

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

EXTENDED STAY, INC., *et al.*,

Reorganized Debtors.

Chapter 11

Case No. 09-13764 (JLG)

**CERTIFICATE OF NO OBJECTION REGARDING NOTICE OF
PRESENTMENT OF ORDER MODIFYING “STIPULATION
AND ORDER REGARDING EXAMINER’S TURNOVER OF
CERTAIN WORK PAPERS OF ALVAREZ AND MARSAL DISPUTE
ANALYSIS & FORENSIC SERVICES LLC TO THE LITIGATION TRUST**

1. On April 19, 2022, the Lightstone Parties¹ in the adversary proceeding captioned *Finbarr O’Connor, etc. v. DL-DW Holdings, LLC et al.*, 11-ap-02254-JLG (the “Adversary Proceeding”) filed the notice of presentment [Docket No. 1954] (the “Notice of Presentment”) of the proposed *Order Modifying “Stipulation and Order Regarding Examiner’s Turnover of Certain Work Papers of Alvarez and Marsal Dispute Analysis & Forensic Services LLC to the Litigation Trust”* [Docket No. 1954-1] (the “Proposed Order”). The Proposed Order modifies the *Stipulation and Order Regarding Examiner’s Turnover of Certain Work Papers of Alvarez and Marsal Dispute Analysis & Forensic Services LLC to the Litigation Trust*, which the Court entered in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) on June 28, 2011 [Docket No. 1450] (the “Original Examiner Turnover Over”).

2. As set forth in the Notice of Presentment, the deadline for filing an objection to the Proposed Order was **May 3, 2022, at 5:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”). As also set forth in the Notice of Presentment, the Lightstone Parties will present the Proposed Order to the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, for

¹ The Lightstone Parties are: DL-DW Holdings, LLC, Lightstone Holdings, LLC, the Lightstone Group, LLC, Lightstone Commercial Management, BHAC Capital IV, LLC, Park Avenue Funding LLC, David Lichtenstein, Bruno de Vinck, Peyton “Chip” Owen, and Joseph Teichman.



signature on **May 10, 2022 at 11:00 a.m. (prevailing Eastern Time)**.

3. On April 19, 2022, the Lightstone Parties served the Notice of Presentment and Proposed Order upon all parties to the Adversary Proceeding, the above-captioned former debtors and debtors in possession, the Office of the United States Trustee for the Southern District of New York, and the examiner that was appointed in the Chapter 11 Cases, as set forth in the *Certificate of Service*, dated April 21, 2022 [Docket No. 1955]. Further, all parties receiving ECF notifications in the Chapter 11 Cases were provided notice of the Notice of Presentment and Proposed Order via the ECF system. Additionally, on April 22, 2022, the Lightstone Parties served the Notice of Presentment and Proposed Order upon Alvarez & Marsal.

4. Plaintiffs in the Adversary Proceeding, Finbarr O'Connor, as successor trustee for and on behalf of the Extended Stay Litigation Trust (the "Litigation Trust"), and the Litigation Trust, consent to entry of the Proposed Order. The Litigation Trust is a party to the Original Examiner Turnover Order.

5. Moreover, no objection, responsive pleading or request for hearing with respect to the Notice of Presentment or the Proposed Order has been filed on the docket or served on the Lightstone Parties. Counsel for the Lightstone Parties has reviewed the Court's docket not less than forty-eight (48) hours after expiration of the Objection Deadline, and no objection, responsive pleading, or request for a hearing with respect to the Notice of Presentment or Proposed Order appears thereon. Counsel is filing this certificate of no objection (the "CNO") not less than forty-eight (48) hours after the expiration of the Objection Deadline set forth in the Notice of Presentment.

6. An electronic copy of the Proposed Order in substantially the same form that was annexed as Exhibit A to the Notice of Presentment is being submitted to the Court, along with

this CNO.

7. In accordance with the Court's Local Rule 9075-2, the Lightstone Parties respectfully request that the Proposed Order submitted to the Court with this CNO be entered without a hearing.

Dated: May 5, 2022
New York, New York

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

EXTENDED STAY, INC., *et al.*,

Reorganized Debtors.

Chapter 11

Case No. 09-13764 (JLG)

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

Upon the notice of presentment dated April 19, 2022 (the “Notice of Presentment”), filed by the Lightstone Parties;¹ and upon the proposed order annexed to the Notice of Presentment (the “Proposed Order”) modifying the *Stipulation and Order Regarding Examiner’s Turnover of Certain Work Papers of Alvarez and Marsal Dispute Analysis & Forensic Services LLC to the Litigation Trust* entered on June 28, 2011 in the above-captioned chapter 11 cases [Docket No. 1450] (the “Original Examiner Turnover Order”); and paragraph 3 of the Original Examiner Turnover Order providing:

The Litigation Trust² 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;

¹ The Lightstone Parties are: DL-DW Holdings, LLC, Lightstone Holdings, LLC, the Lightstone Group, LLC, Lightstone Commercial Management, BHAC Capital IV, LLC, Park Avenue Funding LLC, David Lichtenstein, Bruno de Vinck, Peyton “Chip” Owen, and Joseph Teichman.

² Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Original Examiner Turnover Order.

and the Extended Stay Litigation Trust (the “Litigation Trust”), being a party to the Original Examiner Turnover Order and plaintiff in the adversary proceeding captioned *Finbarr O’Connor, etc. v. DL-DW Holdings, LLC et al.*, 11-ap-02254-JLG (the “Adversary Proceeding”), having consented to entry of the Proposed Order; and the Court having jurisdiction to consider the Notice of Presentment and Proposed Order in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Lightstone Parties having provided notice of the Proposed Order to all signatories to the Original Examiner Turnover Order and to all parties to the Adversary Proceeding; and the Court having convened a hearing on the Proposed Order on May 10, 2022; and no objections to the Proposed Order having been filed, or all objections to the Proposed Order having been overruled; and the Court finds and determines that the Lightstone Parties have provided due and proper notice of the Proposed Order and no further notice is necessary, and that the legal and factual bases set forth by the Lightstone Parties establish just and sufficient cause to enter the Proposed Order;

IT IS HEREBY ORDERED THAT:

1. The Original Examiner Turnover Order is hereby modified, amended, and superseded, solely to provide that (a) Finbarr O’Connor, as successor trustee for and on behalf of the Litigation Trust and (b) the Litigation Trust, are hereby ordered to produce any A&M Debtor Party Derived Work Papers in their custody, possession or control to all defendants and third-party defendants in the Adversary Proceeding, within fourteen (14) days of entry of this Order.
2. The Original Examiner Turnover Order shall remain in full force and effect in all other respects.
3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

4. The terms and conditions of this Order are effective immediately upon entry.

SO ORDERED:

Dated: , 2022
New York, New York

Honorable James L. Garrity, Jr.
United States Bankruptcy Judge