintiffs related to funds upon deposit of such funds); *Lincoln Nat’l Life Ins. Co. v. Steen*, Civil Action No. 5:21-cv-00042, 2021 U.S.

⁸ The attorneys’ fees incurred in connection with Mr. Curtin’s lawsuit are also recoverable under Section 12 of the base Subcontract, which requires Cyberlux to indemnify HII “from and against any and all claims, damages, losses, liabilities or expenses (including reasonable attorney’s fees, consultant fees, and expert witness fees) arising out of or relating to any third party claims, causes of action, lawsuits, or other proceedings . . . to the extent such Claims arise from [Cyberlux]’s (or any of [Cyberlux]’s subcontractors, suppliers, employees, agents, or representatives) . . . intentional misconduct, negligence, or fraud . . . or . . . violation of applicable law or regulation.” Mr. Curtin alleged in First Amended Complaint that Cyberlux and its agent, Chuck Watts, “intentionally interfered with [his] business expectancy and economic relationships through coordinated, malicious conduct . . .” Curtin Compl. ¶ 25 and that HII was liable therefor. *Id.* ¶ 50.

⁹ Although Section 7 of Mod. 4 also allows HII to recoup “internal charges” including the cost of in-house counsel and other staff who dedicated time to resolving Cyberlux creditor issues, HII does not setoff or seek those amounts here.

Dist. LEXIS 210480, at *10 (W.D. Va. Nov. 1, 2021) (ordering that upon deposit of disputed funds, interpleader plaintiff dismissed and enjoining claimants from undertaking further actions or proceedings against plaintiff as to disputed funds); *Allstate Life Ins. Co. v. Ellett*, No. 2:14cv372, 2015 U.S. Dist. LEXIS 13526, at *4 (E.D. Va. Feb. 4, 2015) (“Once a court determines that interpleader is appropriate, the court “may discharge the plaintiff from further liability,” and may enter an injunction restraining the claimants from litigating related actions in state or federal court.”) (quoting 28 U.S.C. § 2361).

As set forth above, the Disputed Funds represent the net balance of the Received Funds owing to Cyberlux after deduction of (i) amounts incurred by HII in connection with the Proceedings, which are subject to recoupment pursuant to § 7 of Mod. 4, and (ii) amounts already paid to Cyberlux creditors pursuant to court order. Once HII deposits the Disputed Funds, HII will have no independent interest in the Disputed Funds or this litigation. HII is entitled to receive a discharge from further liability related to or arising out of the Received Funds, and seeks an injunction restraining the Creditor Defendants, Cyberlux, and anyone later joined as a party to this action from instituting, maintaining, and/or prosecuting any proceeding in any state, federal, or other court or tribunal against HII asserting any claims arising from or related to the Received Funds. As a result, HII should also be dismissed from this action with prejudice.

V. CONCLUSION

Based on the foregoing, and as pleaded in the First Amended Complaint, HII respectfully requests that the Court grant HII’s Motion for Relief in Interpleader.

Respectfully Submitted,

HII MISSION TECHNOLOGIES CORP.

By: /s/ Clark J. Belote

Of Counsel

Dennis T. Lewandowski (VSB No. 22232)
Clark J. Belote (VSB No. 87310)
Ahmed E. Mohamed Khalil (VSB No. 98315)
Kaufman & Canoles, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
T: (757) 624-3000
F: (888) 360-9092
dennis.lewandowski@kaufcan.com
clark.belote@kaufcan.com
ahmed.khalil@kaufcan.com

*Counsel for Interpleader Plaintiff,
HII Mission Technologies Corp.*