

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

CELEBRITY RESORTS, LLC, *et al.*,

Debtors.

Case No.: 6:10-bk-03550-ABB

Chapter 11

(Jointly Administered with Cases

6:10-bk-3551-ABB to 6:10-bk-3585-ABB)

AMENDED ORDER

This matter came before the Court on the Final Application, the Supplement to Final Application, and the request for payment of the holdback from the first interim fee award (Doc. Nos. 468, 527) (collectively, "Final Application") filed by R. Scott Shuker and the law firm of Latham, Shuker, Eden & Beaudine, LLP (collectively, "Applicant") seeking an award of fees and costs incurred in connection with legal services performed as counsel to Celebrity Resorts, LLC and all of its affiliates and related entities, which are also debtors and debtors-in-possession (collectively, "Debtors"). A hearing was held on December 22, 2010 at which the Applicant, Jared M. Meyers as the representative of the Debtors, counsel for the Office of the United States Trustee, and counsel for various parties in interest appeared. The Final Application is unopposed.

Applicant advised the Court in open Court the Debtors and Debtors' counsel reached an agreement pursuant to which the entire amount of the Final Application shall be approved and deemed an Allowed Administrative Claim; however, all approved unpaid fees and costs shall be paid over time in equal installments. The first payment shall be due upon entry of this Order, and all remaining amounts are to be paid in equal installments over the next five (5) months.

Applicant seeks in its Final Application payment of fees of \$532,570.65 and expenses of \$18,443.08, for a total of \$551,013.73, for the period March 5, 2010 through December 22, 2010. The total amount of \$551,013.73 contains the amount of \$77,259.19 awarded from Applicant's First Interim Fee Application (Doc. No. 301), but held back pursuant to the Order entered on October 4, 2010 (Doc. No. 353).

Applicant expended 1,718.70 hours on this case during the application period with such time billed at hourly rates ranging from \$150.00 to \$450.00, for a blended hourly rate of \$300.00. This case has been complex, challenging, and highly litigious. The time incurred by Applicant is reasonable.

Applicant's fees are due to be reduced for Applicant's failure to timely file the Debtors' Affidavit in Support of Confirmation (Doc. No. 524). A Chapter 11 debtor is required to file a confirmation affidavit setting forth the factual bases upon which the debtor relies in establishing that each of the requirements of 11 U.S.C. Section 1129 are met. The affidavit must be filed four days prior to the confirmation hearing. The confirmation affidavit is of critical importance to the Court and the parties in interest, particularly in a case of this complexity, in understanding the issues surrounding confirmation, whether confirmation is contested, and whether the confirmation elements of 11 U.S.C. Section 1129 have been met.

An Order was entered on November 24, 2010 (Doc. No. 427) setting the Debtors' confirmation hearing for December 22, 2010 and directing the Debtors to file a confirmation affidavit within four day of such hearing date. The Affidavit of Jared M. Meyers was filed on December 21, 2010—one day prior to the confirmation hearing on December 22, 2010. Applicant did not comply with the filing directive of the November 24, 2010 Order. Applicant's fees are due to be reduced by \$10,000.00 for its failure to timely file the Affidavit.

After consideration of the First Colonial and Johnson factors¹, an award of fees of \$522,570.65 is reasonable. Applicant's costs of \$18,443.08 are reasonable and Applicant is due to be awarded 100% of its costs.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that Applicant is hereby awarded fees of \$522,570.65 plus costs of \$18,443.08, for a total award of \$541,013.73, as an allowed administrative expense pursuant to 11 U.S.C. Sections 503(b) and 507(a)(2); and it is further

ORDERED, ADJUDGED AND DECREED that upon the Effective Date of the Debtors' Confirmed Plan, all of the fees and costs awarded to Applicant, including those awarded pursuant to the October 4, 2010 Order (Doc. No. 353) shall be deemed final and not subject to disgorgement and shall be paid as set forth herein.

Dated this 20th day of January, 2011.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

¹ The reasonableness of attorney's fees and costs is determined through an examination of the criteria enunciated by the Fifth Circuit Court of Appeals in In the Matter of First Colonial Corp. of Am., 544 F.2d 1291 (5th Cir. 1977) and Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). The twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; (12) awards in similar cases. Johnson, 488 F.2d at 714.