



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
August 19, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 18-12734-MKN
)	Chapter 11
SCHULTE PROPERTIES LLC,)	
)	
Debtor.)	Date: July 27, 2022
)	Time: 9:30 a.m.
)	

**ORDER ON APPLICATION TO MODIFY EMPLOYMENT OF
DEBTOR’S SPECIAL LITIGATION COUNSEL¹**

On July 27, 2022, the court heard the Application to Modify Employment of Debtor’s Special Litigation Counsel (“Modification Application”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On May 10, 2018, Schulte Properties LLC (“Debtor”) filed a voluntary Chapter 11 petition through its bankruptcy counsel, the law firm of Johnson & Gubler, P.C. (“Johnson Firm”). (ECF No. 1). On May 24, 2018, Debtor filed its schedules of assets and liabilities (“Schedules”), Statement of Financial Affairs (“SOFA”),² and other required information.³ A

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

² Item 28 of the SOFA attests that 100% of the interest in the Debtor is held by Melani Schulte who serves at the manager of the limited liability company.

³ FRBP 1007(c) allows a debtor to, within 14 days of filing a voluntary bankruptcy petition, file “the schedules, statements, and other documents” as required under this rule.

1 deadline of September 12, 2018, was set for any creditor to file a proof of claim.

2 On June 28, 2018, an order was entered authorizing the Debtor to employ the Johnson
3 Firm as its Chapter 11 bankruptcy counsel. (ECF No. 47).

4 On January 4, 2019, an order was entered authorizing the Debtor to employ the law firm
5 of Kellett & Bartholow PLLC (“Kellett Firm”) as special counsel to pursue claims against
6 various lenders and loan servicers with respect to the many residential real properties held by the
7 Debtor. (ECF No. 154).

8 On September 10, 2019, an order was entered authorizing the Kellett Firm to withdraw as
9 special counsel. (ECF No. 583).

10 On April 13, 2021, Debtor filed another application to employ (“Employment
11 Application”) different special counsel, attorney Matthew Carlyon, whose supporting declaration
12 is attached thereto (“First Carlyon Declaration”). (ECF No. 843). The Employment Application
13 is signed by Melani Schulte as managing member of the Debtor.⁴ Part IV of the Employment
14 Application states the scope of counsel services to be as follows:

- 15 1. Prepare approximately 30 claims objections on behalf of the Debtor
16 (emphasis added);
- 17 2. If requested to institute, prosecute or defend any lawsuits, adversary
18 proceedings and/or contested matters arising out of this bankruptcy
19 proceeding in which the Debtor may be a party;
- 20 3. If requested, to pursue the Debtor’s claims against third parties, including
lenders and servicers, as set forth on Debtor’s Schedule B; and
- 21 4. To assist Debtor’s bankruptcy counsel, and advise the Debtor, as may
22 become necessary in this bankruptcy proceeding.

21 Debtor filed its voluntary petition on May 10, 2018. (ECF No. 1). Debtor filed its Schedules,
22 SOFA, and other documents on May 24, 2018. (ECF No. 26).

23 ⁴ Debtor filed an ex parte motion for an order shortening time so that the Application
24 could be heard on an expedited basis. (ECF No. 844). The court granted the ex parte request,
25 setting the hearing for April 28, 2021. (ECF No. 847). The court required proposed special
26 counsel to file a supplemental verification of his connections with the Johnson Firm. On April
27 16, 2021, Debtor filed a supplemental declaration from attorney Carlyon (“Second Carlyon
28 Declaration”). (ECF No. 849). On April 16, 2021, Debtor also filed the declaration of its lead
Chapter 11 counsel, Matthew Johnson (“First Johnson Declaration”). (ECF No. 850). Both
declarations establish that attorney Carlyon previously was employed by the Johnson Firm from
June 3, 2013 to August 8, 2014. The First Johnson Declaration also attested to Chapter 11
counsel’s understanding of the scope of attorney Carlyon’s proposed services as special counsel.

1 Application at 2:19-25. Part VI of the Employment Application states in pertinent part the terms
2 of employment and arrangement of compensation for special counsel as follows:

- 3 1. Counsel has received no retainer, however requires a retainer of
4 \$60,000.00, which will be billed on a flat-fee basis for all claims
5 objections deemed appropriate by the Debtor. Debtor may seek separate
6 approval from the Court for post-petition DIP financing for the payment
7 of a retainer to proposed special counsel for any additional work outside
8 the claims objections.
- 9 2. Applicant wished to retain said professional persons on a flat-fee basis
for all claims objections, and for any other work outside the claims
objection process, under a general retainer, at the hourly rates charged by
said professional persons, due to the unknown length and extent of service
performed by said professional persons for Applicant.

10 Employment Application at 3:11-24. The declaration attached to the Employment Application
11 states that proposed special counsel “has not received any retainer from or on behalf of the
12 Debtor, however Matthew Carlyon does require a retainer of \$60,000.00 flat-fee retainer prior to
13 the commencement of work in this case.” First Carlyon Declaration at ¶ 7. The declaration of
14 Chapter 11 counsel accompanying the Employment Application justified the flat fee arrangement
15 by attesting, in pertinent part, as follows:

- 16 • The Debtor is attempting to retain Mr. Carlyon on a flat-fee basis for
17 \$60,000.00 to prepare and argue claim objections for the Debtor.
(Emphasis added.)
- 18 • It is anticipated that there will be approximately thirty (30) claim
19 objections in this matter, each of which will require the special litigation
20 counsel, Matthew Carlyon, to extensively track the accounting of the
21 individual loans from the date of the conformation[sic] order, March 8,
22 2011 forward. Many of the loans have been transferred on multiple
23 occasions.
- 24 • Additionally, it is expected that each claim objection will require
25 significant work to adequately respond to as the loans span over a ten (10)
26 year time period and many have been transferred by the original loan
27 servicer, requiring additional work to track the full accounting of each
28 loan.
- By way of example, in the Citibank matter, brought in the individual case
of Melani Schulte, it took her retained counsel, Christopher Burke, over
two (2) weeks of work to prepare just one motion.
- Further, Karen Kellet, former special counsel of the debtor, billed over
\$60,000.00 in work during her first month on this matter. The debtor is
unable to afford those services, and therefore she is no longer assisting
the Debtor.

- The substantial amount of work required in this matter, if billed by the hour, would likely produce an exorbitant bill for the debtor. The proposed flat-fee retainer of \$60,000.00 to employ special litigation counsel is immensely beneficial to the debtor, as there is a known amount to be charged, which the Debtor believes will be significantly less than if billed hourly.⁵
- Johnson & Gubler, P.C. will take measure to not duplicate the work being performed by Mr. Carlyon.

First Johnson Declaration at ¶¶ 4, 5, 6, 7, 8, 9, and 10.

On April 28, 2021, an order was entered granting the Employment Application to employ attorney Carlyon as special counsel (“Special Counsel Employment Order”). (ECF N0. 853).

On July 7, 2021, an order was entered approving the substitution of the law firm of Foran Glennon Palandech Ponzi & Rudloff PC (“Foran Firm”) as special counsel in place of attorney Carlyon (“Foran Substitution Order”). (ECF No. 875).⁶

On April 29, 2022, Debtor filed a first interim application to approve compensation of the Foran Firm as special counsel (“Foran Fee Application”)⁷ and noticed it to be heard on June 1,

⁵ Given the representation that 30 claim objections would be prepared, the \$60,000 flat fee is equivalent to an average fee of \$2,000 per objection. Because a filed proof of claim signed under penalty of perjury constitutes prima facie evidence of the validity and amount of the claim, see FED.R.BANKR.P. 3001(f), an objecting party cannot simply file an objection, but must present sufficient evidence to overcome the effect of the signed proof of claim. The time required to prepare the claim objections in this case was well-known to the Debtor given its express concerns about the amount billed by prior special counsel as well as the time expended by attorney Burke in the related proceeding. Despite such concerns, the \$60,000 flat fee agreement was reached.

⁶ After the Special Counsel Employment Order was entered, attorney Carlyon filed an ex parte stipulation on June 14, 2021, signed by the Debtor’s principal, authorizing the Foran Firm to substitute as special counsel (“Substitution Stipulation”). (ECF No. 866). Attached to the Substitution Stipulation was another declaration from attorney Carlyon attesting that he had joined the Foran Firm and that the Foran Firm: “has received a flat-fee retainer payment of \$60,000. This amount is and shall be held in trust until interim and/or final approval of fees in this matter by this Court. The source of this payment is the Debtor.” Substitution Stipulation at 5:22-23 and 6:20-22.

⁷ Attached to the Foran Fee Application is a declaration from attorney Carlyon (“Third Carlyon Declaration”) authenticating the hourly billing statements submitted, and that the firm had billed \$83,197.08 in total attorney’s fees and costs. Attorney Carlyon also states that “Pursuant to the flat-fee agreement between Foran Glennon and Debtor, the fees should be capped at \$60,000 in this matter.”

1 2022. (ECF Nos. 1025 and 1026).⁸

2 On May 4, 2022, Debtor filed the instant Modification Application and noticed it to be
3 heard on June 15, 2022. (ECF Nos. 1037 and 1038). The Modification Application is signed by
4 Melani Schulte as managing member of the Debtor.

5 On May 30, 2022, the Office of the United States Trustee filed an objection (“UST
6 Objection”) to the Modification Application. (ECF No. 1048).

7 On May 31, 2022, and June 1, 2022, joinders in the UST Objection were filed by various
8 creditors that held claims secured by deeds of trust against the Debtor’s properties. (ECF Nos.
9 1050, 1051, 1052, and 1054)

10 On June 1, 2022, an interim order was entered granting the Foran Fee Application in the
11 total amount of \$60,000.00.⁹ (ECF No. 1053).

12 On June 8, 2022, Debtor filed a reply in support of the Modification Application.¹⁰ (ECF
13 No. 1057).¹¹

14 _____
15 ⁸ Special counsel sought compensation for a total of **236.1 hours** of legal services
16 provided by attorney Carlyon from June 10, 2021 to January 31, 2022, regarding the preparation
17 of approximately 32 claim objections. See Foran Fee Application at Section VII and IX. Of the
18 236.1 total hours, 142.8 hours were spent drafting the claim objections supported by 83.7 hours
19 of document review and 18 hours of legal research. Id. at Section IX (2). According to the
20 billing statement of the Foran Firm, all of those services were completed by January 31, 2022.
21 Id. at Exhibit 1.

22 ⁹ Interim fee allowances in a Chapter 11 proceeding are not final. Final approval of fees
23 is required and any previously fees approved on an interim basis are subject to disgorgement if
24 they are determined to be excessive. See 11 U.S.C. §330(a)(5).

25 ¹⁰ Attached to the reply is another declaration from attorney Johnson dated June 6, 2022
26 (“Second Johnson Declaration.”). He attests that his law partner is unavailable due to a personal
27 loss and that the law firm will be unable to litigate the various claim objections prepared by
28 special counsel. Id. at ¶ 9.

25 ¹¹ Also attached to the reply is another declaration from attorney Carlyon dated June 6,
26 2022 (“Fourth Carlyon Declaration”). He attests that the Foran Firm never contemplated
27 performing the services excluded by its contract with the Debtor for the \$60,000.00 flat fee. Id.
28 at ¶ 14. Attached to that declaration are copies of two documents, the first of which is a copy of
an Attorney-Client Employment Contract between attorney Carlyon and Melani Schulte
 (“Carlyon Employment Contract”), individually, as well as Schulte Properties LLC. Both
 Melani Schulte and Schulte Properties are identified as the Client. That contract bears the April

1 On June 15, 2022, the hearing on the Modification Application was continued to July 13,
2 2022.

3 On July 6, 2022, Debtor filed a supplemental declaration of Matthew Johnson in support
4 of the Modification Application (“Third Johnson Declaration”). (ECF No. 1089).

5 On July 13, 2022, the hearing on the Modification Application was further continued to
6 July 27, 2022.

7 On July 26, 2022, Debtor filed a further supplemental declaration of Matthew Johnson
8 (“Fourth Johnson Declaration”) in support of the Modification Application. (ECF No. 1096).

9 **DISCUSSION**

10 Debtor seeks to modify special counsel’s employment from the flat fee previously agreed
11 and approved by the court in favor of an hourly fee to perform tasks that allegedly were excluded
12 from the prior arrangement. There is no dispute that special counsel agreed to provide specific
13 services for a flat fee of \$60,000. The original Employment Application was clear about special
14 counsel’s services: to prepare “approximately 30 claims objections on behalf of the Debtor.”
15 Attorney Carlyon was clear that he required “a retainer of \$60,000.00 flat fee retainer prior to the
16 commencement of work in the case.” Neither the Employment Application specified nor
17 attorney Carlyon testified that the services would include matters beyond preparation of the
18 claim objections.

19 In his declaration filed in support of the Employment Application, however, attorney
20 Johnson expressly attested that special counsel was being paid the \$60,000.00 flat fee “to prepare
21 and argue claim objections for the Debtor.” Attorney Johnson also represented that special
22 counsel’s work would require him “to extensively track the accounting of the individual loans”
23 and that “each claim objection will require significant work to adequately respond to as the loans

24 _____
25 7, 2021 signatures of Melani Schulte, individually, as well as Schulte Properties LLC through its
26 managing member, Melani Schulte, and also the signature of attorney Carlyon. The second
27 document is a copy of a letter dated June 3, 2021, whereby Melani Schulte, individually, and
28 Schulte Properties, agree that the prior contract would be modified to substitute the Foran Firm.
Under the contract, counsel’s representation of the client specifically excludes, *inter alia*, the
filing of the claim objections prepared by counsel as well as any litigation regarding the
objections, such as reviewing any creditor responses, preparing and filing any replies, or
appearing at any hearings or negotiations that occur as a result of the objections.

1 span over a ten (10) year period...requiring additional work to track the full accounting of each
2 loan.” Attorney Johnson described the additional work required of special counsel by comparing
3 the two weeks of work required of attorney Christopher Burke to prepare a motion dealing with
4 the claim of Citibank in the separate Chapter 11 proceeding of the Debtor’s principal. Attorney
5 Johnson also attested that the Debtor was unable to afford the \$60,000.00 for one month of work
6 billed by prior special counsel, and represented that the \$60,000.00 flat fee “is immensely
7 beneficial to the debtor, as there is a known amount to be charged, which the Debtor believes
8 will be significantly less than if billed hourly.”

9 The UST maintains that the original Employment Application provided for special
10 counsel not only to prepare any required claim objections, but also to argue the merits of any
11 claim objections. See UST Objection at ¶ 13. It relies on the Supplemental Johnson Declaration
12 that was filed in support of the original Application. As noted above, that declaration from
13 Chapter 11 counsel attested that special counsel would not only prepare the claim objections, but
14 also would “argue” the objections. Id. at ¶ 4. Moreover, the UST maintains that the Debtor has
15 filed only two claim objections during the case, one of which was withdrawn. Id. at ¶ 18. The
16 UST apparently implies that much of the work for which special counsel was employed, i.e., to
17 prepare thirty claim objections for the \$60,000 flat fee, has never been performed. The UST
18 argues that based on the original Employment Application and the representations of attorney
19 Johnson, special counsel is obligated to prepare any additional claims objections and to argue the
20 claim objections for the \$60,000 flat fee that special counsel already has been paid.¹²

21 In response to the UST’s objection, Debtor filed the Third Johnson Declaration on July 6,
22 2022, and the Fourth Johnson Declaration on July 26, 2022.

23
24 ¹² Unless attorneys divide their responsibilities in the barrister and solicitor roles of
25 English legal practice, see M. Schwarzschild, “The English Legal Professions: An Indeterminate
26 Sentence,” 1998 WL 911905, at *253 (Apr. 1, 1998)(solicitors “advise clients, negotiate and
27 draft documents, interview witnesses, and prepare cases whose actual trial will be conducted by
28 barristers.”), the scope of an agreement to “argue” a claim objection is unclear at best. By its
nature as a contested matter, a claim objection encompasses the rules of discovery that are akin
to typical civil litigation responsibilities rather than just showing up at court to present argument.
See FED. R. BANKR. P. 9014(c).

1 The Third Johnson Declaration attaches an “Attorney-Client Employment Contract” from
 2 special counsel dated on or about June 28, 2022 (“Foran Contract”).¹³ With respect to the claim
 3 objections in this Chapter 11 proceeding, Section IV of the agreement provides for the Foran
 4 Firm¹⁴ to provide “First-Tier Representation” consisting of the following:

5 Preparation of objections to the Claims (the “Objections”). The First-Tier
 6 Representation consists of the necessary organization of documents, legal
 7 research, and drafting of the Objections. These drafts will be submitted to
Client’s Bankruptcy Counsel, who is expected to file and litigate those
Objections.

8 See Foran Contract at §IV.A. (Emphasis added.) The agreement then provides for special
 9 counsel to provide “Second Tier Representation” consisting of the following:

- 10
- Filing the Objections with the appropriate Bankruptcy Court.
 - Representing Schulte Properties in litigation regarding the Objections, including, but not limited to, reviewing any creditor’s response to the Objections, preparing and filing any reply to those responses, appearing at appropriate hearings, and participating in any arbitration, mediation, or negotiation which occurs as a result of the Objections.

14

15 ¹³ The contract identifies the “Client” as Melani Schulte, an individual, as well as the
 16 Debtor, Schulte Properties LLC. The contract is signed by Melani Schulte, individually, as well
 17 as Schulte Properties through its managing member, Melani Schulte. A chapter 11 debtor in
 18 possession, however, has a fiduciary duty to all of its creditors, and not to an individual Chapter
 19 11 debtor or the owners of a non-individual Chapter 11 debtor. See generally Woodson v.
 20 Fireman’s Fund Ins. Co. (In re Woodson), 839 F.2d 610, 614 (9th Cir. 1988) (“As debtor in
 21 possession he is a trustee of his own estate and therefore stands in a fiduciary relationship with
 22 his creditors.”). Moreover, counsel authorized to represent a non-individual Chapter 11 debtor
 23 has a duty to the Chapter 11 debtor, not the owners of the debtor. See Everett v. Perez (In re
 24 Perez), 30 F.3d 1209, 1219 (9th Cir. 1994). Prior to the filing of the Third Johnson Declaration,
 25 a copy of the Foran Contract had never been disclosed. Likewise, prior to the filing of the Third
 26 Carlyon Declaration, a copy of attorney Carlyon’s attorney-client employment contract had
 27 never been disclosed. The Substitution Stipulation previously filed with the court on June 14,
 28 2021, see discussion at note 6, supra, obviously did not include the Foran Contract because that
 document was never signed until more than a year later. In other words, this is the first
 disclosure that the Foran Firm represents or intends to represent both Melani Schulte individually
 and Schulte Properties as the debtor in possession. This also is the first disclosure that attorney
 Carlyon represented or intended to represent both Melani Schulte individually and Schulte
 Properties as the debtor in possession. Nothing of the sort was authorized by the Special
 Counsel Employment Order nor the Foran Substitution Order.

¹⁴ The contract separately identifies “Bankruptcy Counsel” as Matthew L. Johnson, Esq.
 of Johnson & Gubler, P.C.

- Representing Client in any adversary proceeding(s) which may be filed as a direct result of the Objections.

Foran Contract at §IV.B. (Emphasis added.)¹⁵

The Fourth Johnson Declaration now states that the First Johnson Declaration filed on April 16, 2021 was in error in multiple, significant respects. First, attorney Johnson now attests that attorney Carlyon’s flat fee encompassed only the preparation of the thirty claim objections, but that attorney Carlyon would be paid on an hourly basis if, and only if, attorney Carlyon was requested to argue the objections. See Fourth Johnson Declaration at ¶ 2. Second, the \$60,000 flat fee for preparation of the claim objections substantially underestimated the work required to do so. Id. at ¶ 4.¹⁶ Third, because of the volume of documents and information reviewed to prepare the claim objections, it makes more sense for attorney Carlyon to argue the objections rather than the Johnson Firm. Id. at ¶ 5. Finally, attorney Johnson attests that he and the Debtor’s principal, as well as attorney Carlyon, have reached the conclusion that attorney

¹⁵ It is not entirely clear why the Johnson Firm would be required to file the claim objections as part of the “First-Tier Representation” while the Foran Firm would be required to both file and litigate the claim objections as part of the “Second Tier Representation.” Presumably, the Johnson Firm as Chapter 11 counsel always wants to monitor if and when claim objections are filed in the case.

¹⁶ The Carlyon Employment Contract specifically discussed the \$60,000 flat fee as follows:

Due to the voluminous nature of the documents, records, and legal research which are contemplated to be involved in the Representation, the Parties are unable to accurately predict the total attorney hours which will be required to complete the Representation, but the Parties accept Bankruptcy Counsel’s estimation of those hours at 300.

Attorney shall perform work, pursuant to Section III of this agreement, at the rate of \$350/hour (the “Rate”). Attorney agrees to limit all fees and expenses to a total of \$60,000, unless substantial and unforeseen circumstances arise, which would place an untenable financial strain on Attorney, such as a significant increase in the necessary attorney hours beyond 300, substantial and unexpected expenses, or other unexpected matters which naturally tend to create significant financial burdens.

See Carlyon Employment Contract at §IV (emphasis added).

1 Carlyon should be the one to argue any claim objections because he is the most familiar with
2 them. Id. at ¶ 6.

3 The court having considered the record, as well as the written and oral arguments
4 presented, concludes that the Modification Application should be granted in part as set forth
5 below.

6 Debtor's request is based on the fundamental premise that the Johnson Firm now lacks
7 sufficient personnel to provide the services necessary to complete the Chapter 11 proceeding.
8 Debtor previously determined that over thirty claim objections are necessary but the Johnson
9 Firm represents that the services of attorney Carlyon are now necessary to efficiently litigate the
10 necessary claim objections. No one seems to dispute that qualified counsel is required to
11 prosecute the claim objections nor that attorney Carlyon is qualified to do so. No one seems to
12 dispute that qualified counsel (including members of the Johnson Firm) would bill at the hourly
13 rate charged by attorney Carlyon, or perhaps more. No one disputes that the Johnson Firm no
14 longer has one of its two named partners available to assist attorney Johnson in representing the
15 Debtor in this proceeding.

16 No one disputes that there was no express language in the Employment Application nor
17 in the Special Counsel Employment Order that required special counsel to provide services
18 beyond the preparation of the claim objections. Likewise, no one disputes that there was no
19 language in the Carlyon Employment Contract stating that attorney Carlyon would provide
20 additional services. No one disputes that attorney Johnson's language that the \$60,000 flat fee
21 was for attorney Carlyon to "prepare and argue" claim objections, see First Johnson Declaration
22 at ¶ 4, supra, is not reflected in the language of the Employment Application, the Carlyon
23 Employment Contract, or the Special Counsel Employment Order.

24 No one disputes, however, that special counsel specifically contracted with the Debtor to
25 prepare the claim objections required in the case in exchange for a flat fee of \$60,000. No one
26 disputes that the flat fee was based on an estimate of 300 hours of services required. See
27 discussion at note 16, supra. No one disputes that an "untenable financial strain" would exist
28 under the Carlyon Employment Contract only if, for example, there was "a significant increase in

1 the necessary attorney hours beyond 300.” Id. No one disputes that special counsel expended a
2 total of 236.1 hours through January 31, 2022 to prepare approximately 32 claim objections. See
3 discussion at note 8, supra. No one suggests that an untenable financial strain has arisen within
4 the meaning of the Carlyon Employment Contract that would preclude special counsel from
5 completing the contract. More important, no one disputes that the \$60,000 flat fee was paid by
6 the Debtor.

7 The bottom line is that the court granted the Employment Application rather than what
8 was asserted in the First Johnson Declaration. The Special Counsel Employment Order makes
9 no reference to nor does it incorporate the First Johnson Declaration. Special counsel is
10 obligated, however, to prepare all of the claim objections for the agreed fee. By its nature, a flat
11 fee arrangement assures the attorney of being paid a fixed price for services to be rendered and
12 assures the client that it will not be charged beyond the fixed price for the services to be
13 performed. An attorney is required by rules of professional responsibility to provide competent
14 services regardless of the amount of fees paid by a client and the performance of such services
15 are subject to the various standards, including under Rule 11, regardless of the views of the
16 client. In other words, special counsel must competently perform the services that it agreed for
17 the agreed flat fee it was paid. Special counsel is not precluded from seeking payment at its
18 hourly rate for services beyond the preparation of the claim objections.

19 Under these circumstances, the court will grant the Modification Application to authorize
20 the Debtor to employ special counsel at the hourly rate proposed in the Foran Contract to
21 represent the Chapter 11 estate in its prosecution of the claim objections encompassed by the
22 Special Counsel Employment Order. This authorization does not excuse special counsel from
23 completing its preparation of all the claim objections that were encompassed by the Employment
24 Application.

25 **IT IS THEREFORE ORDERED** that the Application to Modify Employment of
26 Debtor’s Special Litigation Counsel, Docket No. 1037, be, and the same hereby is, **GRANTED**
27 in part as provided above.

1 **IT IS FURTHER ORDERED** that all other relief requested in the Modification
2 Application is **DENIED**.

3
4 Copies sent via CM/ECF ELECTRONIC FILING

5 Copies sent via BNC to:
6 SCHULTE PROPERTIES LLC
7 ATTN: OFFICER OR MANAGING AGENT
8 9811 W. CHARLESTON BLVD STE 2-351
9 LAS VEGAS, NV 89117

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