

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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<b>In re:</b>	:	X	Chapter 11
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<b>MAGNA ENTERTAINMENT CORP., et al.,<sup>1</sup></b>	:		Case No. 09-10720 (MFW)
	:		
<b>Debtors.</b>	:		Jointly Administered
	:		
	:		<b>Objections Due: April 14, 2009 at 4:00 p.m.</b>
	:		<b>Hearing Date: April 20, 2009 at 1:00 p.m.</b>

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X

**SUPPLEMENTAL RESPONSE AND OBJECTION OF THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS OF MAGNA ENTERTAINMENT CORP., ET AL. TO  
GREENLIGHT CAPITAL OFFSHORE PARTNERS' MOTION FOR THE  
APPOINTMENT OF AN EXAMINER, OR IN THE ALTERNATIVE,  
DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE**

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") submits this supplemental response and objection (the "Objection") to the motion of Greenlight Capital Offshore Partners' ("Greenlight") for the appointment of an examiner, or in the alternative, directing the appointment of a chapter 11 trustee (the "Motion") [Docket No. 198]. In support of the Objection, the Committee states as follows:

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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, if applicable, are: (i) Magna Entertainment Corp., 8374; (ii) The Santa Anita Companies, Inc., 6180; (iii) Los Angeles Turf Club, Incorporated, 6200; (iv) Pacific Racing Association, 5367; (v) MEC Land Holdings (California) Inc., 7410; (vi) Gulfstream Park Racing Association Inc., 6292; (vii) GPRA Thoroughbred Training Center, Inc., 2326; (viii) MEC Dixon, Inc., 7005; (ix) MEC Holdings (USA) Inc., 8494; (x) Sunshine Meadows Racing, Inc., 4288; (xi) Thistledown, Inc., 5742; (xii) MEC Maryland Investments, Inc., 4637; (xiii) 30000 Maryland Investments LLC, 1704; (xiv) Remington Park, Inc., 2024; (xv) GPRA Commercial Enterprises Inc., 6156; (xvi) Pimlico Racing Association, Inc., 4527; (xvii) The Maryland Jockey Club of Baltimore City, Inc., 3840; (xviii) Laurel Racing Association Limited Partnership, 0504; (xix) Laurel Racing Assoc., Inc., 0505; (xx) Prince George's Racing, Inc., 6493; (xxi) Southern Maryland Racing, Inc., 9850; (xxii) Southern Maryland Agricultural Association, 9661; (xxiii) Maryland Jockey Club, Inc., 3124; and (xxiv) AmTote International, Inc., 1143.

### **Summary of Greenlight Motion**

1. On March 27, 2009, Greenlight filed the Motion, which requests the appointment of an examiner pursuant to sections 1104(c) of the Bankruptcy Code or, in the alternative, the appointment of a chapter 11 trustee. Greenlight asserts that the Court is required to appoint an examiner pursuant to section 1104(c)(2) of the Bankruptcy Code. In addition, Greenlight states that even if the Court does not interpret section 1104(c)(2) as requiring the appointment of an examiner, the Court should nonetheless appoint an examiner to investigate the financial affairs of the Debtors as well as to provide the Court and parties in interest with critical information in connection with consummated and proposed insider or related party transactions. Greenlight claims that an examiner is necessary to determine whether there has been any mismanagement by the Debtors' controlling shareholder and/or management, or any breaches of fiduciary duty. Specifically, Greenlight claims that the Debtors' history of insider and related-party transactions such as the proposed debtor-in-possession financing (the "DIP Facility") and the "stalking horse" agreement, and the Debtors' recent performance under the control of Frank Stronach warrants the immediate appointment of an examiner and possibly, a trustee.

### **Recent Events**

2. As the Court is aware, the Committee previously filed a reservation of rights with respect to the Motion (the "Reservation of Rights") [Docket No. 313], explaining that the Committee was actively negotiating with the Debtors and MID to address the Committee's previously expressed concerns about, among other things, corporate governance at the Debtors

and the terms of the proposed DIP Facility and therefore was unable to take a position on the Motion at that time.<sup>2</sup>

3. Since the filing of the Reservation of Rights, the Committee and its advisors have continued their discussions of the open issues with the Debtors, MID and their advisors. As a result, the Committee believes that it has now negotiated an acceptable resolution of its concerns. As will be announced on the record at the final hearing on the DIP Facility to be held on Monday, April 20, 2009, these developments include:

- The resignation of Frank Stronach as CEO of Magna Entertainment Corp. and the appointment of Greg Rayburn as his replacement with complete authority to oversee the Debtors' reorganization process, including any sale of assets;
- The appointment of an additional independent board member;
- While he remains a director of Magna Entertainment Corp., Mr. Stronach will be excluded from any deliberations, review or approval by the board of any asset sales and/or the development and proposal of a plan of reorganization;
- The Debtors, in conjunction with Blackstone, the Committee's financial advisor, are reviewing the sale process and will present a revised process for approval in early May 2009;
- The maturity of the DIP Facility has been extended for an additional 60 days (to November 5, 2009) to allow a more extensive marketing period for those assets that are to be sold and allow the Debtors more time to formulate a plan of reorganization;
- MID will forgo current payment of interest as adequate protection, thereby reducing amount of priority funding that is required and avoiding premature payments to MID in respect of claims that are under investigation;
- The consensual period for the Committee's investigation of MID's prepetition liens and transactions has been extended until June 30, 2009, the budget for such investigation has been increased to \$250,000 and the Committee has been granted standing to file and prosecute a complaint or objection to claims if such complaint or objection is deemed warranted by the Committee and the matters cannot be resolved prior to the expiration of the challenge period.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Reservation of Rights.

- MID's right to credit bid is subject to the Committee's right to challenge MID's prepetition claims and to the resolution of such a challenge.

4. In light of these recent developments, the Committee believes there is no current need for the appointment of an examiner to conduct an investigation of the scope proposed in the Motion or a chapter 11 trustee.

### **Objection**

#### **The Court Should Limit the Scope of the Examiner's Investigation**

5. Section 1104(c) of the Bankruptcy Code provides:

If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor *as is appropriate*, including any investigation of any allegations of fraud, dishonest, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor or by current or former management of the debtor [if] . . . (2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5,000,000.

11 U.S.C. § 1104(c) (emphasis added). By indicating that the Court shall order the appointment of an examiner "as is appropriate," section 1104(c)(2) gives the Court discretion to decide (i) whether to appoint an examiner, and if so, (ii) the scope of the examiner's investigation.

6. Should the Court deem it is necessary to appoint an examiner, the Bankruptcy Code provides the Court with broad discretion over the scope of an examiner's investigation. See In re Loral Space & Communications, Ltd., 2004 WL 2979785, at \*5 (S.D.N.Y. Dec. 23, 2004) ("It is [the] court's duty to fashion the role of an examiner to avoid substantial interference with the ongoing bankruptcy proceedings. To that end, the Bankruptcy Court may exercise its discretion to limit the scope of the examiner's investigation and the

compensation and expenses available to the examiner”) (emphasis added); In re UAL Corp., 307 B.R. 80, 86 (Bankr. N.D. Ill. 2004) (“The court presiding over a large bankruptcy should have the authority to limit examiner investigations to ‘appropriate’ subjects, methods, and duration . . . .”); In re Revco, 898 F.2d 898, 901 (6th Cir. 1990) (The Court retains broad discretion to direct the examiner’s investigation, “including its nature, extent, and duration.”)

7. Indeed, section 1104(c)(2) “was not intended and should not be relied on to permit a blatant interference with the chapter 11 case or the plan confirmation process.” 7 COLLIER ON BANKRUPTCY ¶1104.03[2][b] (Lawrence P. King ed., 15th ed. Rev. 2004). Thus,

the limitations and proscriptions regarding the scope of the investigation are subject only to the sound discretion of the bankruptcy judge. In addition (or as an alternative), the court can limit in advance the compensation to be awarded to the examiner and limit the expenses as well. Finally, the court may permit the confirmation process to continue and perhaps even conclude prior to receipt of an examiner’s report.

Id.

8. As set forth in the Motion, Greenlight seeks the appointment of an examiner with broad authority to investigate the relationship and prepetition transactions among the Debtors and MID. As an initial matter, it is important for the Court to keep in mind that at the same time Greenlight is asserting conflicts of interest at the Debtors, Greenlight itself wears more than one hat in these cases. While it may nominally be a creditor of Magna Entertainment Corp., Greenlight is also a large shareholder of MID and therefore holds interests that materially differ from and potentially conflict with those of creditors of the estates. Any consideration of Greenlight’s request for an examiner cannot ignore the potential impact of its non-creditor interests. In addition, Greenlight overlooks the fact that the Committee is already charged and empowered to investigate the issues it would commit to an examiner. See 11 U.S.C.

§ 1103(c)(2) (stating that the Committee “may investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor’s business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan . . .”). Moreover, there does not appear to be a present pressing need for a broad examination. Through negotiations with MID, the Committee obtained an extension of the time and an increase in the budget to investigate the Debtors’ prepetition transactions with MID from what was initially provided in the interim DIP order. More importantly, the Committee will be better positioned to commence any actions (or negotiate a resolution) with MID than an examiner. Accordingly, there is no reason for the Court to order the appointment of an examiner to investigate these same issues and increase the administrative burden on the Debtors’ estates.

9. While the Committee recognizes that some courts have held that appointment of an examiner is mandated by the language of section 1104(c), it remains within the Court’s discretion to prescribe the scope of the examiner’s investigation. UAL Corp., 307 B.R. at 86. The Committee believes that the scope of the examiner’s investigation should be narrowly tailored as set forth in the Amended and Corrected Response of Magna Entertainment Corp. in Opposition to the Motion of Greenlight Capital Offshore Partners for Order Directing the Appointment of an Examiner, or, in the Alternative, Directing the Appointment of a Chapter 11 Trustee (the “Debtors’ Objection”) [Docket No. 334].

*There is No Basis for the Appointment of a Chapter 11 Trustee*

10. In the Motion, Greenlight states that it does not believe that it must first move for the appointment of a trustee prior to or contemporaneously with moving for the appointment of an examiner. To the extent the Court determines otherwise, as a precautionary matter, Greenlight seeks the appointment of a trustee, pursuant to section 1104(a) of the

Bankruptcy Code. Greenlight, however, provides no factual or legal argument in support of its request for the appointment of a trustee and fails to even cite the standard for the appointment of a trustee under section 1104(a) of the Bankruptcy Code. Because Greenlight has not made a sufficient showing that grounds for the appointment of a trustee exist, the Court should deny Greenlight's Motion to the extent that it seeks such relief.

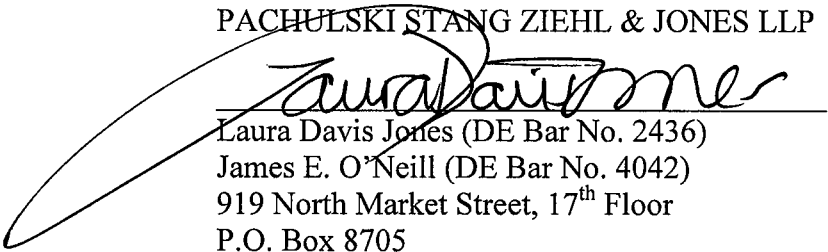
11. Moreover, as explained above, at the prompting of the Committee, the Debtors have made a number of corporate governance changes that address the conflict issues raised by Greenlight and by the Committee. Based on these negotiated changes, the Committee currently believes there will be a sufficient additional protection against conflicts of interest to obviate any current need for the appointment of a trustee. As such, Greenlight's Motion for the appointment of a chapter 11 trustee should be denied.

**Conclusion**

Accordingly, for the reasons set forth herein, the Committee respectfully requests that the Court (i) use the discretion it is afforded under section 1104(c) of the Bankruptcy Code to limit the scope of the examiner's investigation as set forth above; (ii) deny Greenlight's request for the appointment of a chapter 11 trustee; and (iii) order such other relief as the Court deems just.

Dated: Wilmington, Delaware  
April 19, 2009

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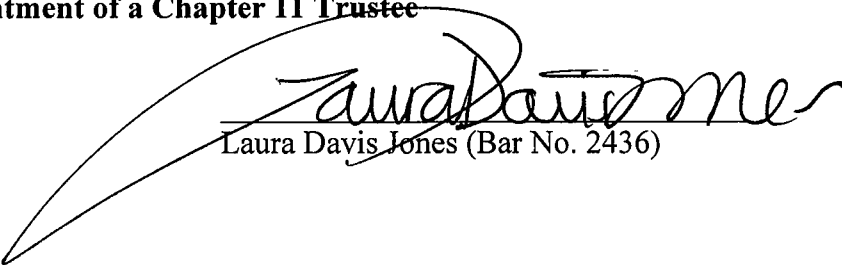
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
MAGNA ENTERTAINMENT CORP., *et al.*,<sup>1</sup> ) Case No. 09-10720 (MFW)  
Debtors. ) Jointly Administered

**CERTIFICATE OF SERVICE**

I, Laura Davis Jones, hereby certify that on the 19<sup>th</sup> day of April, 2009, I caused a copy of the following documents to be served on the individuals on the attached service list in the manner indicated:

**Supplemental Response and Objection of the Official Committee of Unsecured Creditors of Magna Entertainment Corp., et al. to Greenlight Capital Offshore Partners' Motion for the Appointment of an Examiner, or in the Alternative, Directing the Appointment of a Chapter 11 Trustee**

  
Laura Davis Jones (Bar No. 2436)

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) Magna Entertainment Corp., 8374; (ii) The Santa Anita Companies, Inc., 6180; (iii) Los Angeles Turf Club, Incorporated, 6200; (iv) Pacific Racing Association, 5367; (v) MEC Land Holdings (California) Inc., 7410; (vi) Gulfstream Park Racing Association, Inc., 6292; (vii) GPRA Thoroughbred Training Center, Inc., 2326; (viii) MEC Dixon, Inc., 7005; (ix) MEC Holdings (USA) Inc., 8494; (x) Sunshine Meadows Racing, Inc., 4288; (xi) Thistledown, Inc., 5742; (xii) MEC Maryland Investments, Inc., 4637; (xiii) 30000 Maryland Investments LLC, 1704; (xiv) Remington Park, Inc., 2024; (xv) GPRA Commercial Enterprises Inc., 6156; (xvi) Pimlico Racing Association, Inc., 4527; (xvii) The Maryland Jockey Club of Baltimore City, Inc., 3840; (xviii) Laurel Racing Association Limited Partnership, 0504; (xix) Laurel Racing Assoc., Inc., 0505; (xx) Prince George's Racing, Inc., 6493; (xxi) Southern Maryland Racing, Inc., 9850; (xxii) Southern Maryland Agricultural Association, 9661; (xxiii) Maryland Jockey Club, Inc., 3124; and (xxiv) AmTote International, Inc., 1143. The Debtors' corporate headquarters are located at 1209 Orange Street, Wilmington, DE 19801.

**Magna Entertainment Supp Response to  
Greenlight re Examiner Service List**

Case No. 09-10720(MFW)  
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