

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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|------------------------------------|---|-------------------------|
| In re:                             | ) |                         |
|                                    | ) | Chapter 11              |
| TRUMP ENTERTAINMENT RESORTS, INC., | ) |                         |
| <i>et. al.</i> ,                   | ) | Case No. 14-12103 (KG)  |
|                                    | ) | (Jointly Administrated) |
| Debtors.                           | ) |                         |

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Re: Docket Nos.: 175, 366, 712, 713, 716, and 757  
Hearing Date: January 16, 2015 at 9:30 a.m.

**SUPPLEMENTAL OBJECTION OF LEVINE, STALLER, SKLAR, CHAN & BROWN, P.A. TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING THE PROPOSED DISCLOSURE STATEMENT FOR DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION**

Levine, Staller, Sklar, Chan & Brown, P.A. ("Levine Staller"), a secured creditor in the above-captioned chapter 11 cases, by and through its undersigned counsel, Saul Ewing LLP, hereby files this supplemental objection (the "Supplemental Objection")<sup>1</sup> to the Debtors' motion (the "Motion") [D.I. 175], seeking entry of an order, as revised (the "Revised Order") [D.I. 716], approving the *Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement") [D.I. 713] and (the "Third Amended Plan") [D.I. 712],<sup>2</sup> on grounds that the Disclosure Statement lacks required adequate information pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code"), and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). In support of this Supplemental Objection, Levine Staller respectfully states as follows:

**PRELIMINARY STATEMENT**

1. Culminating a long running dispute in this case, this Court determined that Levine

<sup>1</sup> Levine Staller previously filed an objection to the Motion (the "Objection") [Docket No. 366].

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement and Third Amended Plan.

Staller holds a secured claim perfected by a statutory attorney's charging lien (the "Charging Lien Secured Claim") that this Court ordered and allowed under Bankruptcy Code section 506(a) and Bankruptcy Rule 3012, describing it as "a **fully secured** claim for the entire amount of the \$1.25 million in legal fees that remain due and owing plus interest, costs and attorney's fees for collection and enforcement of the Charging Lien."

2. Despite this Court's ruling, the Debtors have defiantly contested Levine Staller's status as a fully secured creditor and instead characterize Levine Staller as a general unsecured creditor, requiring, among other things, this Supplemental Objection.

3. Levine Staller objects to the Disclosure Statement because it does not provide adequate information pertaining to its fully secured claim. The Disclosure Statement inaccurately describes this Court's order that Levine Staller is a fully secured creditor and rejects this Court's order by classifying Levine Staller's claim as a General Unsecured Claim.

4. For the reasons set forth at length in Levine Staller's Supplemental Objection to the Debtor's Motion for DIP Financing [D.I. 757]<sup>3</sup> and Objection [D.I. 366], which are both incorporated herein by reference, and as discussed below, the Disclosure Statement cannot be approved as it fails to accurately describe and classify Levine Staller's fully secured claim.

### **FACTS AND PROCEDURAL BACKGROUND**

5. Since the inception of this case the Debtors and other parties have persistently and defiantly disputed Levine Staller's status as a secured creditor requiring Levine Staller to continually and vigorously defend its rights.

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<sup>3</sup> The full title is the Supplemental Objection of Levine, Staller, Sklar, Chan & Brown, P.A. with Respect to the Debtors' (1) Motion for Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, and (V) Modifying Automatic Stay and (2) the DIP Facility Commitment Letter.

6. The dispute over Levine Staller’s secured claim culminated in an evidentiary hearing on November 24, 2014, and this Court took under advisement the *Motion of Levine, Staller, Sklar, Chan & Brown, P.A. for Entry of an Order Fixing the Value and Priority of, and Allowing Its Claim as Secured in Full, Pursuant to 11 U.S.C. § 506(A) and Rule 3012 of the Federal Rules Of Bankruptcy Procedure* (the “Claim Determination Motion”), as well as the objections, reply, sur-reply, declarations, and other documents filed in relation thereto. [See D.I. 295, 407, 410, 412, 413, 494, 456, 458, and 225].

7. Critically, the Claim Determination Motion sought from the Court a determination that Levine Staller holds a fully secured claim under both 11 U.S.C. § 506(A) and Rule 3012 of the Federal Rules of Bankruptcy Procedure, and the title of the pleading—*Motion of Levine, Staller, Sklar, Chan & Brown, P.A. for Entry of an Order **Fixing the Value and Priority of, and Allowing Its Claim as Secured in Full, Pursuant to 11 U.S.C. § 506(A) and Rule 3012 of the Federal Rules Of Bankruptcy Procedure***—specifically asked the Court to allow Levine Staller’s claim as fully secured. Which is exactly what the Court did.<sup>4</sup>

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<sup>4</sup> The note of the Advisory Committee on Rules illuminate this:

**Rule 3012. Valuation of Security**

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.

**Notes of Advisory Committee on Rules—1983**

Pursuant to §506(a) of the Code, secured claims are to be valued and allowed as secured to the extent of the value of the collateral and unsecured, to the extent it is enforceable, for the excess over such value. The valuation of secured claims may become important in different contexts *e.g.*, to determine the issue of adequate protection under §361, impairment under §1124, or treatment of the claim in a plan pursuant to §1129(b) of the Code. This rule permits the issue to be raised on motion by a party in interest. The secured creditor is entitled to notice of the hearing on the motion and the court may direct that others in the case also receive such notice.

F.R.B.P. 3012 and Notes of Advisory Committee on Rules—1983, available in 2 Collier Pamphlet Edition of the Bankruptcy Rules 2014, p. 224 (Alan N. Resnick & Henry J. Sommer eds., Matthew Bender) (underlined emphasis added).

Accordingly, the Court’s Charging Lien Order, which was entered under Rule 3012, fixed and determined *for all purposes* in this bankruptcy case that Levine Staller’s claim is valued and allowed as a fully secured

8. In neither their Objections nor Sur-Reply did the Debtors or the Icahn Lenders argue that if the Court found Levine Staller had a secured claim, the value of Debtor's estate was inadequate to satisfy Levine Staller's fully secured claim or reserve the right to make such an argument at a later date.

9. On December 5, 2014, this Court issued a memorandum opinion on the Claim Determination Motion (the "Charging Lien Opinion") [D.I. 600], and entered an order deciding the Claim Determination Motion (the "Charging Lien Order") [D.I. 601].

10. In the Charging Lien Order, the Court found that "Levine Staller possesses a first-priority, prior-perfected Charging Lien" which the Court allowed as "a **fully secured** claim for the entire amount of the \$1.25 million in legal fees that remain due and owing plus interest, costs and attorney's fees for collection and enforcement of the Charging Lien." (emphasis added). The Court concluded that Levine Staller's secured claim and Charging Lien on the Debtors' assets is second in priority only to the pre-existing liens of the Icahn Lenders. See the Charging Lien Order [D.I. 601] and the Charging Lien Opinion [D.I. 600].

11. No party-in-interest appealed or otherwise contested or sought clarification of the Charging Lien Order. Accordingly, the Charging Lien Order and its holding that Levine Staller possesses a fully secured claim became final and nonappealable and remains so today.

12. Nevertheless, the Disclosure Statement includes Levine Staller's claim as a General Unsecured Claim by use of terms that are defined in the Third Amended Plan.<sup>5</sup> The Third Amended Plan relevantly provides that "**General Unsecured Claim** means any Claim (including, for the avoidance of doubt, the Levine Staller Claims)..." See p. 14 of 68.

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claim.

<sup>5</sup> Page 2 of the Disclosure Statement provides, "all capitalized terms in this disclosure statement not otherwise defined herein have the meanings given to them in the [Third Amended Plan]."

13. The Third Amended Plan also defines Levine Staller Claims, and provides that,

***Levine Staller Claims*** means any and all Claims asserted by or on behalf of Levine, Staller, Sklar, Chan & Brown, P.A., including, without limitation, all Claims arising from or related to the Bankruptcy Court's *Order Granting in Part the Motion of Levine, Staller, Sklar & Brown, P.A. for Entry of an Order Fixing the Value and Priority of, and Allowing Its Claim as Secured in Full, Pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure* [Docket No. 601] and *Memorandum Opinion Re Motion of Levine, Staller, Sklar & Brown, P.A. for Entry of an Order Fixing the Value and Priority of, and Allowing Its Claim as Secured in Full* [Docket No. 600], and including, without limitation, all Claims asserted in the proofs of claim assigned Claim Nos. 383, 384, 385, and 386 by the Claims Agent.

See Third Amended Plan p. 15-16 of 68.

14. The Disclosure Statement also purports to provide a detailed description of Levine Staller's Charging Lien and secured claim in Section 5.18 which provides:

**5.18. *Levine Staller Litigation.***

As discussed above, Levine Staller formerly represented the Debtors in connection with the 2008-2012 Tax Appeals. On October 15, 2014, Levine Staller filed the *Motion of Levine, Staller, Sklar, Chan & Brown, P.A. for Entry of an Order Fixing the Value and Priority of, and Allowing Its Claim as Secured in Full, Pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure* (the "**Lien Motion**") [Docket No. 295] seeking the allowance of a first priority, perfected attorney's charging lien (the "**Charging Lien**") in the amount of \$1.25 million, plus interests and costs, on the proceeds of and cash derived from the judgment entered by the Tax Court of New Jersey on June 22, 2012 in whosoever hands they may come. Levine Staller further argued that the Charging Lien related back to the commencement of the 2008-2012 Tax Appeals in 2008 and therefore ranked senior in priority relative to the liens of the First Lien Lenders. A hearing to consider the Lien Motion was held on November 24, 2014. On December 5, 2014, the Court entered an order [Docket No. 601] and memorandum opinion [Docket No. 600] granting Levine Staller a fully secured claim in the Debtors' cash, in the amount of \$1.25 million with respect to the Charging Lien, and providing that such claim shall be enforced with priority over all subsequently perfected liens, but junior to any liens that may or have been granted to the First Lien Parties under the First

Lien Credit Agreement.

See Disclosure Statement p. 42 of 135.

**OBJECTION**

15. Levine Staller renews its objection to the Debtors' Disclosure Statement. The description of Levine Staller's claims and proposed treatment under the Disclosure Statement and Third Amended Plan are disingenuous due to this Court's determination that allowed Levine Staller a fully secured claim in this case for the entire amount of the Charging Lien and the interest, fees, and costs secured by the Charging Lien.

16. The Charging Lien Order makes no limitation on the value or allowance of Levine Staller's fully secured claim in this case:

"IT IS FURTHER ORDERED that pursuant to 11 U.S.C. § 506, Levine Staller is allowed a fully secured claim for the entire amount of the \$1.25 million in legal fees that remain due and owing plus interest, costs and attorney's fees for collection and enforcement of the Charging Lien."

See Charging Lien Order D.I. 601 p. 2 of 2. It goes on to explain that Levine Staller is a secured creditor second in priority only to the Icahn Lenders.

17. As discussed at greater length in Levine Staller's Supplemental Objection to DIP Financing, in light of the relief expressly sought in the Claim Determination Motion, the words "fully secured" can mean only one thing: This Court evaluated Levine Staller's claim, determined the claim was secured, determined the amount of its secured claim, and recognized that the secured claim was still "fully secured" by assets of the estate notwithstanding its second position behind the Icahn Lenders.

18. This Court was clearly aware of the amount of the prepetition secured debt owed to the Icahn Lenders, as well as being aware of the valuation of the Debtors' assets presented in

connection with various motions already filed in the case. To hold that Levine Staller's secured claim was "fully secured" means that the Court took into account valuation when it decided the Claim Determination Motion, in order to grant the parties clarity as to where Levine Staller fits into the Plan classification scheme.

19. Accordingly, Levine Staller's "fully secured" claim for the Charging Lien must be a Class 2, "Other Secured Claims" claim under the Plan. The Debtors, however, refuse to accept this Court's ruling and have instead amended the Plan to specifically define Levine Staller's claims as within the general unsecured class, when it should properly be included within Class 2 Other Secured Claims.

20. Levine Staller also reserves its right to further object to the Motion and Disclosure Statement at the hearing and to request adjustments to the Revised Order.

**CONCLUSION**

21. The Disclosure Statement fails to provide adequate information and provides incorrect information regarding Levine Staller's fully secured claim for the Charging Lien. As a result, the Disclosure Statement does not meet the requirements of section 1125 of the Bankruptcy Code and should not be approved without amendment.

Dated: January 13, 2014

Respectfully Submitted

By 

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FOR THE DISTRICT OF DELAWARE

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In re: \_\_\_\_\_ )  
TRUMP ENTERTAINMENT RESORTS, INC., *et. al.*, ) Chapter 11  
Debtors. ) Case No. 14-12103 (KG)  
 ) **(Jointly Administrated)**  
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**CERTIFICATE OF SERVICE**

I, Teresa K.D. Currier, hereby certify that on January 13, 2015, I caused a copy of the **Supplemental Objection of Levine, Staller, Sklar, Chan & Brown, P.A. to the Debtors' Motion for Entry of an Order Approving the Proposed Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization** to be served on the parties on the attached service list in the manner indicated therein.

**SAUL EWING LLP**

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Dated: January 13, 2015

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