

Fill in this information to identify the case:

Debtor MS Leisure Company

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 25-10610

**Modified Official Form 410
Proof of Claim**

12/24

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	Festival Fun Parks, LLC _____ Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? Festival Fun Parks, LLC Barry S. Turner PO Box 330189 Miami, FL 33233 Contact phone <u>3056994392</u> Contact email <u>bt@bstpa.com</u>	Where should payments to the creditor be sent? (if different) Festival Fun Parks, LLC Thomas Johnson 285 East Waterfront Drive, Suite 150 Homestead, PA 15120 Contact phone _____ Contact email <u>See summary page</u>
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _ _ _ _

7. How much is the claim? \$ 218,685.42. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

See summary page

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/16/2025
MM / DD / YYYY

/s/Thomas Johnson
Signature

Print the name of the person who is completing and signing this claim:

Name Thomas Johnson
First name Middle name Last name

Title General Counsel

Company Festival Fun Parks, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



Verita (KCC) ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 733-1434 | International (310) 751-2633

Debtor: 25-10610 - MS Leisure Company District: District of Delaware		
Creditor: Festival Fun Parks, LLC Barry S. Turner PO Box 330189 Miami, FL, 33233 Phone: 3056994392 Phone 2: Fax: Email: bt@bstpa.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Disbursement/Notice Parties: Festival Fun Parks, LLC Thomas Johnson 285 East Waterfront Drive, Suite 150 Homestead, PA, 15120 Phone: Phone 2: Fax: E-mail: thomas.johnson@palaceentertainment.com DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: ORDER GRANTING FESTIVAL FUN PARKS, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST MS LEISURE COMP	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 218,685.42	Includes Interest or Charges: Yes	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Thomas Johnson on 16-Jun-2025 12:03:22 p.m. Pacific Time Title: General Counsel Company: Festival Fun Parks, LLC		

Fill in this information to identify the case:

Debtor 1 _____
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: _____ District of _____
Case number _____

Official Form 410

Proof of Claim

12/24

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?**
Name of the current creditor (the person or entity to be paid for this claim) _____
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact phone _____ Contact email _____ Uniform claim identifier (if you use one): _____	Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact phone _____ Contact email _____

4. **Does this claim amend one already filed?**
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
 No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?** No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. **How much is the claim?** \$_____. **Does this amount include interest or other charges?**
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?** Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

9. **Is all or part of the claim secured?** No
 Yes. The claim is secured by a lien on property.

Nature of property:

Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

Motor vehicle

Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$_____

Amount of the claim that is secured: \$_____

Amount of the claim that is unsecured: \$_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$_____

Annual Interest Rate (when case was filed) _____%

Fixed
 Variable

10. **Is this claim based on a lease?** No
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$_____

11. **Is this claim subject to a right of setoff?** No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City State ZIP Code

Contact phone _____ Email _____

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: Chapter 11
LEISURE INVESTMENTS HOLDINGS LLC, Case No.: 25-10606 (LSS)
*et. al.*¹
Debtors. (Jointly Administered)

ATTACHMENT TO PROOF OF CLAIM

As of the Petition Date, MS LEISURE COMPANY owes Festival Fun Parks, LLC a total of **\$218,685.42**.

The basis of this claim is the Order Granting Festival Fun Parks, LLC’s Motion For Partial Summary Judgment Against MS Leisure Company And Denying MS Leisure Company’s Motion For Summary Judgment entered on July 16, 2024. This amount includes, without limitation to, the following: (i) the amounts awarded to Oceaneering International, Inc. in the Order Granting Final Summary Judgment dated February 17, 2024; (ii) Festival Fun Parks, LLC’s estimated attorneys’ fees and costs; and (iii) Oceaneering International, Inc. estimated attorneys' fees and costs.

Reservation of Rights

This Proof of Claim may not include all amounts relating to all pre-petition and post-petition interest, fees, costs, expenses, charges and attorney and other professional fees and expenses for which the Debtor is liable, including without limitation all costs and expenses incurred in enforcing and preserving Creditor’s rights under the Loan Documents. In addition, certain of Creditor’s claims cannot, at this time, be reasonably calculated or estimated. Creditor does not waive any of its rights to any and all such claims by not ascribing a specific dollar amount thereto at this time. Creditor reserves all rights to (i) amend, clarify, modify, update or supplement this Proof of Claim at any time and in any respect, including without limitation to assert additional claims and requests for payment or additional grounds for Creditor’s claims; (ii) file additional proofs of claim at any time and in any respect; (iii) file separate proofs of claim as: (a) permitted by any order entered in this case establishing a deadline to file proofs of claim; (b) required or

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are as follows: Leisure Investments Holdings LLC (7260); Triton Investments Holdings LLC (6416); MS Leisure Company (7257); Icarus Investments Holdings LLC (2636); Ejecutivos de Turismo Sustentable S.A. de C.V. (5CA4); Dolphin Capital Company, S. de R.L. de C.V. (21H8); Dolphin Leisure, Inc. (7073); Dolphin Austral Holdings, S.A. de C.V. (6A13); Aqua Tours, S.A. de C.V. (6586); Viajero Cibernético, S.A. de C.V. (1CZ7); Promotora Garrafón, S.A. de C.V. (0KA2); Marineland Leisure, Inc. (7388); GWMP, LLC (N/A); Gulf World Marine Park, Inc. (0348); and The Dolphin Connection, Inc. (0322). For the purposes of these chapter 11 cases, the address for the Debtors is Leisure Investments Holdings LLC, c/o Riveron Management Services, LLC, 600 Brickell Avenue, Suite 2550, Miami, FL 33131.

permitted by law; or (c) otherwise ordered by the Bankruptcy Court; and/or (iv) file a request for payment of an administrative expense or priority claim in accordance with 11 U.S.C. §§ 503(b) and 507(a).

In the event Creditor is determined to be an over-secured creditor, Creditor reserves all rights to collect post-petition interest, attorneys' fees, costs, or other amounts as permitted by the Loan Documents.

By virtue of the filing of this Proof of Claim, Creditor does not waive, and hereby expressly reserves, Creditor's rights to pursue any and all claims and requests for payment, including but not limited to, the claims and requests for payment described herein against Debtor based on the facts and circumstances giving rise to the claims asserted in this Proof of Claim or any other alternative legal theories.

The execution and filing of this Proof of Claim is not and shall not be deemed or construed as: (a) a waiver or release of Creditor's rights against any person, entity, or property, which may be liable for all or any part of the claims asserted herein, including but not limited to guarantors or co-debtors; (b) a consent by Creditor to the jurisdiction or venue of the Bankruptcy Court with respect to proceedings, if any, commenced in Debtor's chapter 11 case against or otherwise involving Creditor; (c) a waiver or release of Creditor's right to trial by jury in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution; (d) a waiver or release of Creditor's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court Judge; (e) a waiver of the right to move or to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding which may be commenced in Debtor's chapter 11 case against or otherwise involving Creditor; (f) an election of remedies; or (g) a waiver or limitation of any procedural or substantive rights or defenses to any claim that may be asserted against Creditor by Debtor, any official committee of unsecured creditors, trustee or examiner appointed in this case or any subsequent case, or any other party.

Creditor further reserves the right to amend this proof of claim to include additional interest, fees, attorneys' fees, and expenses, and any and all other costs, charges and amounts due with regard to the above-described Loan, and reserves each and every right regarding its claim against the Debtor, any guarantors, any other collateral, and/or the parties liable on the judgment.

Creditor reserves the right to amend its claim to reclassify some or all of its claim from a secured claim to an unsecured claim (or vice versa), as necessary.

Creditor also reserves the right to establish and/or contest the value of the property as the value listed is the Debtor's scheduled value. Creditor also specifically reserves its right to assert a claim pursuant to 11 U.S.C. § 506(b) for post-petition interest, fees, costs, and attorneys' fees.

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2023-016128-CA-01

SECTION: CA21

JUDGE: David C. Miller

Oceaneering International, Inc.

Plaintiff(s)

vs.

Festival Fun Parks, LLC et al

Defendant(s)

**ORDER GRANTING FESTIVAL FUN PARKS, LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST MS LEISURE COMPANY AND DENYING MS
LEISURE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court for hearing on July 1, 2024, on Festival Fun Parks, LLC's ("Festival") Motion for Partial Summary Judgment dated April 19, 2024 [Doc. 47], and MS Leisure Company's ("MS Leisure") Motion for Summary Judgment dated April 19, 2024 [Doc. 46] (collectively, the "Motions"). The Court has reviewed the Motions, MS Leisure's Response in Opposition to Festival's Motion for Partial Summary Judgment dated June 11, 2024 [Doc. 74], Festival's Response in Opposition to MS Leisure's Motion for Summary Judgment dated June 11, 2024 [Doc. 75], MS Leisure's Motion to Strike Declaration of Gerard Brick Used in Support of Festival's Motion for Partial Summary Judgment dated May 10, 2024 [Doc. 62]; and the pleadings. The Court, having heard argument of counsel, being fully advised in the premises and consistent with Court's oral ruling at the conclusion of the hearing on July 1, 2024, hereby finds as follow:

FINDINGS OF UNCONTROVERTED FACT

1. On May 10, 2021, Oceaneering International, Inc. and Festival entered into the Fixed Fee Agreement for Contractor's Services. Under the Fixed Fee Agreement, Oceaneering agreed to install a gate in a whale enclosure at the Miami Seaquarium in exchange for a fee.
2. On August 16, 2021, Festival and MS Leisure entered into the Asset Purchase Agreement. Pursuant to the Asset Purchase Agreement, Festival agreed to sell MS Leisure certain assets, including the Miami Seaquarium.
3. Section 2.4 of the Asset Purchase Agreement provides:

Assumed Liabilities. In connection with the purchase and sale of the Purchased Assets pursuant to this Agreement at the Closing, the Buyer shall assume all liabilities of the Seller exclusively related to the Business, including, in each case only those liabilities as set forth on the Disclosure Schedules, including liabilities (a) under the Purchased Assets, as may arise from and after the Closing, (b) related to any Pending Assets, as may arise from and after the Closing, and/or (c) under the Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules, in respect of, and only to the extent arising in any period from and after the Closing (including, for the avoidance of doubt, but subject to Section 3.3, the applicable obligations in respect of pre-paid annual passes issued by the Business prior to the Closing) but only to the extent (with respect to this clause (d)) that (i) the Seller's rights thereunder are effectively transferred to the Buyer, and (ii) such liabilities and obligations (A) do not arise from or relate to any breach by the Seller of any provision of any Seller Contract, and (B) do not arise from or relate to any event, circumstance or condition occurring or existing prior to the Closing Date that, with notice or lapse of time, would constitute or result in a breach of any Seller Contract (collectively, the "Assumed Liabilities"). For the avoidance of doubt, all outstanding executory obligations under the Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules shall be Assumed Liabilities.

4. Schedule 4.17(a) of the Seller Disclosure Schedules in the Asset Purchase Agreement specifies the Fixed Fee Agreement as one of the "Assumed Liabilities" that MS Leisure assumed pursuant to the Asset Purchase Agreement.

5. Section 8.5 of the Asset Purchase Agreement provides:

Indemnification by the Buyer. The Buyer shall save, defend, indemnify, and hold harmless the Seller and its Affiliates and the respective Representatives, successors and assigns of each of the foregoing (the "Seller Indemnified Parties") from and against any and all Losses asserted against, incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

- a. any breach of any representation or warranty made by the Buyer contained in this Agreement or any Ancillary Agreement;
- b. any breach of any covenant or agreement by the Buyer contained in this Agreement or any Ancillary Agreement; and
- c. after the Closing, any Purchased Asset or Assumed Liability.

6. The Asset Purchase Agreement defines "Losses" as "any and all losses, damages, liabilities, claims, awards, judgments, penalties, reasonable and documented out of pocket costs and expenses

(including reasonable attorneys' fees, costs and other out-of-pocket expenses incurred in investigating, prosecuting, preparing or defending the foregoing)”

7. Section 8.6(a) of the Asset Purchase Agreement provides:

In order for a party (the “Indemnified Party”) to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any Person against the Indemnified Party (a “Third Party Claim”), such Indemnified Party shall deliver written notice thereof to the party against whom indemnity is sought (the “Indemnifying Party”) with reasonable promptness after receipt by such Indemnified Party of written notice of the Third Party Claim and shall provide the Indemnifying Party with such information with respect thereto as the Indemnifying Party may reasonably request. The failure to provide such notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VIII except to the extent that the Indemnifying Party is materially prejudiced by such failure.

8. Section 8.6(e) of the Asset Purchase Agreement also states:

If the Indemnifying Party does not notify the Indemnified Party within twenty (20) Business Days following its receipt of such notice that the Indemnifying Party disputes its liability to the Indemnified Party hereunder, such claim specified by Indemnified Party shall be conclusively deemed a liability of the Indemnifying Party hereunder, and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand.

9. Although the Fixed Fee Agreement originally contemplated that Oceaneering would complete the project by August 13, 2021, Oceaneering and Festival agreed to modify this deadline because of a delay caused by a third-party and an expansion in the scope of Oceaneering’s work on the project.

10. On December 2, 2021, Festival sent Oceaneering a letter regarding Festival’s sale of the Miami Seaquarium to MS Leisure (the “Consent and Waiver Agreement”). In the Consent and Waiver Agreement, Oceaneering “consent[ed] to the Assignment.” Pursuant to the Consent and Waiver Agreement, Oceaneering also agreed that assignment of the Fixed Fee Agreement “will not constitute a breach of, or an event of default under, or give you the right to terminate the agreement.”

11. On March 3, 2022, MS Leisure and Festival closed on the sale of the Miami Seaquarium. At the time of the Closing, Oceaneering had not yet completed its work on the gate.

12. On February 9, 2023, Festival delivered written notice to MS Leisure that Oceaneering had completed its work and was seeking final payment under the Fixed Fee Agreement, and demanded that MS Leisure pay for or otherwise resolve Oceaneering's claim.

13. After Festival delivered written notice of Oceaneering's claim to MS Leisure, MS Leisure did not provide notice to Festival, within 20 business days of receiving the notice from Festival, that MS Leisure disputed its liability to Festival.

14. On May 2, 2023, Oceaneering filed its Complaint against Festival and MS Leisure. The Complaint asserted two causes of action against Festival: Breach of Contract (Count I) and, in the alternative, Unjust Enrichment (Count II) and two causes of action against MS Leisure: Breach of Contract (Count III) and, in the alternative, Unjust Enrichment (Count IV).

15. On February 17, 2024, the Court entered an Order Granting Final Summary Judgment in Oceaneering's favor against Festival on its Breach of Contract claim (Count I) and determined that Oceaneering was entitled to payment of its final invoice for the work it performed pursuant to the Fixed Fee Agreement (the "Prior Summary Judgment Order").

16. In the Prior Summary Judgment Order, the Court determined that Oceaneering was entitled to payment on its final invoice of \$112,188.97, prejudgment interest of \$6,496.44 (for a total of \$118,685.42), and its attorneys' fees and taxable costs, which the Court has not yet determined. *Id.*

CONCLUSIONS OF LAW

I. FESTIVAL IS ENTITLED TO SUMMARY JUDGMENT ON ITS CONTRACTUAL INDEMNIFICATION CLAIM AGAINST MS LEISURE

17. The Asset Purchase Agreement was a valid contract that included an enforceable indemnification agreement between the parties. Under the terms of the Asset Purchase Agreement, once Festival delivered written notice to MS Leisure of Oceaneering's claim, MS Leisure had 20 days to respond to the indemnification demand. Because MS Leisure failed to respond for over 20 days after receiving written notice, the Oceaneering claim was "conclusively deemed a liability" of MS Leisure pursuant to the Asset Purchase Agreement.

18. The unequivocal language of the Asset Purchase Agreement required MS Leisure to dispute indemnification once it received the written notice from Festival, regardless of whether MS Leisure believed the payment due to Oceaneering constituted an "Assumed Liability."

19. The party disputing liability must speak up, comply with the express terms of the indemnification clause, and notify the other party that it disputes its liability. MS Leisure failed to do so and therefore Festival is entitled to summary judgment on its contractual indemnification claim against MS Leisure.

II. FESTIVAL IS ENTITLED TO SUMMARY JUDGMENT ON ITS CLAIM OF BREACH OF CONTRACT AGAINST MS LEISURE.

20. To prevail on a breach of contract claim, a party must show: (1) the existence of a valid contract; (2) material breach of the contract; and (3) damages.

21. Festival and MS Leisure executed a valid contract, the Asset Purchase Agreement. The Asset Purchase Agreement identified the Fixed Fee Agreement with Oceaneering as one of the "Assumed Liabilities" that MS Leisure assumed when it purchased the Miami Seaquarium. Therefore, under the clear and unambiguous terms of the Asset Purchase Agreement, MS Leisure agreed to assume any liabilities to Oceaneering under the Fixed Fee Agreement.

22. The final payment for the Fixed Fee Agreement became due after the Closing, because Oceaneering did not complete its work under the Fixed Fee Agreement until after the Closing. Therefore, the obligation to pay Oceaneering—after it completed its work under the Fixed Fee Agreement—was an executory obligation that arose after the Closing. To eliminate any doubt regarding this obligation, the Asset Purchase Agreement stated that "all outstanding executory obligations under the Seller Contracts set forth on Schedule 4.17(a) of the Seller Disclosure Schedules shall be Assumed Liabilities." Therefore, the Fixed Fee Agreement was an Assumed

Liability that MS Leisure was responsible for after the Closing.

23. MS Leisure's refusal to pay Oceaneering for the remaining amount it was owed under the Fixed Fee Agreement constituted a material breach of the Asset Purchase Agreement. As a result of MS Leisure's material breach of the Asset Purchase Agreement, Festival has sustained damages. Namely, in the Prior Summary Judgment Order, Festival was obligated to pay Oceaneering the final payment due under the Fixed Fee Agreement, interest, attorneys' fees, and taxable costs.

24. MS Leisure claims that the Fixed Fee Agreement obligation arose prior to the Closing and, therefore, does not qualify as an Assumed Liability. This is incorrect because the obligation to pay Oceaneering was an executory obligation that did not become due until Oceaneering completed its work, which occurred after the Closing.

25. MS Leisure also claims that Festival breached the Fixed Fee Agreement by attempting to assign it to MS Leisure. Festival, however, obtained Oceaneering's express, written consent to assign the Fixed Fee Agreement to MS Leisure. This Court's Prior Summary Judgment Order merely determined that the Assignment was not effective, vis-à-vis Oceaneering and Festival, to delegate to MS Leisure Festival's duty to make payment to Oceaneering. Rather, Oceaneering retained its right under the Fixed Fee Agreement to seek payment from Festival. The Assignment did not, on the other hand, operate to prohibit Festival from agreeing with MS Leisure in the Asset Purchase Agreement, vis-à-vis Festival and MS Leisure, that MS Leisure would assume responsibility and liability after Closing for any remaining payments due to Oceaneering under the Fixed Fee Agreement.

26. Finally, MS Leisure claims that Oceaneering breached the Fixed Fee Agreement prior to the Closing by not completing the work by the originally contemplated completion date of August 13, 2021. Oceaneering and Festival, however, modified this completion date, and MS Leisure has not introduced any evidence to suggest that the agreed-upon modification of the completion date was improper. Moreover, as the Court previously held in the Prior Summary Judgment Order, Oceaneering did not breach the Fixed Fee Agreement and was entitled to payment of its final invoice for the work it performed pursuant to the Fixed Fee Agreement.

27. MS Leisure raises substantially similar arguments in support of its claim that the Fixed Fee Agreement was an Excluded Liability. The Court rejects these arguments for the same reasons it rejects MS Leisure's claim that the Fixed Fee Agreement was not an Assumed Liability. The Court also finds that MS Leisure's purported affirmative defenses are inapplicable, unsupported, and/or not proper affirmative defenses. Therefore, Festival is entitled to summary judgment on its breach

of contract claim against MS Leisure.

III. MS LEISURE IS NOT ENTITLED TO SUMMARY JUDGMENT

28. MS Leisure's Motion for Summary Judgment on Festival's Crossclaims raises the same arguments that MS Leisure makes in its Opposition to Festival's Motion for Partial Summary Judgment. Therefore, the Court denies MS Leisure's Motion for Summary Judgment for the reasons already discussed in this Order.

CONCLUSION

It is **ORDERED AND ADJUDGED** that:

- a. Festival's Motion for Partial Summary Judgment is **GRANTED**. Festival's crossclaim against MS Leisure for breach of contract (Count I) is **GRANTED** as to liability, and the Court reserves ruling on the determination of the amount of damages to which Festival is entitled on that claim. Festival's crossclaim against MS Leisure Company for contractual indemnification (Count II) is **GRANTED** as to liability, and the Court reserves ruling on the determination of the amount of damages to which Festival is entitled on that claim.

- b. MS Leisure Company's Motion for Summary Judgment is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 16th day of July, 2024.


~~2023-016128-CA-01 07-16-2024 9:36 AM~~

2023-016128-CA-01 07-16-2024 9:36 AM

Hon. David C. Miller

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Carmen M. Ortega, cortega@sidley.com
Carmen M. Ortega, pboylan@sidley.com
Carmen M. Ortega, efilingnotice@sidley.com
Cheyenne Moghadam, c.moghadam@jones-adams.com
Elliot B Kula, elliot@kulalegal.com
Elliot B Kula, eservice@kulalegal.com
Ian M. Ross, iross@sidley.com
Ian M. Ross, gportes@sidley.com
Ian M. Ross, efilingnotice@sidley.com
Katlin C. Cravatta, kcravatta@foley.com
Katlin C. Cravatta, bshelley@foley.com
Katlin C. Cravatta, katlin-cravatta-5220@ecf.pacerpro.com
Lucien Johnson, lucien.johnson@foley.com
Lucien Johnson, ctavarez@foley.com
Matthew DellaBetta, mdellabetta@sknlaw.com
Matthew L. Jones, matthew@jones-adams.com
Timothy A. Kolaya, tkolaya@sknlaw.com
Timothy A. Kolaya, tkolaya@ecf.courtdrive.com
W. Steven Adams, steven@jones-adams.com
William Aaron Daniel, aaron@kulalegal.com
William Aaron Daniel, eservice@kulalegal.com
William Mueller, william@kulalegal.com

Physically Served: