

Featured Story

# Slippery Slope

October 24, 2017

## Fraud Scheme Crumbles Under Mountain of Evidence

U.S. immigration policy continues to be a subject of national debate, but almost everyone agrees that the EB-5 visa program has been a win-win for immigrants and the U.S. economy. Under the EB-5 program, foreign nationals can gain U.S. residency if they invest a minimum of \$500,000 in business projects that create at least 10 jobs in economically depressed areas.

Unfortunately, both investors and communities can point to instances of unscrupulous individuals blemishing an otherwise innovative program that has transformed and revitalized rural and urban areas throughout the United States. Case in point is Vermont's Jay Peak Resort, believed to be the largest fraud scheme in the history of the federal EB-5 Immigrant Investor Visa Program. More than 800 foreign investors who hoped to gain green cards for themselves and their immediate family members instead were defrauded out of hundreds of millions of dollars by what civil complaints describe as a massive Ponzi scheme and the largest fraud in the state's history. Fortunately, a court-appointed legal team has been able to recover and return the investors' stolen money and get the jobs-creating project back on track, even as litigation continues.

Jay Peak offers important lessons for would-be EB-5

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Michael I. Goldberg  
Jonathan S. Robbins

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investors, as well as companies and communities that want the jobs the program is designed to create.

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In April 2016, federal authorities sought the appointment of a receiver over the Jay Peak resort and related properties and the court subsequently appointed Akerman Partner Michael Goldberg as the receiver. The U.S. government alleged that executives controlling Jay Peak engaged in a massive Ponzi-type fraud from the time they purchased the resort in 2008. The primary victims in the scheme were EB-5 investors who poured their money into purported expansion of the resort and related projects. Instead, the executives diverted the money into shell companies and more than 100 financial accounts, the government alleges. One of the resort’s executives is accused of spending \$5 million of project funds for a condominium in New York and spending millions for personal expenses and taxes, according to a federal complaint.

As a result of the investigation, a former Jay Peak principal has agreed to a settlement, while another is scheduled for trial on damages in 2018. In the meantime, Mr. Goldberg is pursuing actions to

attempt to reimburse investors and maintain the value of the resort by following through on some of the expansion plans. Notably, financial services firm Raymond James agreed to pay Mr. Goldberg, as receiver, \$150 million to reimburse investors and contractors who lost money in the alleged scheme.

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Systemic and organized fraud costs U.S. businesses and consumers billions of dollars each year.

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### **Expect Congress to Examine EB-5 Program**

While the Jay Peak fraud is extraordinary for its scope, the EB-5 program has been criticized by some for enticing foreign investors into dubious projects or directing funds to projects, especially hotel and other high-profile real estate developments, even casinos, which are not in high unemployment areas and are not with well-established developers or EB-5 investment companies. Vermont Sen. Patrick Leahy has called for bipartisan legislation to ensure that the program fulfills its purpose of creating jobs in depressed areas.

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## The Future of EB-5

The program must be renewed every few years by Congress and it may be a part of any changes to immigration laws considered by the Trump administration. Given its popularity and record of successful developments, the program will likely continue albeit with some amendments. One possible change discussed is an increase in the minimum investment and another is to craft rules discouraging the use of low-cost capital for projects that don't meet the threshold of a Targeted Employment Area, defined by the U.S. Department of Labor as high unemployment areas or rural areas. With the Jay Peak story still fresh, other amendments may provide greater protection for defrauded investors.



*Law360:* Jay Peak Receiver Eyes Changes To EB-5's Fraud Provisions

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## Investor Due Diligence

Legislative action aside, the biggest risk for investors is that they won't get the green cards for themselves, spouses, and unmarried children under age 21 if they get involved with a business found to be fraudulent. While returns of the investment are an investor priority, returns on their investment are in many cases secondary to obtaining visas, but investors would do well to do aggressive due diligence on the recipients of their money. As with any investment, there are no guarantees of safety.

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Most EB-5 investments don't go directly to a specific business but are invested through regional centers. These are usually private companies that are government-approved aggregators of funds who act as middlemen and connect investors and businesses that need millions in cheap capital for expansion or big projects. Due diligence should include these regional centers, which can either be the first line of defense—or the chief enablers—of fraud. In the Jay Peak case, some investors have accused the regional center of turning a blind eye to irregularities by the resort executives.

Just as investors should be wary of unproven regional centers or EB-5 investment companies, so should developers and businesses. Getting involved with an unreliable or unscrupulous partner could place funding in jeopardy and, as Jay Peak shows, lead to huge legal headaches.