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Proposed Counsel to the Examiner

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

**In re:**

**TCI 2 Holdings, LLC, et al.,  
  
Debtors.**

Chapter 11  
Case No. 09-13654 (JHW) (Jointly  
Administered)  
  
Hearing Date:  
Oral Argument Requested If Opposition  
Received

**NOTICE OF EXAMINER’S MOTION  
FOR AN ORDER APPROVING WORK PLAN**

**PLEASE TAKE NOTICE** that on October\_\_\_\_, 2009 at \_\_\_\_\_ a.m./p.m. or as soon thereafter as counsel may be heard, Michael St. Patrick Baxter, the Examiner herein (the “**Examiner**”), shall move before this Court for entry of an order approving his proposed work plan (the “**Work Plan**”) to conduct the investigation of the negotiating process on the selection

of the Beal/Trump plan, pursuant to that certain order entered on September 15, 2009, directing the appointment of an examiner (the "**Motion**").

**PLEASE TAKE FURTHER NOTICE** that, in support of the Motion, the Examiner shall rely upon the accompanying Application and the argument of counsel presented at the hearing on the Motion.

**PLEASE TAKE FURTHER NOTICE** that responsive pleadings, if any, must be timely filed with the Clerk of the United States Bankruptcy Court via the Court's electronic filing system or conventionally filed at the Clerk's Office of the United States Bankruptcy Court, U.S. Post Office and Courthouse, 401 Market Street, Second Floor, Camden, NJ 08101 and served simultaneously upon Day Pitney LLP, 200 Campus Drive, Florham Park, New Jersey 07932, Attention: Richard M. Meth, Esq., proposed counsel to the Examiner, in accordance with Rule 9013-1(d) of the Local Rules of Bankruptcy Procedure for the District of New Jersey (the "Local Rules"), unless otherwise ordered by the Court.

**PLEASE TAKE FURTHER NOTICE** that, in the event no objections are timely raised as to the relief requested in the Motion, the Motion shall be deemed uncontested on the return date and the relief sought may be granted in the Court's discretion.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Rule 9013-1(f) of the Local Rules, oral argument is hereby requested if opposition is received.

**PLEASE TAKE FURTHER NOTICE** that the Examiner believes no complex factual or legal issues are involved herein. Therefore, in accordance with Rule 9013-2 of the Local Rules, no memorandum of law is submitted herewith.

Dated: October 5, 2009  
Florham Park, New Jersey

DAY PITNEY LLP

By: /s/ Richard M. Meth  
RICHARD M. METH

-and-

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**EXAMINER'S MOTION  
FOR AN ORDER APPROVING WORK PLAN**

Michael St. Patrick Baxter, the Examiner herein, in accordance with this Court's order appointing an examiner (the "**Examiner Order**"), individually and by and through his undersigned counsel submits this motion for an order approving his proposed work plan (the "**Work Plan**") to conduct the examination (the "**Motion**"), and states as follows:

### **BACKGROUND**

1. On February 17, 2009, the Debtors<sup>1</sup> filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code. No trustee has been appointed, and the Debtors remain in possession of their assets and continue to manage their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. No official committee has been appointed in these chapter 11 cases.

3. On August 11, 2009, the Ad Hoc Committee of Noteholders (the "**Ad Hoc Committee**") filed a motion for the appointment of an examiner (the "**Examiner Motion**").

4. On September 15, 2009, the Court granted the Examiner Motion and entered the Examiner Order, directing the Acting United States Trustee for Region Three (the "**U.S. Trustee**") to appoint an examiner.

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: TCI 2 Holdings, LLC (0526); Trump Entertainment Resorts, Inc. (8402); Trump Entertainment Resorts Holdings, L.P. (8407); Trump Entertainment Resorts Funding, Inc. (8405); Trump Entertainment Resorts Development Company, LLC (2230); Trump Taj Mahal Associates, LLC, d/b/a Trump Taj Mahal Casino Resort (6368); Trump Plaza Associates, LLC, d/b/a Trump Plaza Hotel and Casino (1643); Trump Marina Associates, LLC, d/b/a Trump Marina Hotel Casino (8426); TER Management Co., LLC (0648); and TER Development Co., LLC (0425).

5. The Examiner Order directed the Examiner to “(a) investigate the negotiating process on the selection of the Beal/Trump plan, the considerations of the Debtors in terms of the desirability of that plan over the Ad Hoc Committee’s plan, how that process went forward and the role of Mr. Trump in that context; and (b) otherwise perform, to the extent further directed by the Court upon notice and a hearing, such other duties as set forth in 11 U.S.C. § 1106(a)(3) and 11 U.S.C. § 1106(a)(4) of the Bankruptcy Code (collectively, the ‘**Investigation**’).” (Emphasis added.)

6. The Court also required the Examiner to propose a work plan and the estimated costs to complete the Investigation.

7. On September 21, 2009, the U.S. Trustee filed a notice of appointment of the Examiner, and on September 22, 2009, the Court entered an order approving the appointment of Michael St. Patrick Baxter as examiner.

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1409 and 1409.

### **RELIEF REQUESTED**

9. The Examiner has reviewed the scope of the Investigation, and has consulted with counsel to the Debtors, counsel to Mr. Trump, counsel and financial adviser to the Ad Hoc Committee, and counsel to Beal Bank. The Examiner has prepared a work plan taking into account the terms of the Examiner Order, the scope of the Investigation, his consultations with the parties-in-interest, and other publicly available documents obtained before filing the Motion. The Examiner requests approval of the Work Plan and that he be authorized to proceed with the Investigation as proposed in the Work Plan.

10. The Examiner has selected the law firm of Covington & Burling LLP to serve as his counsel in this case, and the law firm of Day Pitney LLP to serve as his New Jersey local counsel, and will shortly file retention applications for both firms.

### **WORK PLAN**

11. The Work Plan consists of five discrete phases: (a) case initiation and preparation of the Work Plan; (b) document discovery; (c) deposition discovery; (d) preparation of an examiner's report; and (e) post-examination report administrative matters. The Examiner has discussed the proposed examination schedule with the parties in interest, and has incorporated comments from the parties to ensure that the Work Plan is coordinated with, and will not delay, the confirmation process. The Examiner expects the parties either to agree on a schedule for confirmation discovery or to request an order from the Court setting confirmation discovery-related deadlines. The Examiner has not proposed deadlines in this Work Plan, but intends to accomplish the Investigation within the confirmation discovery time frames as either agreed upon by the parties or ordered by this Court.

#### **Phase 1: Case Initiation and Preparation of Work Plan**

12. Phase 1 consists of the preparation and submission of (a) retention applications for Covington & Burling LLP and local counsel; and (b) the Work Plan and budget. This phase is substantially complete.

#### **Phase 2: Document Discovery**

13. Phase 2 involves obtaining information necessary to the Investigation from the parties in interest and possibly from third parties. The Examiner intends to request documents from the Debtors, their key officers and directors, the Debtors' financial advisor,

Mr. Trump, Ms. Trump, Beal Bank and certain of its officers, the members of the Ad Hoc Committee, and other parties likely to have relevant information.

14. To expedite document discovery and to minimize costs, the Examiner has reviewed and intends to adopt the document requests relevant to the Investigation that the Ad Hoc Committee has already propounded to the Debtors, the Beal parties, and Mr. and Ms. Trump. The Examiner also may be able to adopt any document requests the other parties make of the Ad Hoc Committee, although he has not yet seen such requests.

15. The Examiner anticipates that the Investigation and the confirmation discovery will result in the production of a substantial number of electronic documents, including e-mails. All of the interested parties will need access to these materials once they are produced. The Examiner understands that the Debtors have already contracted with an outside e-discovery vendor to manage the electronic documents. To avoid burdening the Debtors' estates with duplicative and unnecessary expenses relating to e-discovery, the Examiner proposes that the Court authorize, and direct, the Debtors to establish a multi-party document repository so that all interested parties will have access to the documents produced, and to be produced, in these cases.

16. In the interest of efficiency and expedition, the Examiner will also seek to schedule depositions during this phase so that they will commence within approximately two weeks following the completion of document discovery.

17. The Examiner has not yet determined whether it will be necessary or prudent to retain an expert to assist him in completing the examination. For example, the Examiner understands that the Debtors' decision to propose the Beal/Trump plan was based, in part, on valuation analysis that was performed by the Debtors' financial advisor. It might



be helpful to have the benefit of a valuation expert to assist in assessing the reasonableness of the Debtors' reliance on the conclusions reached by its financial advisor. If and when the Examiner determines that it is necessary or advisable to seek the assistance of an expert, he intends to seek Court approval therefor. If such a request is made and granted, this would increase the cost of the Investigation.

18. Phase 2 of the Work Plan is already underway.

**Phase 3: Deposition Discovery**

19. Phase 3 involves depositions by the Examiner and his counsel of witnesses material to the Investigation. The Examiner expects that deposition discovery will occur during the 30 days following the completion of document discovery, or whatever time period the parties otherwise agree upon and/or the Court orders for confirmation discovery. It is expected that the Examiner and his counsel will conduct depositions of certain of the Debtors officers and directors, the Debtors' financial advisor, Mr. Trump, Beal Bank and certain of its officers, certain members of the Ad Hoc Committee, and perhaps other material witnesses.

20. The Examiner Order requires that the 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. It also provides that “[s]olely in connection with the confirmation process and the Investigation, (a) any discovery taken by any Party shall include the Examiner, and any depositions or document requests made by the Examiner shall include the Parties, and (b) to the extent that a deposition of a witness is scheduled, that witness shall only be deposed once by the Parties and the Examiner, subject to further order of this Court or agreement by the Parties.”

21. The Examiner anticipates that, in connection with confirmation, multiple parties will seek to depose witnesses on issues that may overlap with the areas of inquiry in the Investigation. The Examiner intends to use every effort to make his depositions as brief as practicable. However, given the number of parties in interest and the instruction to coordinate depositions among the parties in interest, the Examiner expects that the deposition of certain witnesses may be lengthy. Out of an abundance of caution, the Examiner requests that the Court order that the seven-hour limit imposed by Fed. R. Civ. Pro. 30(d) not curtail, or limit, the Examiner's inquiry. The Examiner submits that Rule 30(d) is not applicable to a Rule 2004 examination, in any event, and while there is likely to be substantial overlap between the matters of the Investigation and confirmation issues, the Examiner's obligation to conduct the Investigation is independent of the confirmation process. The Examiner should therefore be accorded sufficient time to depose material witnesses.

**Phase 4: Examiner Report**

22. Phase 4 involves the preparation of the report of examination. Following the completion of discovery and an analysis of the results, the Examiner, with the assistance of his counsel, will prepare a report of his findings. It is the Examiner's intention to complete and file his report in sufficient time before the confirmation hearing so that it will be of use to the Court and the parties in interest. The Examiner has requested the parties to build time into the proposed confirmation schedule to permit this to occur.

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

meet this schedule and increase the costs of the Investigation. In such event, the Examiner intends to promptly inform the Court and/or to seek such judicial assistance as may be appropriate.

**Phase 5: Post-Examination Report Matters**

24. Phase 5 involves post-examination report administrative matters. After the Examiner submits his report, he will conduct limited motion practice to obtain direction from the Court regarding the handling of documents and materials obtained during the Investigation, his fee application and that of his counsel, and any other issues arising from the issuance of the report.

**ESTIMATED COSTS**

25. The Examiner has set forth below his estimate of the amount of professional time that will be necessary to complete the Investigation. This estimate is based primarily upon the volume of documents that the Examiner is informed will be involved in the document production and a limited number of witnesses to be deposed. However, the actual cost may be materially higher or lower depending on the actual volume of the documents and the number of witnesses actually deposed. In addition, the estimate assumes that the Debtors and the other parties in interest will cooperate with the Examiner in the Investigation. Lack of cooperation will necessarily and materially increase the cost of the Investigation. As a result, this estimate is not intended as either a cap or a floor on the professional fees that may be incurred.

26. The Examiner anticipates that he will spend approximately 75 to 125 hours per month over a three-month period. The Examiner's hourly rate is \$775. He

estimates that his aggregate fee will be approximately \$174,375.00 to \$290,625.00. Travel time will be billed at 50% of his customary hourly rate.

27. The Examiner has assigned various Covington attorneys to work on the Investigation, and to provide the following legal services:

- (a) General bankruptcy-related advice and assistance to the Examiner;
- (b) Attend necessary Court hearings, argue motions, conduct work related to compliance with the Bankruptcy Code and rules of this Court;
- (c) Assist in the Investigation, enforce subpoenas and conduct motion practice, negotiate agreements related to the use of confidential or privileged documents and information, review documents, conduct interviews and depositions; and
- (d) Assist in the preparation of the Examiner's report.

28. Because the Examiner intends to complete the Investigation and file the report before the confirmation hearing, it will be necessary to pursue expedited document production and witness deposition. This schedule will likely require parallel tracks of depositions. To ensure that the work is completed expeditiously, it will be necessary to assign more attorneys, in general, and more senior attorneys, in particular, to handle the discovery. The Examiner intends to make efficient use of project attorneys, whose hourly rates are lower than associates' rates, to conduct the initial document review. In addition, the central document repository proposed in paragraph 15 above should help to minimize costs. The expedited nature of the Investigation, however, may result in higher costs than would otherwise be incurred if the time were less compressed.

29. The blended hourly rate of the Covington attorneys likely to work on this matter is expected to be approximately \$480 per hour. It is estimated that the equivalent of four attorneys will work between 100 hours and 160 hours per month, over a three-month period at a blended hourly rate of \$480. Covington's estimated legal fees are therefore expected to be between \$576,000.00 and \$921,600.00. Travel time will be billed at 50% of the applicable hourly rate.

30. The Examiner estimates that the legal fees of New Jersey local counsel will be between \$20,000.00 and \$50,000.00 (exclusive of expenses). Travel time will be billed at 50% of the applicable hourly rate.

31. It is currently anticipated that the rates of New Jersey local counsel will be as follows: (a) partners not to exceed \$525 per hour; (b) associates not to exceed \$370 per hour; and (c) paralegals not to exceed \$195 per hour.

32. The Investigation will require the Examiner and his professionals to incur certain expenses in connection with travel,<sup>2</sup> document management and copying, service fees, deposition costs and other related expenses. These expenses will also vary depending on the volume of documents produced, and whether the Debtors establish a central document depository. At this stage, the Examiner is unable to estimate the amount of expenses likely be incurred.

33. The Examiner intends to make every effort to conduct the Investigation in as cost-effective a manner as practicable under the circumstances. The

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<sup>2</sup> Most of the witnesses are in the New York/New Jersey area, but the Beal Bank witnesses are in Texas, and if they are unwilling to travel to New York they may need to be deposed in Texas. The Examiner expects to make efficient use of local counsel to cover any relevant hearings that do not require the Examiner's attendance.

Examiner intends to promptly inform the U.S. Trustee if it appears that the Examiner's and his counsel's professional fees may materially exceed the estimate and the reasons therefor.

WHEREFORE, the Examiner respectfully requests that the Court enter an order approving the Work Plan and budget as set forth herein, and that the Court grant such other and further relief as deemed appropriate and as justice requires.

Dated: October 5, 2009

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

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In re:

TCI 2 HOLDINGS, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 09-13654 (JHW)

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Oral Argument Requested  
If Opposition Received

**ORDER APPROVING EXAMINER'S WORK PLAN AND GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through three (3), is hereby **ORDERED**.

Page 2

Debtor: TCI 2 HOLDINGS, LLC, et al.  
Case No. 09-13654 (JHW)  
Caption of Order: Order Approving Examiner's Work Plan and Granting Related Relief

THIS MATTER having been opened to the Court upon the Motion of Michael St. Patrick Baxter, the Examiner herein (the "**Examiner**"), for an Order Approving Work Plan and Granting Related Relief (the "**Motion**"); and it appearing that due and proper notice of the Motion was provided to all interested parties in these cases; and the Court having considered the Motion and any opposition thereto; and for good cause shown;

IT IS HEREBY ORDERED as follows:

1. That the Motion be, and hereby, is granted;
2. That the Work Plan<sup>1</sup> be, and hereby is, approved;
3. That the Debtors be, and they hereby are, authorized and directed to establish a multi-party document repository in accordance with the terms of the Motion, and to provide reasonable access thereto to all interested parties;
4. That the seven-hour limit on depositions, pursuant to Fed. R. Civ. P. 30(d)(1), be, and it hereby is, waived with respect to any depositions conducted by the Examiner in the course of the Investigation;
5. That this order is without prejudice to the Examiner's right to seek a modification of the Work Plan; and

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.



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Debtor: TCI 2 HOLDINGS, LLC, et al.

Case No. 09-13654 (JHW)

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6. That this order is without prejudice to the rights of the Examiner and his counsel to seek approval, and payment, of fees and expenses incurred in connection with the Investigation and the Examiner's report that are in excess of those estimated and set forth in the Motion.

## General Information

<b>Court</b>	United States Bankruptcy Court for the District of New Jersey; United States Bankruptcy Court for the District of New Jersey
<b>Docket Number</b>	1:09-bk-13654
<b>Status</b>	Closed