

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

In re:

EXTENDED STAY INC., et al.,

Debtors.

Case No. 09-13764 (JMP)

Chapter 11

(Jointly Administered)

**STIPULATION AND ORDER REGARDING EXAMINER'S TURNOVER OF CERTAIN  
WORK PAPERS OF ALVAREZ AND MARSAL DISPUTE ANALYSIS & FORENSIC  
SERVICES LLC TO THE LITIGATION TRUST**

The Extended Stay Litigation Trust, through Hobart G. Truesdell, as Trustee (the "Litigation Trust"), Ralph R. Mabey (the "Examiner"), and Extended Stay, Inc. and its affiliated debtors in the above-referenced chapter 11 cases, certain of which are Reorganized Debtors under the Plan referred to and defined below (collectively, the "Debtors"), by and through their respective counsel, hereby enter into this stipulation and agreed order (the "Order") as follows:

**RECITALS**

WHEREAS, on June 15, 2009, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court, Southern District of New York (the "Court");

WHEREAS, on September 24, 2009, the Court entered the Order Pursuant to 11 U.S.C. § 1104 Directing the Appointment of an Examiner, and on September 29, 2009, Ralph R. Mabey was appointed as the Examiner;

WHEREAS, the Examiner and the Debtors and certain non-Debtor affiliates (collectively, the "Debtor Parties") entered into that certain "Order and Stipulation Between the Debtors and

the Examiner,” dated as of October 27, 2009 (“Debtor Parties’ Confidentiality Stipulation”), pursuant to which the Debtor Parties agreed to produce certain documents to the Examiner and his Court-appointed professionals (collectively, the “Examiner’s Professionals”) on the terms and conditions outlined therein, which the Court “So Ordered” on December 23, 2009 [Docket No. 659];

WHEREAS, each of the Debtor Parties has the authority to provide the necessary consent for all of the “Extended Stay Parties” (as such term is defined in the Debtor Parties’ Confidentiality Stipulation) as required under Paragraph 5 of the Debtor Parties’ Confidentiality Stipulation with respect to the sharing of Shared Information (as such term is defined in the Debtor Parties’ Confidentiality Stipulation);

WHEREAS, in the course of the Examiner’s investigation the Examiner received certain documents from the Debtor Parties pursuant to the terms and conditions of the Debtor Parties’ Confidentiality Stipulation (as the term “documents” is defined by Local Civil Rule 26.3 of the United States District Court for the Southern District of New York, thereafter, collectively, the “Debtor Parties’ Documents”);

WHEREAS, certain documents were created in furtherance of the Examiner’s report by one of the Examiner’s Professionals, Alvarez & Marsal Dispute Analysis and Forensic Services LLC (“A&M”) based upon information provided by third parties (collectively, the “A&M Work Papers”);

WHEREAS, on July 20, 2010, the Court entered an order (the “Confirmation Order”) confirming the Debtors’ Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 8, 2010, as Amended (the “Plan”);

WHEREAS, the Litigation Trust was formed on October 8, 2010, pursuant to the Plan,

the Confirmation Order and related litigation trust agreement (the last being referred to as the “Litigation Trust Agreement”);

WHEREAS, pursuant to the Plan and Litigation Trust Agreement, which is incorporated into and part of the Plan, Hobart G. Truesdell was appointed the Litigation Trustee on October 8, 2010;

WHEREAS, pursuant to the Plan and a certain settlement agreement (the “ESI Settlement Agreement”), as of the effective date of the Plan, the Debtors and other parties automatically transferred various assets, including causes of action, to the Litigation Trust. The Litigation Trust is responsible for prosecuting or otherwise dealing with these possible causes of action;

WHEREAS, on August 31, 2010, the Court entered the Order Granting Examiner’s Motion for Order Granting Certain Relief and Establishing Certain Procedures Related to Conclusion of Examination (the “Examiner’s Conclusion Order”) [Docket No. 1221]. Pursuant to the Examiner’s Conclusion Order: (1) A&M has preserved the A&M Work Papers; and (2) the Court retained jurisdiction to determine all matters relating to the interpretation or enforcement of the Examiner’s Conclusion Order;

WHEREAS, the effective date of the Plan was October 8, 2010;

WHEREAS, Debtors have been providing in accordance with the Plan and Litigation Trust Agreement the Debtor Parties’ Documents produced to the Examiner to the Litigation Trust;

WHEREAS, a subset of the A&M Work Papers was derived solely from information contained in the Debtor Parties’ Documents (“A&M Debtor Party Derived Work Papers”);

WHEREAS, the Litigation Trust believes it may be desirable to have access to the A&M

Debtor Party Derived Work Papers in order to discharge its duties pursuant to the Plan and Litigation Trust Agreement and, therefore, requested that the Examiner provide copies of the A&M Debtor Party Derived Work Papers to the Litigation Trust;

**AGREED ORDER**

**NOW, THEREFORE**, the Litigation Trust, the Examiner, and the Debtor Parties hereby stipulate and agree that, upon Court approval and entry of this Order:

1. Subject to the terms and conditions set forth below, the Examiner shall provide photocopies and/or electronic copies, in a format to be determined in the sole and absolute discretion of the Examiner and the Examiner's Professionals and mindful of the cost involved, of the A&M Debtor Party Derived Work Papers to the Litigation Trust as soon as reasonably practicable; provided, however, that, the A&M Debtor Party Derived Work Papers to be provided shall not include the following categories of documents: (i) drafts of the A&M Work Papers; (ii) electronic and written communications of any nature between and/or among the Examiner's Professionals, between and/or among the Examiner and the Examiner's Professionals, or with persons other than the Debtor Parties; (iii) interview notes or any document containing a summary of any interview conducted by the Examiner or the Examiner's Professionals other than the Debtor Parties; (iv) deposition transcripts; or (v) any other subset of the A&M Debtor Party Derived Work Papers that the Examiner and the Examiner's Professionals deem appropriate to withhold, in the sole and absolute discretion of the Examiner and the Examiner's Professionals, based upon claims by the Examiner of his or the Examiner's Professionals of, including, without limitation, attorney work product, attorney-client privilege, or any other applicable privilege. The Litigation Trust shall have no standing to challenge any determination by the Examiner or the Examiner's Professionals to withhold any document on

grounds of privilege or protection pursuant to the terms of this Stipulation and the Litigation Trust hereby waives its right to do so under this Stipulation, with all parties reserving their respective rights as to any subsequent requests that may be issued by the Litigation Trust to the Examiner or the Examiner's Professionals for documents or information under the Examiner's Conclusion Order or such other procedure as this Court may deem appropriate.

2. The Litigation Trust shall not rely solely upon any of the A&M Debtor Party Derived Work Papers provided to the Litigation Trust pursuant to this Stipulation in any subsequent litigation that may be instituted by the Litigation Trust and generally will use it for factual and informational purposes, unless previously agreed upon in writing by the Examiner and the Examiner's Professionals. However, it is recognized that the Litigation Trust has obtained information and documents from the Debtors Parties and other third parties, and will continue to do so and, thus, no such documents or information so obtained (i.e., obtained from sources other than the Examiner and the Examiner's Professionals pursuant to this Stipulation) are subject to the terms and conditions of this Stipulation, even if also produced by the Examiner and the Examiner's Professionals pursuant to this Stipulation; provided, however, that the Litigation Trust recognizes that it must predominately rely upon the copies obtained from the Debtor Parties and other third parties in any litigation to avoid breaching any terms and conditions of this Stipulation with respect to the copies obtained from the Examiner and the Examiner's Professionals (i.e., the copies obtained from the Examiner and the Examiner's Professionals will remain subject to the terms and conditions of this Stipulation).

3. The Litigation Trust may provide any of the A&M Debtor Party Derived Work Papers provided to the Litigation Trust pursuant to this Stipulation to any employees, attorneys, agents, experts and other professionals retained by the Litigation Trust but may not provide any

of the A&M Debtor Party Derived Work Papers to any other party except pursuant to: (a) a final order of this Court compelling the production of the A&M Debtor Party Derived Work Papers provided by the Examiner and the Examiner's Professionals to the Litigation Trust pursuant to this Stipulation, or (b) the prior written agreement of the Examiner and the Examiner's Professionals.

4. The provision by the Examiner and the Examiner's Professionals of photocopies or electronic copies of any of the A&M Debtor Derived Work Papers to the Litigation Trust pursuant to this Stipulation shall not affect any privileges or other protections to which any of the A&M Debtor Derived Work Papers may be subject and the A&M Debtor Derived Work Papers shall, therefore, remain subject to, including, without limitation, attorney work product, attorney-client privilege, or any other applicable privilege regardless of the fact that the Examiner and the Examiner's Professionals may have provided photocopies or electronic copies of such privileged or protected A&M Debtor Derived Work Papers to the Litigation Trust pursuant to this Stipulation.

5. The disclosure by the Litigation Trust of any of the A&M Debtor Derived Work Papers, whether by consent of the Examiner or the Examiner's Professionals, by Court order, or by the Litigation Trust in violation of this Stipulation shall not affect the privileged protection of such disclosed A&M Debtor Derived Work Papers with respect to any person or entity and shall not affect the privileged protection of any other A&M Debtor Derived Work Papers.

6. The Litigation Trust shall be responsible for the payment of all fees and expenses, including the customary hourly rates for all involved professionals, incurred by the Examiner and the Examiner's Professionals in connection with their compliance with this Stipulation, as provided for in the Examiner's Conclusion Order and the Post-Effective Date Fee Procedures

Order.

7. The Debtor Parties, each of which Debtor Parties has the authority to provide the necessary consent required under paragraph 5 of the Debtor Parties' Confidentiality Stipulation with respect to the sharing of Shared Information, hereby consent to the Examiner and the Examiner's Professionals providing the documents hereunder. They further agree that the production of any of the A&M Debtor Party Derived Work Papers to the Litigation Trust does not violate the terms of the Debtor Parties' Confidentiality Stipulation.

8. The compliance by the Examiner and the Examiner's Professionals with this Stipulation, the Post-Effective Date Fee Procedures Order, or any other Order of this Court, shall in no way be deemed or constitute a violation of any such orders or in any way result in a waiver of any rights or protections granted to the Examiner and the Examiner's Professionals thereunder, including, without limitation, those provisions pertaining to the prohibition against any parties serving any discovery requests upon the Examiner or the Examiner's Professionals other than pursuant to prior order of the Court.

9. The compliance of the Examiner and the Examiner's Professionals with this Stipulation shall in no way limit the ability of the Examiner and the Examiner's Professionals to assert any available defense against any party, including, without limitation, the ability of the Examiner and the Examiner's Professionals to refuse to enter into a similar agreement with any other party.

10. Except as explicitly provided herein, nothing herein relieves any party of any obligation or requirement established by the Examiner's Conclusion Order.

11. The Debtors' consent to this Order shall not be deemed to be consent to the disclosure of any Debtor Parties' Documents or A&M Debtor Party Derived Work Papers to any

person other than the Litigation Trustee.

12. This Order shall be effective as of the date of entry by the Court.

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13. This Court shall retain jurisdiction to determine all matters relating to the interpretation, enforcement, or modification of this Order.

Dated: June 6, 2011

**STUTMAN, TREISTER & GLATT  
PROFESSIONAL CORPORATION**

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SO ORDERED.

Dated: New York, New York  
June \_\_, 2011

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HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE