

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:

DB ISLAMORADA, LLC,

Case No. 07-20537-AJC
Chapter 11

Debtor. _____ /

FINAL FEE APPLICATION OF PATRICIA A. REDMOND, ESQ., AND STEARNS
WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.,
AS COUNSEL FOR DEBTOR, DB ISLAMORADA, LLC

1. Name of Applicant: Patricia A. Redmond, Esq., and Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
2. Role of Applicant: Counsel for Debtor, DB Islamorada
3. Name of certifying professional: Patricia A. Redmond
4. Date Case filed: 11/29/2007
5. Date of Application for Employment: 12/05/2007 (DE #8)
6. Date of Order Approving Employment: 01/04/2008, *nunc pro tunc* to 11/29/2007 (DE #19)
7. If Debtor's counsel, date of Disclosure of Compensation form: N/A
8. Date of this Application: 06/17/2009
9. Dates of Services Covered: 05/01/2009 through 06/16/2009

Fees . . .

- | | |
|---|----------------|
| 10. Total Fee Requested for this Period through 03/25/2009 (from Ex. 3) | \$ 22,364.00 |
| 11. Balance Remaining in Fee Retainer Account, not yet awarded | \$(0.00) |
| 12. Fees Paid or Advances for this Period, by other sources | <u>\$ 0.00</u> |
| 13. Net Amount of Fee Requested for this Period | \$ 22,364.00 |

Expenses . . .

- | | |
|---|---------------------|
| 14. Total Expense Reimbursement Requested for this Period | \$ 424.28 |
| 15. Balance Remaining in Expense Retainer Account, not yet awarded | \$(0.00) |
| 16. Expenses paid or Advanced for this Period, by other sources | <u>\$ 0.00</u> |
| 17. Net Amount of Expense Reimbursement Requested for Period | \$ 424.28 |
| 18. Gross Award Requested for this Period | \$ 22,788.28 |
| 19. Net Amount Requested for this Period | \$ 22,788.28 |
| 20. If <u>Final</u> Fee Application, Amounts of Net Awards Requested in Interim Applications but not previously Awarded | <u>\$ 45,395.10</u> |
| 21. Final Fee and Expense Award Requested (#19 and #21) | \$ 68,183.38 |

History of Fees and Expenses

1. Dates, sources and amounts of retainers received:
Applicant received a retainer from the Debtor in the amount of \$57,500.00 on October 12, 2007, which included \$1,039.00 for the Clerk's filing fee. As of the Petition Date, November 29, 2007, Applicant held a balance of \$38,933.00 total cost and fee retainer.
2. Dates, sources and amounts of third party payments received: None
3. Prior Fee and Expense Awards: FIRST INTERIM FEE APPLICATION, as supplemented

Dates covered by first application:	11/01/2007 to 04/30/2008	
Amount of fees requested:	\$226,975.50	
Amount of expenses requested:	\$ 22,768.74	
Amount of fees awarded:		\$181,580.40
Amount of expenses awarded:		\$ 22,768.74
Amount of fee retainer applied:		\$ 16,164.26
Amount of expense retainer applied:		\$ 22,768.74
Fee award, net of retainer applied:		\$165,416.14
Expense award, net of retainer applied:		\$ 0.00
Date of first award:	05/07/2009	
Amount of fees actually paid:		\$150,000.00
(Leaving a balance awarded but not paid of:		\$ 15,416.14)
Amount of expense reimbursement actually paid:		\$ 0.00
Portion of fees requested but not awarded, which applicant wishes to defer to this Final Fee Application:		\$ 45,395.10
Portion of expenses requested but not awarded, which applicant wishes to defer to final fee application		\$ 0.00

FEE APPLICATION

PATRICIA A. REDMOND and STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A., (“Applicant” or “Stearns Weaver”), as counsel for the Debtor-in-Possession, DB ISLAMORADA, LLC (“Debtor”), applies for final compensation for services rendered and costs incurred in this proceeding. This application is filed pursuant to 11 U.S.C. § 330 and Bankruptcy Rule 2016, and meets the requirements set forth in the Guidelines incorporated in Local Rule 2016-1(B)(1). The exhibits attached to this application, pursuant to the Guidelines, are:

Exhibit “1-A” – Summary of Professional Time by Timekeeper for this period and cumulative;

Exhibit “1-B” – Summary of Professional by Task Codes for this period only;

Exhibit “2” – Summary of Requested Reimbursement of Expenses for this period and cumulative

Exhibit “3” – The Applicant’s complete time records, in chronological order, by activity code category, for the time period covered by this application. The requested fees are itemized to the tenth of an hour.

The Applicant believes that the requested fee of \$22,364.00 for 79.20 hours worked for the period May 1, 2009 through June 16, 2009 (“Application Period”), reasonable considering the twelve factors enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Circuit 1974), made applicable to bankruptcy proceedings by *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir. 1977), and is consistent with *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Blum v. Stenson*, 465 U.S. 886, 897 (1984); *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986); and *Norman v. Housing Authority of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988), as more fully discussed hereinafter.

I. BACKGROUND

1. The Debtor was organized and formed as a limited liability company in the State of Florida on or about August 28, 2003. The Debtor was in the business of developing a condominium hotel in Islamorada, Florida (the "Property").

2. Unfortunately, the Debtor's business began to experience cash flow issues, and on November 29, 2008, this case was commenced with the filing of the Debtor's voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor was operating its business and managing its assets as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1008.

3. On January 4, 2008, the Court entered an Order (DE #19) authorizing the Debtor to employ Stearns Weaver as its bankruptcy counsel in this case.

4. The major secured creditor in this case was MAMC, Inc., d/b/a Berman Capital Management as Servicing Agent ("Secured Creditor"), which held:

- a. A first mortgage commonly referred to as the Mortgage Note Series #1 Lenders securing note with the principal balance of \$23,568,000; and,
- b. A second mortgage commonly referred to as the Mortgage Note Series #2 Lenders securing a note with the principal balance of \$1,250,000.

5. The Debtor's other secured creditors in respect of the Property consisted of:

- c. Various mechanic's lienholders holding claims totaling approximately \$600,000; and,
- d. Property tax claimants asserting tax liens totaling approximately \$60,000.

II. SUMMARY OF STEARNS WEAVER'S EFFORTS

6. It was Stearns Weaver's and the Debtor's goal to ensure that the Debtor remains an ongoing viable business. Stearns Weaver and the Debtor firmly believe that the Debtor's filing for bankruptcy protection was the best avenue to achieve the goals of the Debtor to make the necessary improvements to its Property and affect the sales contemplated by the Debtor.

7. Stearns Weaver responded in an expeditious and efficient manner to all of the demands and challenges of maintain the Debtor's business operations and the financing of

necessary expenditures. Moreover, Stearns Weaver amicably resolved and negotiated interim financing issues prior to these issues being brought before the Court.

8. After commencement of this bankruptcy case, with the deepening of the housing crises, came the realization that reorganization would not be feasible and thus the Debtor determined a liquidation or sale of its assets would be necessary. The Property was sold at auction to the Secured Creditor for a credit bid of a portion of its liens in the amount of \$5,000,000, on March 19, 2009, and the sale was approved by Order Approving and Confirming Debtor's Sale of Debtor's Property, Free and Clear of Liens and Encumbrances, Pursuant to 11 U.S.C. § 363, to MAMC, Inc (DE #197).

9. Stearns Weaver and the Debtor have been conscious of the fact that a transaction of this size and complexity is an expensive and lengthy process. As a result, they have expected that issues may arise that add further complications and expense. Indeed, Stearns Weaver has expended substantial time and funds in preparation for the contemplated sale of the Debtor's Property, the auction process and post-auction proceedings. Stearns Weaver has been considerably conscientious of staffing this case in an efficient manner while ensuring the highest quality of legal representation to the Debtor. To achieve that goal, Stearns Weaver designated one lead attorney and one lead paralegal to handle the bankruptcy issues of this Chapter 11 Case. Together, they have developed operational procedures for this Chapter 11 Case, prepared pleadings, documents, and agreements, responded to inquiries, resolved administrative issues, and handled every aspect involving financing and sale, almost all of which occurred on an expedited basis. Stearns Weaver respectfully submits that these services have been invaluable and resulted in significant contributions to this estate.

10. As shown on the time entries attached as Exhibit 3, Stearns Weaver's most significant efforts include the following:

- a) **Post-Petition Financing:** negotiating and obtaining expedited Court approval of the Debtor's much needed use of cash collateral and post-petition financing

which was critical to the Debtor's ability to preserve and maintain the Property until it could be sold. These efforts included negotiations, meetings and conferences with the Debtor, creditors, the secured lenders and their respective counsel; preparation of agreements, motions, orders, and other documents; and attendance at court hearings. As a result of these efforts, the Court entered Orders that were essentially agreed to by all interested parties and authorized the Debtor's to obtain the much needed post-petition financing.

b) **Sale of Properties:** providing legal advice and exhaustive efforts on an expedited basis to the Debtor regarding every aspect of the potential sale of the Property including, (i) negotiating and drafting the Purchase and Sale Agreement; (ii) successfully negotiating agreements with the Mortgage Note Series #1 Noteholders and Mortgage Note Series #2 Noteholders holding mortgages on the Debtor's Property regarding their claims, liens, and terms and provisions of the sale; (iii) preparing and filing a detailed motion to sell the Property requesting that the Court establish the necessary complex guidelines for interested purchasers to become qualified bidders, establish specific bidding procedures, and schedule an expedited auction; (iv) negotiating and amicably resolving all objections to the manner of the sale and terms and provisions of the sale motion and related orders; and (v) preparing other sale documents, responding to interested purchasers, and assisting with due diligence efforts. As a result of these efforts, the auction sale of the Property occurred on March 19, 2009 and the Secured Creditor MAMC credit bid \$5,000,000 for the Property. Subsequent to the auction sale, Stearns Weaver was required to expend approximately (40) hours in defending against an ill-founded objection and motion to strike sale raised by one of the qualified bidders.

c) **Case Administration:** spending extensive time to properly prepare the Schedules, Statements of Financial Affairs, and Amended Schedules for the Debtor, compiling all necessary information to comply with the U.S. Trustee Guidelines, and

communicating regularly with the U.S. Trustee's Office, all counsel of record, and interested parties. Stearns Weaver believes that these efforts greatly assisted the U.S. Trustee in reaching its decision not to appoint a Creditors' Committee, facilitated an orderly and uneventful 341 meeting of creditors, helped resolve many creditor inquiries, and promoted the smooth administration of this Chapter 11 Case; and

d) **Preservation of Assets:** Applicant also was involved in negotiations, discovery and litigation with respect to the Concorde Wilshire deposit of \$500,000, resulting in a recovery pursuant to a settlement of \$250,000 plus interest. Moreover, Applicant has defended against the surcharge attempts by Freight Logistics and will submit its prospective opinion in the next week.

11. Stearns Weaver respectfully submits that its efforts during this case have helped to conserve resources for the benefit of the Debtor's estate and preserve the Debtor's assets. Importantly, the Debtor requested that Stearns Weaver essentially perform what was expected to be a restructuring, and then liquidation in less than one year, handle the case administration process and minimize party objections in order to provide for a smooth court process. Stearns Weaver believes it has delivered on all of those tasks and more.

III. RELIEF REQUESTED

12. By way of this Fee Application, Stearns Weaver seeks Court approval and allowance of legal fees in the amount of \$22,364.00 and costs in the amount of \$424.28, totaling \$22,788.28, for services rendered during the Application Period for which no previous application has been made, allowance of the fees in the amount of \$45,395.10 previously requested but not awarded (holdback) from Stearns Weaver's First Interim Application, and ratification of the fees and expense previously awarded in this case.

13. On February 5, 2008, Stearns Weaver filed its Disclosure of Compensation of Attorney for Debtor (DE #14) which discloses the amounts paid to Stearns Weaver pursuant to its prepetition fee agreement with the Debtor.

14. Stearns Weaver has not entered into any agreement, written or oral, express or implied, with the Debtor, or any other party in interest, or any attorneys of such parties, for the purpose of fixing the amount of any of the fees or other compensation to be allowed or paid from the assets of the Debtor.

IV. FACTORS TO BE CONSIDERED

A. Time and Labor Required

15. The transcribed time records and detail of services rendered, which are attached hereto as Exhibit 3, show that Stearns Weaver has devoted a total of 79.20 hours of time to serving the Debtor during this Application Period, including attorney and paraprofessional time. All time has been broken down by categories pursuant to this Court's Guidelines.

16. Patricia Redmond, as lead attorney for the Debtor, has personally handled practically every bankruptcy matter in this case. The representation of the Debtor by primarily one attorney who is the most familiar with all of the issues not only benefits the Debtor, the Court, and interested parties, but provides consistent representation on behalf of the estate in the most economical manner. While a majority of the attorney hours expended by Stearns Weaver are those of Patricia Redmond, certain other attorneys have devoted limited time on an as-needed basis with respect to certain issues involving the sale of the Debtor's Property, including Jason Post who handled all of the Florida real estate issues in timely manner in light of the various emergency issues. Also, virtually all of the paraprofessional time was expended by only one paralegal.

17. The expertise and qualifications of Stearns Weaver's bankruptcy attorneys are well known to this Court. Due to their professional skill and experience in the representation of trustees, debtors, creditors, and creditor committees in bankruptcy proceedings, they have been able to efficiently and successfully represent the Debtor with having to engage only limited legal services from other attorneys in the firm.

B. The Novelty and Difficulty of the Questions Presented

18. There were few novel questions presented by this cause; however the resolution of the issues presented would substantially affect the Debtor's ability to sell its Property, and pay its creditors. Moreover, the issues required immediate attention and were the subject of emergency motions, negotiations, or meetings. The Chapter 11 case is subject to a Receivership proceeding and thus the outcome in the case, likely to be a dismissal, will result in the assets becoming part of the Receivership assets.

C. Skill Requisite to Perform Legal Services Properly

19. In order to perform properly the services rendered for the benefit of the Debtor, Stearns Weaver has been required to draw upon the judgment, experience and substantive legal knowledge of its attorneys specializing in the field of bankruptcy, real estate, secured transactions, and tax and employee benefits. Stearns Weaver's bankruptcy shareholders, Patricia Redmond and Andrew McNamee have represented debtors in other bankruptcy cases and specialize in the fields of bankruptcy and creditors' rights, litigation, lending and secured transactions. They each have appeared continually before this Court for several years. Stearns Weaver's transactional shareholders, Richard Alhadeff and Robert Weissler are expert in their field of practice. The quality of legal services performed in this case and the results obtained attest to Stearns Weaver's expertise and skill. Moreover, the benefits of a competent and qualified staff afforded Stearns Weaver through a large firm enabled it to perform qualified legal services in an expeditious, efficient, and cost-effective manner for the benefit of these estates.

D. Preclusion of Other Employment by the Professional Due to Acceptance of Case

20. The commitment of time and resources necessary to provide expert legal representation to the Debtor has required Stearns Weaver's attorneys and paralegals to devote a significant portion of their time to this case. As a result of these demands, the involvement by professionals other cases undertaken by Stearns Weaver has been limited. However, as a firm,

Stearns Weaver has not been precluded from any other employment due to the acceptance of this case.

E. Customary Fee

21. The rates charged by Stearns Weaver as set forth in the composite exhibits are well within the range charged by attorneys in the Southern District of Florida of similar skill and reputation in the area of bankruptcy, debtor/creditor and commercial law and are the ordinary and usual hourly rates billed by Stearns Weaver to both its debtor and non-debtor clients. Stearns Weaver respectfully submits that the overall blended hourly rate of \$282.37 during the Application Period, including attorneys and paraprofessionals, not only compares favorably to rates customarily charged within this district in cases of similar size and nature, but is actually quite less.

F. Whether Fee Is Fixed or Contingent

22. The fee is on an hourly basis pursuant to § 330 of the Bankruptcy Code and is entirely contingent based upon the Court's approval and the liquidation and recovery of assets in these estates.

G. Time Limitations Imposed by the Client or the Circumstances

23. Stearns Weaver respectfully submits that it has handled all time limitations and emergencies expeditiously and efficiently and obtained excellent results that are beneficial to the creditors of this estate.

H. Experience, Reputation and Abilities of Attorneys

24. Stearns Weaver is an established commercial law firm having substantial experience in bankruptcy, banking, corporate, real estate, tax and the many other disciplines required of counsel for the Debtor in this bankruptcy case. Stearns Weaver's bankruptcy shareholders enjoy an excellent reputation of the highest caliber as experienced practitioners in the field of bankruptcy in South Florida and elsewhere. The quality of the work performed by Stearns Weaver in this proceeding attests to their experience, reputation and ability.

I. Undesirability of the Case

25. Stearns Weaver does not find it undesirable to represent the Debtor in this bankruptcy case. It has been Stearns Weaver's pleasure to represent the Debtor in this matter.

J. Nature and Length of Professional Relationship with Client

26. As disclosed in Stearns's Weaver Affidavit filed in connection with its employment by the Debtor pursuant to 11 U.S.C. § 327(a), Stearns Weaver has represented the Debtor's former Manager, Alan L. Goldberg as Trustee on various matters totally unrelated to this Debtor, its creditors or the bankruptcy estate.

K. Awards in Similar Cases

27. The amount applied for by Stearns Weaver is reasonable in terms of awards in similar cases where similar results have been obtained. The fees requested by Stearns Weaver comport with the mandate and spirit of the Bankruptcy Code which directs that services be evaluated in the light of comparable services performed in bankruptcy cases in the community.

L. Amounts Involved and Results Obtained

28. As detailed throughout this Fee Application, Stearns Weaver has provided competent legal advice and assisted the Debtor in accomplishing its duties under the Bankruptcy Code. All of Stearns Weaver's efforts and the results obtained are stated in detail above. For the purposes of brevity, they are not repeated here.

29. The services rendered by Stearns Weaver were necessary and reasonable. Further, Stearns Weaver respectfully submits that it has rendered all services in the most cost-effective manner possible in order to preserve the assets of these estates, while at the same time thoroughly investigating and prosecuting matters as needed to protect the creditors of these estates.

30. In further justification of the fees requested, Stearns Weaver respectfully requests that this Court take notice that Stearns Weaver maintains an office in a prime commercial location with library facilities and a staff including secretarial, clerical, word-processing, in-

house courier services, and other support personnel. None of these services is subject to compensation or reimbursement under this Court's mandatory guidelines, and a substantial portion of whatever hourly fee may be allowed Stearns Weaver by this Court will merely go to defray these significant overhead charges.

M. Applicable Legal Standard

31. Under the Bankruptcy Code, the applicable legal standard for determining reasonable compensation is set forth in 11 U.S.C. § 330, which states that reasonable compensation shall be based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under Title 11 of the United States Code, and reimbursement for actual, necessary expenses incurred. All of these criteria have been addressed in this Fee Application, and Stearns Weaver respectfully requests that it be granted all fees and expenses requested herein based on the nature and results of its representation of Debtor, the time invested in this case, and the necessity and reasonableness of the fees and expenses incurred.

IV. RESERVATION OF RIGHT TO SUPPLEMENT AND CONCLUSION

32. Stearns Weaver reserves the right to file additional or supplemental fee applications requesting awards of compensation and reimbursement of expenses for items inadvertently omitted and for subsequent periods through the termination of employment in this case.

WHEREFORE, Patricia A. Redmond, Esq., and the law firm of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., as counsel on behalf of the Debtor, request to be allowed final compensation for legal services in the amount of \$22,364.00 and costs in the amount of \$424.28, totaling \$22,788.28, for services rendered during the Application Period for which no previous application has been made; allowance of the fees in the amount of \$45,395.10 previously requested but not awarded (holdback) from Stearns Weaver's First Interim

Application; and ratification of all fees and expense previously awarded in this case, as part of the costs and expense of administering this estate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 17, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and parties-in-interest registered to receive Notices of Electronic Filing generated by CM/ECF in this case.

Respectfully submitted,

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Museum Tower, Suite 2200
150 West Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3200
Facsimile: (305) 789-3395

By: /s/ Patricia A. Redmond .
PATRICIA A. REDMOND, FBN 303739
predmond@swmwas.com

CERTIFICATION

1. I have been designated as the professional with responsibility in this case for compliance with the “Guidelines for Fee applications for Professionals in the Southern District of Florida in Bankruptcy” (the “Guidelines”).

2. I have read the Applicant’s application for compensation and reimbursement of expenses (the “Application”). The Application complies with the Guidelines, and the fees and expenses sought fall within the Guidelines, except as specifically noted in this certification and described in the Application.

3. The fees and expenses sought are billed at rates and in accordance with practices customarily employed by the Applicant and generally accepted by the Applicant’s clients.

4. In seeking reimbursement for the expenditures described on Exhibit 2, the Applicant is seeking reimbursement only for the actual expenditure and has not marked up the actual cost to provide a profit or to recover the amortized cost of investment in staff time or equipment or capital outlay (except to the extent that the Applicant has elected to charge for in-house photocopies and outgoing facsimile transmissions at the maximum rates permitted by the Guidelines).

5. In seeking reimbursement for any service provided by a third party, the Applicant is seeking reimbursement only for the amount actually paid by the applicant to the third party.

6. The following are the variances with the provisions of the Guidelines, the date of each court order approving the variance, and the justification or the variance: NONE.

By: /s/ Patricia A. Redmond .
PATRICIA A. REDMOND, FBN 303739
predmond@swmwas.com

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