

RALPH R. MABEY
EXAMINER
STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION
185 South State Street
8th Floor
Salt Lake City, Utah 84111
Telephone: (801) 257-7976
Facsimile: (866) 763-0412

STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION
1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Telephone: (310) 228-5600
Facsimile: (310) 228-5788
Robert A. Greenfield (Admitted *Pro Hac Vice*)
George C. Webster II (Admitted *Pro Hac Vice*)
Eric D. Goldberg (Admitted *Pro Hac Vice*)
H. Alexander Fisch (Admitted *Pro Hac Vice*)
Margreta M. Morgulas (MM 7441)

Proposed Counsel to the Examiner

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re: : Chapter 11
Extended Stay, Inc., *et al.*, : Case No. 09-13764(JMP)
Debtors. : (Jointly Administered)
: :
-----X

EXAMINER'S FURTHER AMENDED PRELIMINARY WORK PLAN AND BUDGET

I. INTRODUCTION

Following the filing of the "Examiner's Preliminary Work Plan And Budget" (the "Original Work Plan") on October 13, 2009 [Docket No. 507], Ralph R. Mabey, the Court appointed examiner (the "Examiner") and his proposed counsel met with several parties in

interest on October 21, 2009; participants included representatives of the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), Line Trust Corporation Ltd., Centerbridge Partners, L.P., David Lichtenstein and related entities, TriMont Real Estate Advisors, Inc. ("TriMont"), the Maiden Lane entities, the Federal Reserve Bank of New York, Cerberus Capital Management, LP., Bank of America, N.A., Wachovia Bank, N.A., and, by telephone, the Office of the United States Trustee (the "UST").

The result of that meeting was the amended work plan filed with the Court on October 30, 2009 (the "Amended Work Plan"). Following the October 21 meeting, the Examiner circulated to all parties who attended the October 21 meeting a draft that is substantially similar to the Amended Work Plan. The UST indicated that it had no substantive comment to that draft, and, other than TriMont, the Committee, and the Debtors, no other party provided further substantive comment.

Among other changes from the Original Work Plan, the Amended Work Plan deleted specific reference to a number of items listed in paragraph 5 of the Original Work Plan. The significance of the deletions is that the deleted items will not be a primary focus of the examination. The deletion of those items, however, does not preclude their examination should it become appropriate during the course of the "Investigation," as that term is defined in the Order Directing Appointment of An Examiner [Docket No. 311] (the "Appointment Order") entered September 24, 2009.

Thereafter, due to delays in the commencement of the substantive Investigation, the Examiner determined it necessary to further amend the Amended Work Plan and Budget solely with respect to the proposed date of the filing of the Examiner's Report. Accordingly, this further amended work plan and budget ("Further Amended Work Plan and Budget") reflects the revised proposed filing date of February 19, 2010.

1. Pursuant to the Appointment Order, this Court directed the UST to appoint

an examiner in the above-captioned chapter 11 cases. The Appointment Order further directs that:

pursuant to section 1106(a)(3) of the Bankruptcy Code, the Examiner should conduct an investigation . . . regarding: (i) the structure, negotiation and closing of the Acquisition, (ii) the financial circumstances that led to the filing of the Debtors' chapter 11 cases, and (iii) whether the Debtors' estates have any claims against any person with respect to items (i) and (ii)

Appointment Order at 2.

2. On September 28, 2009, the UST appointed Ralph R. Mabey as Examiner, and filed its notice [Docket No. 312] of such appointment, and application [Docket No. 313] for an order of this Court approving the appointment of Ralph R. Mabey as examiner in the Debtors¹ bankruptcy cases. On September 29, 2009, the Court entered its Order Approving Appointment of Examiner (the "Approval Order") [Docket No. 455].

3. The Appointment Order requires that the Examiner's work plan and budget be approved by this Court after notice to certain parties in interest. The Appointment Order also provides "that until the Examiner has filed his or her report, neither the Examiner nor the Examiner's professionals or agents shall make any public disclosures concerning the performance of the Investigation or the Examiner's duties" Appointment Order at 3,4. To fulfill these mandates, the Original Work Plan and Amended Work Plan generally follow the format and level of detail of the examiner work plans submitted in *In re TCI 2 Holdings, LLC, et al.*, Case No. 09-13654 (Bankr. D.N.J. filed Oct. 5, 2009); *In re Lehman Brothers Holdings Inc., et al.*, Case No. 08-13555 (Bankr. S.D.N.Y. approved Feb. 17, 2009), and *In re SemCrude, L.P., et al.*, Case No. 08-11525 (Bankr. D. Del. filed Nov. 24, 2008). The Examiner submits that this work plan sets forth sufficient detail to inform the Court and the parties and provides an opportunity, if appropriate, to clarify the scope of the Investigation, without interfering with the

¹ The "Debtors" are Extended Stay, Inc., and those of its affiliates that are the subject of the above-captioned jointly-administered cases.

purpose of an effective independent Investigation.

II. THE PRELIMINARY WORK PLAN

A. Phases of the Investigation

4. The Examiner's work plan consists of five phases: (a) initial interviews, project evaluation, preparation of the work plan, and invitations for focused assistance from parties in interest who have already performed analyses; (b) document discovery; (c) deposition discovery; (d) preparation of the Examiner's report; and (e) post-Investigation and report administrative matters.

B. Subject Matter of the Investigation

5. The Examiner has so far determined, through the interviews and other preliminary work described below, that at least the following merit investigation and analysis:

a. the negotiation and documentation of the Acquisition,² and certain compensation and fees paid in connection therewith;

b. the data, information, and materials relied upon by the parties to the Acquisition, including, without limitation, any valuations or appraisals of the assets to be purchased/sold, business plans and/or projections, and the applicable loan agreements;

c. potential causes of actions stemming from the Acquisition;

d. the financial circumstances that led to the filing of the Debtors' chapter 11 cases, including, but not limited to, the projected and actual financial performance of the Debtors (including variances between the Debtors' projections and actual financial performance), with a primary focus on the year immediately preceding the commencement of the cases; and

² The "Acquisition" is the acquisition of Extended Stay and its affiliates in June 2007 by an investment consortium consisting of, among others, David Lichtenstein and Arbor Realty Trust, through DL-DW Holdings LLC, of Extended Stay, from the Blackstone Group.

e. claims of the estates relating to the above-described items.

A. Phase 1: Initial Interviews, Project Evaluation, Preparation of the Work Plan, and Invitation for Focused Cooperation from Parties In Interest Who Have Already Performed Analytical Work.

6. At this early stage of the Investigation, the Examiner, as an outsider to these cases and the subject matter of the Investigation, has worked diligently to understand the disputes that precipitated the Appointment Order, the precise mandate of the Appointment Order, and the information that will be required to complete the Investigation.

A. Initial Interviews

7. To expedite the preparation of a work plan, the Examiner and his proposed counsel assembled a list of the parties that appeared to be both most active in the cases and most familiar with the subject matter of the Investigation. The Examiner and his proposed counsel contacted these parties to: (1) solicit views from such parties regarding the scope of the Investigation and formulation of this work plan; (2) determine the extent of cooperation in such matters as informal document discovery that could be obtained from each party; (3) solicit views as to relevant issues that may arise within the scope of the Investigation; (4) solicit views as to the necessity of hiring a financial advisor to assist the Examiner; (5) explore how to maximize coordination and minimize duplication; (6) discuss the progress and status of the cases as they relate to the Investigation; and (7) hear any other views that a party wished to express.

Specifically:

a. On October 1, 2009, the Examiner and his proposed counsel met telephonically with counsel for the Debtors.

b. On October 2, 2009, the Examiner and his proposed counsel met telephonically with counsel for the Committee.

c. On October 5, 2009, the Examiner and his proposed counsel met telephonically with counsel to Line Trust Corporation Ltd.

- d. On October 6, 2009, the Examiner and his proposed counsel met telephonically with counsel to Centerbridge Partners, L.P.
- e. On October 6, 2009, the Examiner and his proposed counsel met telephonically with counsel to David Lichtenstein and related entities.
- f. On October 7, 2009, the Examiner and his proposed counsel met telephonically with counsel to the special servicer, TriMont, and U.S. Bank, in its capacity as trustee with respect to the trust established in connection with the mortgage debt.
- g. On October 7, 2009, the Examiner and his proposed counsel met telephonically with counsel to the Federal Reserve Bank of New York.
- h. On October 8, 2009, the Examiner and his proposed counsel met in person with the Committee's counsel and financial advisor.
- i. On October 9, 2009, the Examiner and his proposed counsel met in person with counsel to Cerberus Capital Management, LP.

As discussed at the outset, the Amended Work Plan reflects changes resulting from the meeting with parties in interest on October 21, 2009.

8. During the course of the Investigation, the Examiner will continue to maintain lines of communication with parties in interest and the UST as are consistent with his duties. The meetings that the Examiner has conducted so far will not be the last such meetings, nor are the parties with whom the Examiner has already met the only parties who may assist the Investigation.

B. Understanding the Work Necessary to Conduct the Investigation

9. At the outset, the Examiner and his counsel began to review publicly available materials that appear likely to be relevant to the Investigation. Relevant public documents included pleadings filed in connection with the Debtors' cases, such as the first day

pleadings, schedules, and statements, and the pleadings filed in support thereof and opposition thereto, motions for Bankruptcy Rule 2004 examinations, and the UST's motion regarding the appointment of the Examiner, and pleadings relating to litigation commenced in or related to the bankruptcy cases and the CIL Transaction.

10. As a result of the interviews and meetings that he has conducted to date, the Examiner has received more than 38,000 pages of documents, with many more promised. The Examiner and his counsel have begun to review and analyze these documents in furtherance of the Investigation.

11. The Examiner presumes that the documents he collects in the course of the Investigation may at some point after the conclusion of the Investigation be made available to all parties, subject to redactions for any applicable privilege and confidentiality issue. The Examiner will determine whether any party in these cases has already established an electronic document repository at the expense of the Debtors' estates, and proposes that the Court, if necessary, authorize and direct any such party to grant the Examiner access to same for the purpose of accessing any documents produced, or to be produced, in these cases, and to establish an electronic repository for the documents to be produced in connection with the Investigation.

12. The Examiner and his counsel have identified certain legal issues that appear germane to the Investigation. The Examiner anticipates that additional issues will arise as a result of his Investigation that will require legal research, both to analyze the import of findings already made, and to chart a path toward determining questions that must be answered. The Examiner and his professionals will undertake such analyses, and, to the extent possible, given the mandate that the Examiner refrain from making public disclosures regarding the Investigation, coordinate with other interested parties to avoid duplication of efforts.

C. Invitation for Economizing Cooperation

13. The Examiner is aware of the differing expectations of parties in interest

regarding the scope, depth, and, notably, the cost of the Investigation. The Examiner also recognizes the reality that parties in interest have already spent a considerable amount of time and money reviewing documents and considering issues that may be germane to the Investigation. Finally, the Examiner anticipates that the responses to typical document requests related to the Acquisition and the events leading to the chapter 11 filings will result in tens of thousands, and perhaps hundreds of thousands, of pages of documents and emails, all of which will take time and cost money to review. To reduce costs, the Examiner invites parties in interest to direct the attention of the Examiner (based upon work already performed by parties in interest) to particular documents, declarations, analyses, persons, sources, and/or law bearing upon the factual and legal subject matters of the Investigation. This invitation is based upon the document intensive subject matter of the Investigation, the work apparently begun by parties in interest, and the desire for economy and expedition. The bounds of the examination, however, will not be limited by any party's proposed focus or direction. The Examiner has also asked for the cooperation of parties in interest respecting the production of documents and witnesses. The Appointment Order requires that parties in interest use their respective best efforts to coordinate with the Examiner to avoid unnecessary interference with, or duplication of, the Investigation and related discovery efforts.

D. Retention of Professionals

14. The Examiner has sought to retain Stutman, Treister & Glatt Professional Corporation ("ST&G") as his counsel in connection with the Investigation.

15. The Examiner has determined that he cannot adequately conduct his Investigation without the assistance of a financial advisor. While the Examiner hopes to obtain access from other parties' financial advisors to any extant analyses performed in connection with these cases, he will require the assistance of a financial advisor to test the assumptions underlying such analyses, weigh their accuracy, and, where appropriate, apply their work to his

Investigation. After speaking with a number of well-qualified candidates, the Examiner seeks to retain Alvarez & Marsal North America ("A&M") as his financial advisor. An application for authority for such retention has been filed [Docket No. 519] and sets forth the qualifications of A&M and the necessity of its engagement.

16. The initial interviews and preliminary review of available information have served to help the Examiner begin to assess the work that needs to be accomplished to complete the Investigation. Although the submission of this work plan is a significant event of phase 1, the Examiner submits that cooperation with the Examiner, including acceptance of his invitation to provide focused cooperation based upon work performed by parties in interest, will be the most important factor in reducing the time and expense that the Investigation will entail.

B. Phase 2: Document Discovery.

17. Based upon the limited information currently available to the Examiner and subject to receipt of focused assistance, the Examiner anticipates that the following activity will be necessary to complete phase 2:

A. Information Gathering and Verification

18. In addition to analyzing the documents already assembled, the Examiner anticipates that it will be necessary to request, from various parties, organize, review, and analyze many further documents that are relevant to the subject matter of the Investigation. These parties may include certain of the Debtors' current and former officers, directors, employees, and other affiliated persons or entities, including representatives of the HVM entities; certain of the parties involved in the Acquisition, including representatives of the sellers; certain of the lenders with whom the Debtors entered into prepetition transactions; and parties that participated in the negotiation of proposed restructuring alternatives and/or the decision of the Debtors to file the chapter 11 cases; in each case only to the extent authorized by the Appointment Order.

B. Avoiding Duplication

19. The Examiner is reviewing the various applications for discovery under Bankruptcy Rule 2004 that have been filed in these cases. To expedite document discovery and minimize costs, the Examiner intends to determine if any of the discovery sought in connection therewith may prove useful to the Investigation.

20. The Examiner is mindful of discovery that has been or is being conducted in related matters, such as the actions in the Supreme Court of the State of New York, titled *Line Trust Corp., et al. v. Wachovia Bank, N.A., et al.*, Index No. 601713/2009, and *Bank of America, N.A., et al. v. Lightstone Holdings, LLC*, Index No. 601853/2009, and the action pending before this Court, titled *Five Mile Capital II SPE ESH LLC v. Cerberus Capital Management, L.P.*, Adv. Proc. No. 09-01367. To avoid duplication and minimize cost, the Examiner will seek access to any discovery materials that emerge in such actions to the extent, if any, relevant to the Investigation.

21. The Examiner believes that one or more valuations relevant to the Investigation have already been prepared by other parties. The Examiner further currently believes that, with the assistance of his financial advisor, his Investigation into valuation issues attending the Acquisition and subsequent developments may be accomplished by analyzing such valuations against all other relevant materials and testing their underlying assumptions.

C. **Phase 3: Deposition Discovery**

During phase 3 the Examiner and his counsel will continue to conduct interviews, and take depositions:

A. Interviews

22. To minimize cost and streamline the Investigation, the Examiner will conduct interviews of witnesses with respect to the issues that are the subject of the Investigation. At this early stage, it is difficult for the Examiner to predict how many such

interviews will be necessary or to what extent the Examiner will employ the subpoena power that the Court granted in the Appointment Order.

B. Depositions

23. To the extent necessary, phase 3 will also consist of depositions by the Examiner and his counsel of witnesses material to the Investigation. The Examiner expects that depositions will occur during the thirty days following the completion of document discovery, assuming cooperation from relevant parties in connection with both obtaining document discovery in a timely manner and scheduling depositions. The Examiner has preliminarily identified persons he will seek to depose. These persons may include representatives of the Debtors and the HVM entities, representatives of the sellers, buyers, and lenders in connection with the Acquisition, and representatives of the parties that took part in prepetition restructuring negotiations. It may become apparent that certain other material witnesses have information necessary to the Investigation that is best obtained by deposition.

D. Phase 4: The Examiner's Report

24. The Examiner anticipates that during the last thirty to forty-five days of the Investigation, a substantial amount of time will be expended by him and his professionals to prepare for the filing with the Court of the Examiner's report, which will include the Examiner's factual and legal analysis within the scope of the Examination. The Examiner anticipates that, although the last six weeks of the Investigation will involve intensive work on such a report, his professionals will, throughout the course of the Investigation, prepare materials that will be incorporated into the report. The Examiner proposes February 19, 2010, as the date by which his report should be submitted.

25. The Examiner's ability to complete the Investigation in a timely manner is premised on the Examiner receiving cooperation from parties in interest. Lack of cooperation from any material party will adversely affect the ability of the Examiner to meet this schedule

and increase the costs of the Investigation. The Examiner intends to inform the Court, and seek judicial assistance if appropriate, if any such obstacles are encountered.

E. Phase 5: Post-Examination Report Matters

26. Phase 5 involves post-examination report administrative matters. After the Examiner submits his report, he may conduct limited motion practice to obtain direction from the Court regarding the handling of documents and materials obtained during the Investigation, file his fee application and those of his professionals, and handle any other matter that requires his attention in connection with his report.

F. Preliminary Estimate of Fees and Expenses

27. The Examiner has attempted to assess the full scope of the efforts he will need to undertake. Although the Examiner has acquired documents, it is clear that such documents are just some of those that will be necessary to conduct the Investigation. The extent to which additional document discovery will be required, how difficult any such discovery will be to obtain, and how time-consuming a review of further documents will prove are all uncertain. The Examiner does not yet know the extent to which he will obtain access to persons who are presently contemplated to be material witnesses, or whether additional persons may prove to be material witnesses. These discovery issues have the potential to impact the extent and depth of the Examiner's legal and financial analyses. All of these issues, and others, could significantly reduce, or increase, the Examiner's current work estimates, which are based on the Examiner's assumptions about materials he is likely to receive from the parties and his current expectations of cooperation and about future events. The Examiner will promptly advise the Court and the parties as the Investigation unfolds if reality significantly varies from these initial estimates.

28. The Examiner anticipates that he will spend 75 to 100 hours per month over a four-month period. The Examiner's hourly rate is \$875. He estimates that his aggregate fee will be approximately \$262,500 to \$350,000. Notwithstanding the allowance typically

provided for travel, the Examiner and his firm will not bill for non-working travel time.

Although the Examiner's hourly rate is likely to be increased January 1, he has directed that it be frozen at its current level for purposes of this engagement.

29. The Examiner has assigned various ST&G attorneys to work on the Investigation, and to assist in each phase of the Investigation set forth above to the extent necessary. The blended hourly rate of the ST&G attorneys likely to work on this matter is expected to be approximately \$480 per hour. It is estimated that the equivalent of five attorneys and one paralegal will each work between approximately 145 and 160 hours per month, over a four-month period, at such blended rate. Accordingly, ST&G's legal fees are expected to be between approximately \$1,670,000 and approximately \$1,850,000, excluding costs. Although the hourly rates of ST&G attorneys are scheduled to be reviewed and, in some circumstances, increased January 1, ST&G has agreed that the hourly rates of its attorneys will be frozen at current levels for purposes of this engagement.

30. As set forth in paragraph 15 above, the Examiner has decided that it is necessary to seek to retain A&M as his financial advisor. That selection was made only recently, and the scope of A&M's engagement is too preliminary to estimate a budget at this time. In all events, in order to provide appropriate accountability, A&M will be compensated on a time-worked basis through fee applications. Nonetheless, subject to the caveats set forth in paragraph 27 and elsewhere in this work plan, A&M anticipates that, assuming full cooperation from all parties in interest, its fees will total approximately \$1.8 million, which is comprised of two categories of work. The first category of work relates to A&M's role as financial advisor to the Examiner, which is estimated to cost approximately \$1.7 million. The second category of work relates to A&M's role in gathering and maintaining a centralized document repository for the

Examiner, which is estimated to cost approximately \$80,000.³ The estimate of fees associated with the gathering and maintaining a centralized document repository is based on the assumption that documents will be produced with the assistance of the relevant parties and that document production will be in a native formats whenever possible.

31. In summary, the total fees may be estimated for the Examiner, his counsel, his financial advisors, and the costs for forensic technology between approximately \$3.7 million and approximately \$4.0 million. Thus, as a result of the October 21, 2009 meeting with certain parties in interest, the Examiner and his professionals have reduced the upper range of their anticipated budget by over \$800,000.

32. In accordance with the terms of the Appointment Order, the fees and expenses of professionals retained by the Examiner are subject to the filing of applications, and allowance by the Court after notice and a hearing. The Examiner intends to make every effort to conduct the Investigation in as cost-effective a manner as practicable under the circumstances. The Examiner intends promptly to inform the UST, the Court, and parties in interest if it appears that the Examiner's or his counsel's professional fees may materially exceed the estimate and the reasons therefor.

G. Caveats

33. The Examiner's preliminary work plan is based upon currently available information and presumes the full and complete cooperation of the Debtors, the Debtors' affiliates, the Committee, and other key parties in interest in these cases, and the respective representatives of each, as required by the Appointment Order. Given the early stage of the

³ This estimate assumes approximately 5GB (10,000 to 50,000 pages) will be gathered/produced per month. It also includes out-of-pocket costs of approximately \$6,000 related to the hosting of the documents in a centralized electronic repository for the four month period. To the extent that the documents gathered and produced are in native format the estimated fees for the forensic technology may be reduced.

Investigation, and the volume of data anticipated, it will take significant time to review and analyze the documents, and conduct those interviews already foreseeable. As the Investigation progresses, the Examiner's work plan may need to be amended to fulfill the Examiner's duty and deliver a full report. As a result, with Court approval, the work plan may be modified accordingly.

34. The inclusion or discussion of any matter in this work plan should not be construed as limiting the Examiner prospectively. The Examiner will seek any discovery, and will review all parties' rights, liabilities, and obligations, within the scope of the Appointment Order, as is necessary to discharge his duties.

DATED: November 10, 2009

Respectfully submitted,

By: /s/ Margreta M. Morgulas
Margreta M. Morgulas, a Member of
STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION
1901 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Telephone: (310) 228-5600
Facsimile: (310) 228-5788
Email: mmorgulas@stutman.com

Proposed Counsel to the Examiner