



Comprehensive Analysis Report: AWH v. Cyberlux as of 23 November 2024

Description

I. Overview

This report examines the ongoing legal conflict between Atlantic Wave Holdings, LLC, Secure Community, LLC, Strikepoint Consulting, and Cyberlux Corporation. The dispute centres on a settlement agreement executed in June 2023 to resolve prior litigation over unpaid obligations. The agreement required Cyberlux to fulfil specific financial and reporting obligations, including monthly payments, transparency regarding drone contract revenues, and compliance with OTC Markets requirements for its stock. Despite these terms, Atlantic Wave alleges that Cyberlux has engaged in breaches of the agreement, procedural misconduct, and deliberate attempts to shield assets.

Cyberlux, on the other hand, denies these allegations and claims compliance, attributing any delays to external financial and operational challenges. This report evaluates the positions of both parties, integrating additional evidence that Cyberlux failed to publicly disclose the termination of a key drone contract until its third-quarter report in November 2024, months after the termination occurred in May.

II. Atlantic Wave's Position

Atlantic Wave asserts that Cyberlux has repeatedly and deliberately breached the settlement agreement, citing evidence of non-payment, fund mismanagement, and lack of transparency.

Failure to Make Payments

One of the core allegations is Cyberlux's failure to make the required monthly payments under the settlement agreement. Cyberlux ceased making payments in June 2024, in violation of its obligations to pay \$21,459 to Atlantic Wave and \$18,055.56 to Strikepoint each month. Despite receiving \$38.7 million from drone sales in September 2023, Cyberlux failed to apply these funds to the settlement, as required by an acceleration clause that mandated \$5,000 per drone sold.

Diversion of Funds

Atlantic Wave provides evidence that Cyberlux diverted significant funds intended for settlement payments. Bank records show over \$4.4 million was transferred to Mark Schmidt's personal accounts. These transactions, coupled with Cyberlux's claims of financial distress, strongly suggest an intent to prioritise personal enrichment over legal obligations.

Non-Disclosure of Key Developments

The revelation that Cyberlux's key drone subcontract was terminated on 17 May 2024, but not disclosed until November 2024 in its third-quarter report, underscores Atlantic Wave's argument that Cyberlux acted in bad faith. The failure to promptly disclose this material development violated the transparency obligations outlined in the settlement agreement, further eroding trust between the parties.

Procedural and Ethical Misconduct

Atlantic Wave also accuses Cyberlux of procedural delays and misrepresentation:

1. Cyberlux misled the Texas court by falsely claiming a stay of enforcement was in effect in Virginia, resulting in a temporary halt to garnishment actions.
2. The company failed to comply with discovery requests or cooperate with deposition scheduling, significantly delaying litigation.

Stock Compliance Issues

Cyberlux was required to remove the "Caveat Emptor" designation from its stock and achieve "Pink Current" status by 31 December 2023. Failure to meet this deadline, coupled with no evidence of meaningful efforts to resolve these issues, further supports Atlantic Wave's claim of deliberate non-compliance.

Remedies Sought by Atlantic Wave

Atlantic Wave seeks immediate enforcement of the consent judgment, recovery of diverted funds, and additional judicial measures to prevent further asset shielding. It argues that these remedies are essential to secure its interests under the settlement agreement.

III. Cyberlux's Position

Cyberlux contends that it has substantially complied with the settlement agreement and that any lapses are attributable to operational challenges rather than deliberate breaches.

Compliance with Payments

Cyberlux argues that it made regular payments until June 2024 and attributes subsequent delays to financial disruptions caused by external factors. These include market challenges stemming from the conflict in Ukraine and the termination of the K8 drone subcontract. While Cyberlux disclosed this termination in November 2024, it claims the cancellation was due to evolving market conditions and was part of an industry-wide trend rather than a reflection of mismanagement.

Legitimacy of Revenue Diversions

Regarding the transfer of funds to Mark Schmidt, Cyberlux has not provided a formal justification in court. Potential explanations might include framing these payments as salary, bonuses, or reimbursements. However, the timing of these transactions and their use for personal luxury expenditures contradict any claim of operational necessity. This lack of transparency undermines Cyberlux's defence.

Jurisdictional Challenges

Cyberlux alleges that Atlantic Wave violated jurisdictional provisions of the settlement agreement by initiating garnishment actions outside of Virginia. It claims these actions were procedurally improper and demonstrate bad faith on Atlantic Wave's part.

Delayed Disclosure of Contract Termination

Cyberlux acknowledges that the K8 subcontract's termination was a significant development but argues that it had no obligation to disclose it immediately. However, the lack of timely transparency weakens its claims of good-faith compliance, particularly since this contract was a key component of its defence for delaying payments.

Stock Compliance Efforts

Cyberlux maintains that it made reasonable efforts to comply with OTC Markets requirements but was unable to meet the December 2023 deadline due to circumstances outside its control.

IV. Comparative Analysis

Strengths of Atlantic Wave's Position

Atlantic Wave's claims are supported by clear documentation of payment failures, fund mismanagement, and lack of transparency. The evidence of fund diversion, combined with Cyberlux's delayed disclosure of the K8 contract termination, paints a compelling picture of bad-faith behaviour. The terms of the settlement agreement are explicit, leaving little room for Cyberlux to contest Atlantic Wave's enforcement actions. Additionally, Atlantic Wave's documentation of procedural misconduct by Cyberlux strengthens its credibility.

Weaknesses of Atlantic Wave's Position

Atlantic Wave's reliance on garnishment actions in jurisdictions outside Virginia could be viewed as a procedural weakness. If these actions are deemed improper, Cyberlux could challenge their validity, potentially delaying enforcement.

Strengths of Cyberlux's Position

Cyberlux's arguments about market challenges and operational disruptions provide some context for its payment delays. The termination of the K8 subcontract, though poorly communicated, lends credibility to its claims of financial hardship. Additionally, its assertion that Atlantic Wave violated jurisdictional provisions could serve as a basis for procedural counterclaims.

Weaknesses of Cyberlux's Position

Cyberlux's credibility is undermined by its failure to disclose the K8 subcontract termination in a timely manner, its lack of transparency about the transfer of funds to Schmidt, and its procedural misconduct in litigation. The evidence of fund diversion, coupled with personal luxury expenditures, contradicts its claims of financial distress and further weakens its defence.

V. Conclusion

The evidence overwhelmingly supports Atlantic Wave's claims that Cyberlux has breached the settlement agreement and acted in bad faith. Cyberlux's failure to make payments, diversion of funds, delayed disclosure of the K8 subcontract termination, and procedural misconduct represent clear violations of its contractual obligations. While Cyberlux attempts to attribute its failures to external factors, the evidence suggests deliberate efforts to prioritise personal enrichment and avoid compliance.

Atlantic Wave has acted diligently in documenting these breaches and pursuing enforcement. Immediate enforcement of the consent judgment is warranted. Additionally, Atlantic Wave should continue its garnishment efforts, seek additional discovery to uncover hidden assets, and pursue judicial intervention to prevent further asset shielding.

Documents Used in This Analysis

- 1. Settlement Agreement (June 2023)** - Details the obligations of Cyberlux and remedies for breach.
- 2. Declaration of William Welter** - Provides evidence of payment failures, fund diversion, and procedural misconduct.
- 3. Cyberlux Q3 Filing (2024)** - Confirms delayed disclosure of the K8 subcontract termination and offers insight into Cyberlux's financial position.
- 4. Declaration of David Keithly** - Includes allegations regarding Cyberlux's financial instability and questionable business practices.
- 5. Additional Court Filings** - Provide context on procedural history and reinforce allegations of bad-faith litigation by Cyberlux.

All posts, articles, and op-eds about Cyberlux Corporation are grounded entirely in information sourced from publicly available court records, government documents, and financial disclosures filed with OTC Markets. This content is intended for informational purposes only - it's not legal advice, it's not financial guidance, and it's definitely not an invitation to dive headfirst into investment decisions. Our interpretations, opinions, and conclusions stem exclusively from these accessible resources. Ultimate adjudication of legal matters rests with the courts and qualified legal professionals. As always, you're encouraged to verify independently because, let's face it, trust but verify is a motto that never goes out of style.

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1. Cyberlux

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