



**INDEPENDENT REVIEW OF STOCKTON UNIVERSITY'S PURCHASE
AND PROPOSED SALE OF THE SHOWBOAT CASINO IN ATLANTIC CITY**

**PREPARED AT THE REQUEST OF
STOCKTON UNIVERSITY'S
BOARD OF TRUSTEES**

September 15, 2015

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TABLE OF CONTENTS

TABLE OF EXHIBITSii

EXECUTIVE SUMMARY1

BACKGROUND3

A. The Conflicting Covenants.....3

B. Stockton’s Purchase and Sale of the Showboat3

C. Legislative Action and Independent Review5

FINDINGS7

A. Stockton University7

B. Stockton’s Fourth President: Dr. Herman J. Saatkamp, Jr.8

C. Stockton’s Interest in Atlantic City.....8

D. The Showboat Transaction.....9

Introduction.....9

Retention of Florio Perrucci Steinhardt & FaderLLC10

The Letter of Intent and Due Diligence12

Discovery of the 1988 Covenant13

Board of Trustees Meetings14

Negotiation of the Indemnity17

The Closing18

The Aftermath of the Closing: Trump’s Refusal to Waive the 1988 Covenant21

The Demise of the Deal.....22

The KK Ventures Transaction.....26

CONCLUSIONS28

A. Introduction.....28

B. Responsibility of President Saatkamp28

C. Responsibility of Counsel.....36

D. Responsibility of the Board of Trustees.....37

E. Responsibility of State Actors38

F. Responsibility of Caesars39

APPENDIX A41

APPENDIX B43

TABLE OF EXHIBITS*

Exhibit	Description
1	March 13, 2015 Letter from Robert Griffin to Dr. Herman J. Saatkamp, Jr., the Board of Trustees and Brian Jackson re: “Caesars Transfer of Showboat Property to Stockton”
2	October 7, 1988 Agreement as to Assumption of Obligations with Respect to Properties
3	November 18, 2014 Declaration of Restrictive Covenant s
4	December 12, 2014 Purchase and Sale Agreement and Joint Escrow Instructions between Showboat Atlantic City Propco, LLC, Caesars Entertainment Operating Company, Inc. and The Richard Stockton College of New Jersey
5	April 3, 2015 Purchase and Sale Agreement and Joint Escrow Instructions between Stockton University and KK Ventures-Atlantic City, LLC
6	May 23, 2015 Proof of Claim Filed in the United States Bankruptcy Court, Northern District of Illinois in <i>In re: Showboat Atlantic City Propco, LLC</i> (15-01258)
7	April 23, 2015 Letter from Senator Paul Sarlo to Dr. Herman J. Saatkamp, Jr. regarding April 30 Senate Budget and Appropriations Committee hearing
8	August 11, 2015 Email from Michael Perrucci, Esq. to Lawrence Lustberg, Esq. re: “Stockton/Gibbons”
9	October 29, 2014 Letter of Intent between The Richard Stockton College of New Jersey and Showboat Atlantic City Propco, LLC
10	Excerpts of Trustee Madeleine Deininger’s handwritten notes from the December 9, 2014 Stockton Board of Trustees’ Special Closed Session Meeting
11	December 10, 2014 10:09 p.m. Email from Dr. Herman J. Saatkamp, Jr. to Stevan Sandberg, Esq. re: “Move forward”
12	July 18, 2015 Memo from Paul D’Amato, Esq. and George Seltzer, Esq. to Larry Lustberg, Esq. re: “Saatkamp knowledge, lack of response, Title issues, rush to settlement”
13	December 11, 2014 12:59 p.m. Email from Stevan Sandberg, Esq. to Dr. Herman J. Saatkamp, Jr. re: “Title Issue”

* We have not included every document that is quoted or cited in this report as an exhibit, but instead included the documents that were the most important, or useful demonstratives, as exhibits. All documents are available upon request, unless redacted for confidentiality.

Exhibit	Description
14	December 11, 2014 1:11 p.m. Email from Stevan Sandberg, Esq. to Daniel Costa, Esq. and David Meckler, Esq. re: "Stockton - Showboat"
15	December 11, 2014 Email chain with Daniel Costa, Esq., Stevan Sandberg, Esq. and Dr. Herman J. Saatkamp, Jr. re: "Showboat: Revised PSA and Exhibits," and attached Redlined PSA (remaining attachments omitted)
16	December 11, 2014 Email chain between Stevan Sandberg, Esq. and Daniel Costa, Esq. re: "Showboat: Revised PSA and Exhibits"
17	December 12, 2014 Email chain between Dr. Herman J. Saatkamp, Jr. and Stevan Sandberg, Esq. re: "Showboat Discussion"
18	December 12, 2014 9:40 a.m. Email from Stevan Sandberg, Esq. to Dr. Herman J. Saatkamp, Jr. re: "9:00 a.m. Call"
19	December 12, 2014 Email chain between Stevan Sandberg, Esq. and Joe Dougherty, Esq. re: "Showboat"
20	December 12, 2014 Email chain between Stevan Sandberg, Esq. and Dr. Herman J. Saatkamp, Jr. re: "Showboat: Revised PSA"
21	April 6, 2015 Email from Dr. Herman J. Saatkamp, Jr. to Brian Jackson re: "Requested documents"
22	Excerpts from April 1, 2015 Stockton University Board of Trustees Minutes of the Special Closed Session Meeting
23	April 8, 2015 Administrative Announcement

EXECUTIVE SUMMARY

On December 12, 2014, the Richard Stockton College of New Jersey, now Stockton University, entered into an agreement to purchase the Showboat Casino from Caesars to be used as a satellite “Island Campus.” The sale, for \$18 million, was viewed as critical to the University, which was in need of classroom and residential space, as well as to Atlantic City, which would realize significant urban renewal benefits as a result. Unfortunately, as a result of a restrictive covenant that was placed on the property in 1988 by the predecessor to the Trump Taj Mahal, the property at issue could only be used as a “first class hotel-casino.” Meanwhile, in November 2014, just prior to the sale of the Showboat to Stockton, Caesars placed its own restrictive covenant on the property, prohibiting its use for gaming. This Report addresses how Stockton could enter into a transaction which, as a result of these two conflicting covenants, prohibited it from using the premises as a college campus, as it intended, even as it also hampered its ability to sell the property for use, once again, as a casino. The Report is the culmination of an approximately four-month investigation, which included the review of tens of thousands of documents and the interviews of over two dozen persons, some on multiple occasions, inside and outside of Stockton, with regard to the transaction. It sought to determine who was responsible for closing on a transaction which has not resulted in the intended expansion of Stockton or the hoped revitalization of Atlantic City, but has instead imposed substantial costs on the University, both in terms of the maintenance of the property and in legal fees, including for litigation that has not surprisingly resulted, regarding both the initial sale from Caesars and Stockton’s subsequent efforts to sell the Showboat.

The Report that follows describes the facts leading up to and following Stockton’s purchase of the Showboat in detail. It concludes that:

(1) Stockton’s then-President, Dr. Herman J. Saatkamp, a visionary leader during a period of extraordinary growth and progress at the University, was deeply committed to the purchase of the Showboat, for good and legitimate reasons. Thus, while the wisdom of the transaction could have been and was debated, Saatkamp’s advocacy for it was not based upon any illicit motive or self-dealing. That said, Saatkamp’s leadership style, and haste to obtain approval of the deal, hampered debate and, in this case, resulted in the Board of Trustees, which had already approved the transaction, not learning of critical facts -- namely, that Caesars was unable to deliver on a promise to provide a waiver of the 1988 Covenant from Trump and that counsel negotiated a provision that Caesars would indemnify Stockton from any liability resulting from the 1988 Covenant. Specifically, after the Board voted to approve the purchase, but before the closing, Saatkamp learned that a waiver from Trump would not be forthcoming, but did not apprise the Board of this fact or provide to the Board a copy of the final Purchase and Sale Agreement, including the indemnification provision. As a result, the Board never passed upon the final Agreement and did not assess whether the indemnity provided by Caesars was a meaningful protection given Caesars’ precarious financial position; indeed, Caesars ultimately declared bankruptcy one month later. Further, Saatkamp did not enter into meaningful negotiations with Trump to effect a waiver of the 1988 Covenant, or engage with the Board in that process, though Saatkamp claims that adequate resources were available to effect such a resolution. When, ultimately, Saatkamp determined to pursue a sale of the Showboat to Florida developer Glenn Straub, who had previously purchased the adjacent, defunct Revel Casino, instead of developing it as a college campus, Saatkamp (like counsel) failed to recognize that a

critical provision of the Purchase and Sale Agreement had been altered by the purchaser, to Stockton's detriment. Finally, in connection with this investigation, Saatkamp was not candid with investigators, claiming that counsel had not told him about the 1988 Covenant prior to closing when, clearly, he was well aware of that Covenant, albeit satisfied that it ought not preclude the closing. Saatkamp's conduct in that regard increased the costs of this investigation.

(2) Counsel bears some responsibility for miscalculating the risk of closing with the 1988 Covenant in place, notwithstanding the indemnification agreement that he negotiated; lead counsel on the deal, Stevan Sandberg, Esq., has admitted that he did not believe that it was unwise to close and did not advise Saatkamp, representing his client Stockton, not to do so. Counsel also failed to advise Saatkamp that he ought to share with the Board the critical information that Caesars would not in fact be able to obtain a waiver of the 1988 Covenant from Trump prior to closing. Further, counsel simply missed the alterations in the Purchase and Sale Agreement with Straub that fundamentally altered the conditions of that transaction, in a way that was unfavorable to Stockton and which has caused litigation, albeit litigation handled, successfully, by Sandberg's Firm. Finally, Sandberg was not admitted to practice law in New Jersey, a fact that was never disclosed to Stockton.

(3) The Report considers whether the Board of Trustees shares responsibility for the decision to close on the Showboat notwithstanding the conflicting restrictive covenants, but concludes that the Board, although it may have, over time, become overly deferential to President Saatkamp, simply followed the advice of its President and outside counsel. It also was deprived of critical information that could have informed its decision and precipitated further discussion of the 1988 Covenant when Saatkamp did not, after the Board had approved the transaction but before it closed, disclose the significant fact that Caesars would not in fact be able to obtain a waiver of that Covenant from Trump, or provide to the Board the final Purchase and Sale Agreement with Caesars, setting forth the indemnification agreement that became necessary when Trump would not waive. Nor was the Board provided with a meaningful opportunity to explore potential settlement options with Trump.

(4) The Report considers whether state officials pushed Stockton to close notwithstanding the 1988 Covenant. It concludes that this did not occur. Although high level state officials, and particularly Jon Hanson, Chairman of the Governor's Advisory Committee on New Jersey Gaming, favored Stockton opening a campus in Atlantic City as one possible means of revitalizing the City, no state officials were aware of the 1988 Covenant in advance of the closing and none urged closing. Some, albeit not substantial, efforts were made to assist in obtaining a waiver of that Covenant from Trump, but these were relatively minimal and ultimately unsuccessful.

(5) Finally, the Report considers whether Caesars was responsible for the events that transpired because it repeatedly misrepresented, prior to closing, that a waiver of the 1988 Covenant would be forthcoming from Trump when there was no reason to believe that it would be, at least not without substantial additional negotiations and the approval of a Bankruptcy Court. But for those misrepresentations, it concludes that Section 3(b)(ii) of the PSA, which states that Caesars indicated an initial willingness to waive the 1988 Covenant pending bankruptcy court approval, was based upon this misrepresentation and that but for that misrepresentation, Stockton would not have closed on the transaction.

Ultimately, the ill-fated purchase of the Showboat by Stockton, and the ensuing developments, were the result of a confluence of facts, risks and personalities that culminated in a transaction that, with the benefit of 20-20 hindsight, was certainly unwise. Of course, the final chapter of this episode has not yet been written: if Stockton, under new leadership, can effect a sale of the Showboat that covers the purchase price and costs, there may be no harm ultimately realized (indeed, as this goes to press, it is being reported that an agreement has been reached for Stockton to sell the Showboat). That does not mean, however, that lessons cannot be learned from what occurred; they can, in part by assessing who failed and how, as summarized above and detailed below.

BACKGROUND

A. The Conflicting Covenants

1. In 1988, Resorts International, Inc. (operating the Resorts Casino Hotel) conveyed portions of the property on which the Showboat is currently located, as well the surrounding property, to Trump Taj Mahal Realty Corp. for the construction of the Trump Taj Mahal (“the Taj”). At that time, the Atlantic City Showboat, Inc., the predecessor-in-interest to Showboat Atlantic City Propco, LLC (hereinafter, “Caesars”), and Trump Taj Mahal Realty Corp. “agreed to provide for a cluster of casinos at the north end of the Boardwalk, on or near the former Urban Renewal Tract, to create greater customer traffic for all three properties” and “agreed that Showboat would always be operated as a first class casino hotel and the three properties would be inter-connected by skyways.” See “Statement: Stockton/Caesars Sale of the Atlantic City Showboat Casino,” <http://www.trumptaj.com/> (last visited September 14, 2015). The agreement benefited the Taj “by ensuring an adjacent base of casino customers who would frequent the Taj.” See Exhibit 1 at 1. It was embodied in an Agreement as to Assumption of Obligations with Respect to Properties (“AAORP”), which was recorded with the Clerk of Atlantic County on November 17, 1988. See Exhibit 2. Section 3.1 of the AAORP (“1988 Covenant”) states: “Showboat will use the Showboat Realty for the purposes of the operation of a first class hotel-casino and related facilities.” *Id.* at Section 3.1.

2. On November 18, 2014, prior to the sale of the Showboat to Stockton,¹ Caesars recorded a Declaration of Restrictive Covenants (“2014 Covenant”) with the Clerk of Atlantic County, which prohibited any gaming or gambling at the Showboat. See Exhibit 3.

B. Stockton’s Purchase and Sale of the Showboat

3. On December 12, 2014, Caesars entered into a Purchase and Sale Agreement and Joint Escrow Instructions (“PSA”) with Stockton for the sale of the Showboat for \$18 million. See Exhibit 4. Section 3(b) of the PSA, entitled “Title Approval,” identifies the AAORP and the 1988 Covenant, which is referred to as the “Use Covenant,” and states that it “provides, in substance, that the [Showboat] shall at all times be used for the operation of a first class hotel-casino and related facilities.” *Id.* at Section 3(b)(ii). Specifically, the PSA states that Caesars

¹ As discussed *infra*, Findings ¶ 13, the Richard Stockton College of New Jersey became Stockton University in February 2015; hereinafter, unless otherwise specified, it is referred to as “Stockton.”

“has prior to the date hereof informed Trump Taj of the [1988 Covenant] and the desire to have the same . . . released and the AAROP [sic] amended accordingly. Trump Taj has indicated an initial willingness to consider such release, but has indicated that such action will likely require bankruptcy court approval.” *Id.* Section 3(b)(ii) further states: “From and after the Closing, Seller [*i.e.*, Caesars] shall use commercially reasonable efforts, at its sole cost and expense, to obtain from Trump Taj (with such bankruptcy court approval) an executed written release of the [1988 Covenant] in recordable form and a corresponding [sic] amendment to the AAORP.” The section also provides that “Seller [*i.e.*, Caesars] shall indemnify, defend and hold harmless Purchaser [*i.e.*, Stockton] from any Liabilities arising out of or in connection with any claim or action by Trump Taj (or successors or assigns) to enforce the [1988 Covenant] against the Property and/or any judgment thereon.” *Id.* Furthermore, Section 7, entitled “Guaranty by Seller Parent,” states that “Seller Parent [identified earlier as Caesars Entertainment Operating Company, Inc. (“CEOC”)] hereby guarantees to Purchaser the payment and performance of . . . the [1988 Covenant] Indemnification Obligations,” defined in Section 3(b)(ii). However, CEOC declared bankruptcy on January 15, 2015.

4. On April 3, 2015, Stockton entered into a Purchase and Sale Agreement and Joint Escrow Instructions (“the KK PSA”) to sell the Showboat to KK Ventures-Atlantic City, LLC (“KK Ventures”), owned by Glenn Straub, a Florida developer, for \$26 million.² *See* Exhibit 5. Section 3(b) of the KK PSA, entitled “Title Approval,” identifies the 1988 Covenant and the 2014 Covenant, and provides: “Purchaser [*i.e.*, KK Ventures] confirms that it is aware that (A) Trump Taj has stated its intention to attempt to enforce the [1988 Covenant] and (B) the [2014 Covenant] contains provisions that, among other things, purport to prohibit gaming and gambling at [the Showboat]. Purchaser agrees to purchase the property notwithstanding the risks attendant to such matters.” *Id.* at Section 3(b)(ii). Section 4 of the KK PSA, entitled “Closing,” provided that the closing would occur in ninety (90) days “provided that, Seller [*i.e.*, Stockton] may cancel this Agreement by giving written notice to such effect to Purchaser [*i.e.*, KK Ventures] at any time during such ninety-day period if, and only if, Seller is unable to resolve to Purchaser’s satisfaction title issues pertaining to the [1988 Covenant] and the [2014 Covenant], whereupon the Escrow (with all interest earned thereon) shall be returned to the Purchaser and the parties shall be released of all further obligations hereunder.” *Id.* at Section 4(a). The ninety (90) day termination provision expired on July 2, 2015.

5. Today, Stockton continues to own the Showboat, spending an estimated \$500,000 to \$600,000 per month to maintain the Showboat, including utility costs and the costs of employing some 37 security and maintenance personnel. In addition, Stockton has, as a result of the Showboat transaction, been engaged in the following litigation:

- On May 4, 2015, Trump Entertainment Inc. filed a complaint in the Superior Court of New Jersey, Atlantic County (*Trump Entertainment Inc. v. Stockton University*, ATL-L-1048-15), claiming Stockton improperly withheld or redacted information that Trump requested regarding Caesars’ sale of the Showboat to Stockton in response to an OPRA request.

² On April 7, 2015, Straub purchased the bankrupt Revel Casino, adjacent to the Showboat, for \$82 million.

- On July 1, 2015, KK Ventures filed a complaint in the same Court (*KK Ventures - Atlantic City, LLC v. Stockton University*, ATL-L-1490-15) seeking to declare the KK PSA null and void and “at the very least extending the time for closing to a date when the underlying conflicts making the title unmarketable are determined, as well as unjust enrichment resulting from S[tockton’s] unreasonable insistence on a July 2, 2015 closing date.” The complaint also alleged that Stockton did not do all that it could to address the conflicting covenants. The Court dismissed this case on August 10, 2015.
- On July 10, 2015, Stockton sued KK Ventures (*Stockton University v. KK Ventures - Atlantic City, LLC*, ATL-C-47-15); on July 13, 2015, the Court granted Stockton a Temporary Restraining Order so that it could move forward with plans to find another buyer for the Showboat, and prohibited KK Ventures from interfering with Stockton’s title to, or right to convey, the Showboat property. On August 7, 2015, Stockton informed the Court that it had a potential buyer for the property and on August 10, 2015, the Court ruled that the KK PSA was properly terminated. On September 2, 2015, KK Ventures moved to compel access to the Showboat “for the purpose of connecting for the supply of utilities in accordance with the surviving language of the Agreement between the parties.” On September 9, 2015, Stockton opposed the motion to compel and cross-moved for fees and costs. Those motions are returnable on September 18, 2015.
- On May 23, 2015, Stockton filed a Proof of Claim against CEOC and Showboat Atlantic City Propco, LLC in their respective Chapter 11 bankruptcy proceedings. That claim included the allegation that Caesars knew prior to the closing of the Showboat Transaction that the Trump Entities would *not* waive or release the 1988 Covenant. “Although representatives of [Caesars] . . . knew that such representations were material and that Stockton University reasonably relied upon the same in deciding to enter into the Purchase Agreement [for the Showboat], representatives of [Caesars] took no steps to correct their material misstatements.” *See* Exhibit 6, Addendum at ¶ 18 (emphasis in original).

C. Legislative Action and Independent Review

6. On April 23, 2015, Senator Paul A. Sarlo, Chair of the Senate Budget and Appropriations Committee, sent a letter to Stockton’s then-President, Dr. Herman Saatkamp, Jr., requesting his appearance before the Committee to discuss his “recent initiative to establish a satellite campus in Atlantic City on the grounds of the former Showboat Casino, [which] has garnered a lot of attention in the press.” *See* Exhibit 7. Senator Sarlo specifically stated, “I would like to know whether you were aware, while you were negotiating the contract with Showboat, that its parent corporation (Caesars) was in the process of filing for bankruptcy and would do so less than 30 days later.” *Id.* Saatkamp was unable to appear due to his medical condition, discussed below; instead, then-Acting President, Dr. Harvey Kesselman testified on April 30, 2015; Kesselman did not, however, know if Saatkamp or Stockton’s lawyers knew about the 1988 Covenant, or whether they were aware of it but believed it could be resolved.

Given Kesselman's limited knowledge, the Committee expressed the view that Stockton should retain independent counsel to review what had occurred.³

7. Accordingly, on May 21, 2015, this Firm was retained to conduct an independent review of Stockton's purchase of the Showboat in Atlantic City for a negotiated fee of \$350,000, of which \$338,000.00 has been paid to date.⁴ In the course of that investigation, we have conducted over two dozen interviews, as well as re-interviews wherever necessary. These interviews have included discussions with former President Saatkamp and other senior Stockton personnel, including members of Saatkamp's Cabinet; present and former Stockton Trustees, including former Board Chair Dean Pappas and current Chair Madeleine Deininger; attorneys at the Florio Perrucci Steinhardt & Fader law firm ("FPSF"); Jon Hanson, Chairman of the Governor's Advisory Commission on New Jersey Gaming, Sports and Entertainment; Robert Griffin, Chief Executive Officer of Trump Entertainment Resorts ("Trump") and Trump counsel, John Donnelly, Esq. of Donnelly Clark,⁵ and M. James Maley, Esq. of Maley & Associates, Consultant for the Atlantic City Planning Board. A more complete list of the people we spoke to can be found in Appendix A. On occasion, interviewees or their counsel, would provide written submissions to us, which we fully considered and which are discussed below. We also reviewed tens of thousands of documents, including not only the operative legal documents and underlying correspondence, notes, memoranda and articles in the press or other public documents related to the transactions at issue, but also Board agendas, meeting minutes and notes; law firm files; emails, text messages and other electronically stored information which were subject to sophisticated processes of search, retrieval and analysis; and documents regarding the litigation that has ensued, as described above. A more complete list of the documents we reviewed can be found in Appendix B.

8. Caesars, through its external counsel Joseph R. Dougherty, Esq., declined to participate in our review; as a result, we have not interviewed various persons, who are copied on relevant communications and/or referenced in our report, including Caesars' counsel (Dougherty; David Satz, Jr., Esq., Senior Vice President, Government Relations & Development at Caesars Entertainment Corporation in Las Vegas; Daniel J. Costa, Esq., David C. Meckler, Esq., and Michael A. Treska, Esq., Caesars' outside counsel at Latham & Watkins in Los Angeles; and Michael Stein, Caesars' in-house counsel), and officers (Kevin Ortzman, Senior Vice-President, Manager, and CEO of Caesars in Atlantic City; or Daniel Epstien, Vice President

³ Additionally, on July 23, 2015, Senator James Whelan introduced S-3116, which would void the 1988 Covenant and the 2014 Covenant and permit Stockton to sell the property. The State Senate State Government, Wagering, Tourism & Historic Preservation Committee unanimously approved S-3116 that day, but it has not yet been scheduled for a Senate floor vote.

⁴ Gibbons P.C. recently asked the Board of Trustees to consider increasing the fee for services rendered, due, at least in part, to additional investigation that was made necessary by Saatkamp's denial that he was aware of the 1988 Covenant before closing. *See infra*, Conclusions ¶¶ 11-16.

⁵ Although Trump generally cooperated with this investigation, it declined to provide pertinent documents, consistently citing its ongoing OPRA litigation with Stockton. *See supra*, Background ¶ 5.

Finance & Strategy of Caesars Entertainment Corporation in Las Vegas.)⁶ We have also not interviewed any persons associated with KK Ventures, in light of its litigation against Stockton.

9. Throughout, we sought to be fair and completely transparent with interviewees. Thus, we consistently advised any and all witnesses regarding the status of the matter at the time of their interviews and thereafter, including any conflicting information we had and any concerns that we held. We always provided any relevant documents to witnesses at the time of or, in most cases (including Saatkamp and the attorneys at FPSF), in advance of our meetings, and updated them with new information as it became available to us during the course of our review. We always provided the witnesses with a full opportunity to respond to conflicting information or documents, to clarify their prior statements, to address our concerns and, if necessary, to refresh their recollection. Their responses are, as noted above, discussed herein.

FINDINGS

A. Stockton University

10. The New Jersey Legislature established Richard Stockton State College, also known at the time as “Stockton State,” in 1969, to be built on a tract of land located in the Pinelands in Galloway Township, Atlantic County. Construction for the college began on December 9, 1970; meanwhile, a temporary campus was established at the Mayflower Hotel in Atlantic City. Classes began at the Galloway campus in December 1972. In 1993, the college changed its name to The Richard Stockton College of New Jersey. See Stockton University, “About Stockton,” <http://intraweb.stockton.edu/eyos/page.cfm?siteID=197&pageID=68> (last visited September 14, 2015). Today, Stockton is a nationally-ranked public institution: it has been “named one of the ‘2014 Best Colleges: Region by Region’ for the Northeast region and cited on its list of ‘Green Colleges’ by The Princeton Review, an education services company widely known for its test prep programs and college and graduate school guides.”⁷ See Stockton Named to The Princeton Review’s ‘Best in the Northeast’ and ‘Green Colleges’ Lists, <http://intraweb.stockton.edu/eyos/page.cfm?siteID=197&pageID=16&layout=news&ID=188> (last visited September 14, 2015). On September 9, 2015, U.S. World & News Report released its 2016 edition of “America’s Best Colleges,” ranking Stockton in the “Top 15 public Regional Universities of the North.” See Stockton in Top 15 Public Regional Universities of North Rated by U.S. News & World Report, <http://intraweb.stockton.edu/eyos/page.cfm?siteID=197&pageID=16&layout=news&ID=189> (last visited September 14, 2015).

11. Stockton’s Board of Trustees has nine outside members, appointed by the Governor, with varied experience and diverse backgrounds, a student trustee, a student trustee

⁶ Caesars’ refusal to participate is particularly troubling, given that the evidence, as summarized below, tends to show that Caesars may have misled Stockton with regard to Trump’s willingness to waive the 1988 Covenant. See *infra*, Findings ¶ 45.

⁷ The Stockton students who participated in the Princeton Review survey noted that the school is a “‘small, safe, close-knit’ public school with ‘tons of activities available,’ and that the professors ‘are very informative and help you so much in choosing classes to help you graduate on time.’”

alternate, and the President, *Ex-Officio*. Members of the Board serve six-year terms and student trustees serve a two-year term with the first year as a non-voting alternate. The Trustees have experience in law, accounting, real estate development, communications and strategy, and education, among other things, and several have strong backgrounds in public service. See Stockton University, "Trustee Directory," <http://intraweb.stockton.edu/eyos/page.cfm?siteID=201&pageID=59> (last visited September 14, 2015).

B. Stockton's Fourth President: Dr. Herman J. Saatkamp, Jr.

12. Dr. Herman J. Saatkamp, Jr. was named the fourth President of Stockton in June 2003. Saatkamp had a strong background in higher education administration as a result of positions at Indiana University-Purdue University Indianapolis, the Indiana University School of Medicine, Texas A&M University and the University of Tampa. He was also, as Stockton's website states, "a world-class academician, philosopher and author whose published and edited works include 48 books and 45 articles" and "one of the world's foremost experts on the works of philosopher George Santayana." See "About Stockton." Some of the persons we interviewed commented that Saatkamp was a visionary leader whose accomplishments at Stockton were impressive.

13. During Saatkamp's tenure as President, Stockton made enormous strides, including opening a spectacular new 154,000 square foot Campus Center, which houses administrative offices, a food court, meeting and event space, a game room, a bookstore, and other services; purchasing the Seaview Resort, now known as the Stockton Seaview Hotel & Golf Club, which is used for the Hospitality Tourism Management Studies program, offers dormitory space, and generates revenue through the hotel and golf club; opening instructional sites in Manahawkin (for its new American Studies Program), Hammonton and Woodbine; founding, among other entities, the South Jersey Center for Digital Humanities, the New Jersey Coalition for Financial Education (Southern Regional Office) and the South Jersey Regional Internship Center, and creating the Stockton College Center for Public Safety and Security in the Office of Continuing Studies and the Stockton Center for Community Schools; dedicating a \$39.5 million, 66,350-square-foot, three-story Unified Science Center, which expanded the School of Natural Sciences and Mathematics; and on February 18, 2015, becoming a university.

14. Also during Saatkamp's tenure as President, Stockton received previously unprecedented financial support, including a \$500,000 gift from the family of Trustee Leo B. Schoffer, for Stockton's Holocaust Resource Center, a \$1 million anonymous endowed gift to be used for the direct support of students facing exceptional financial hardships and, a \$1,150,000 gift from Former Chair Dean Pappas and his wife Zoe. By 2012, Stockton had received gifts and pledges totaling \$20.4 million, exceeding its previously announced goal.

C. Stockton's Interest in Atlantic City

15. Stockton has long been interested in expanding into Atlantic City, having as long ago as 2002, partnered with the Casino Reinvestment Development Authority ("CRDA") to transform the historic Carnegie Library building in Atlantic City into a satellite campus, and thereby save the landmark structure from demolition. Upon his arrival at Stockton, Saatkamp continued these efforts to expand the school's presence into Atlantic City, both in order to

expand its reach and influence and to play a role in Atlantic City's urban renewal; Saatkamp always felt strongly that Stockton should be the first public institution in New Jersey to expand into Atlantic City.

16. Stockton considered various other locations in Atlantic City prior to its purchase of the Showboat, the most significant of which was the Atlantic Club, located at the southern end of the Boardwalk, which Stockton sought to purchase from Caesars for \$16 million in 2013-14; ultimately, Caesars sold the property to another purchaser, TJM AC Hotel LLC ("TJM") for \$13.5 million in June 2014. Later, Stockton sought to purchase the property from TJM, ultimately offering \$22 million for the property in October, 2014; negotiations, however, failed because Stockton needed more space than TJM offered, among other issues.⁸

D. The Showboat Transaction

Introduction

17. Although there is some evidence that Stockton considered a purchase of the Showboat earlier,⁹ the transaction here at issue was specifically suggested to Saatkamp by Hanson, Chairman of the Governor's Advisory Commission on New Jersey Gaming, Sports and Entertainment¹⁰ at a meeting on September 16, 2014. On that date, Saatkamp along with Trustee Curtis Bashaw met with Hanson at his office in Morristown; the meeting had been arranged by Chris Paladino, President of the nonprofit New Brunswick Development Corp., following the

⁸ Stockton made other efforts to expand into Atlantic City. For example, on July 8, 2014, Stockton submitted a Letter of Intent to lease a site in the Albany Avenue area, and to build an academic building. In August 2014, Stockton conducted a site inspection of the old "Gateway site." In September 2014, Stockton completed two appraisals of "the "AC Gateway Properties," on Atlantic Avenue. And, in October 2014, Stockton conducted an environmental site assessment on vacant land on Oriental Avenue, located near the former Revel Casino.

⁹ In early 2014, Trustee Leo Schoffer presented a package of information about the Showboat to Saatkamp, who intended to speak with Ortzman about it; Saatkamp did, according to his notes dated February 25, 2014, speak to John Palmieri, the Executive Director of CRDA, about the Showboat. Those notes include some mention of a "use variance," but Saatkamp, through counsel, explained that this referred to the Atlantic Club, not the 1988 Covenant or the Showboat.

¹⁰ Hanson had issued a report, "An Economic Recovery Plan For The State of New Jersey," on July 21, 2010, in which the Advisory Commission concluded that Atlantic City gaming was "saveable" and proposed creation of "a 'Clean and Safe' Tourism District with State oversight, with the goal of making Atlantic City clean and safe by July 1, 2011," and "a Master Plan for the new Tourism District, focused on enticing new entrants to build both gaming and non-gaming attractions that will increase demand in the City." Thereafter, at the Governor's second Atlantic City Summit held on November 12, 2014 (Saatkamp was not, to his consternation, invited), Hanson revealed an "Update Report of Governor's Advisory Commission on Gaming, Sports and Entertainment." The Update Report noted that "Stockton College (New University Park) and Medical District could provide additional immediate opportunities[.]"

Summit meeting, *see* n. 10, which he and Bashaw attended. Saatkamp discussed with Hanson his desire to expand Stockton into Atlantic City, including at potential sites at the Gateway or Atlantic Club. Following a discussion of the failed Atlantic Club transaction, Hanson suggested the Showboat and offered to assist in negotiations with Caesars; he also discussed the possibility that CRDA could provide Stockton with \$17 million in funding for the purchase of the Showboat.

18. During the drive back from Morristown, Bashaw told Saatkamp that he did not believe that the Showboat made sense for Stockton; Bashaw reported that Saatkamp believed he had received “marching orders” from Hanson (Saatkamp later told the same thing to Sharon Schulman, Stockton’s CEO for External Affairs and a member of Saatkamp’s Cabinet), and said he wanted to do due diligence on the Showboat. Saatkamp denied feeling that he had received “marching orders,” or experiencing any political pressure to pursue the Showboat; Hanson denied applying any such pressure.

19. As discussed above, Stockton was negotiating with TJM about the Atlantic Club at the time of Saatkamp’s meeting with Hanson. At some point after that meeting, Saatkamp informed Hanson that he was considering walking away from the Atlantic Club because of the cost of the property in relation to its size, and they discussed the Showboat again. Saatkamp told Hanson that he did not think that Caesars would accept Stockton’s offer on the Showboat because Caesars had rejected Stockton’s offer on the Atlantic Club in favor of a lower bid, but Hanson advised him to reconsider. Thereafter, Hanson reported that he spoke with Caesars (*i.e.*, Satz) regarding a price for Stockton to purchase the Showboat. Initially, Caesars demanded \$20 million for the sale; through Hanson, Saatkamp countered at \$16 million (the same price as it had originally offered for the Atlantic Club) and ultimately, with the assistance of Hanson, they settled on an \$18 million purchase price.

Retention of Florio Perrucci Steinhardt & Fader LLC

20. Stockton had retained Nehmad, Perillo & Davis to represent it in negotiations on its Letter of Intent for the Atlantic Club, but concerns about, *inter alia*, a potential conflict of interest caused Stockton to seek new counsel for the Showboat transaction. Based upon the initial recommendation of Michele B. Ginieczki, Legal Counsel for SASI, but with the blessing of others, including Saatkamp, Stockton chose Paul Fader, Esq., at FPSF.¹¹ Accordingly, on October 8, 2014, Paul Fader, partner and Executive Committee member at FPSF, sent a retainer agreement “for the Atlantic City real estate transaction” to Charles Ingram, Stockton’s Vice President of Administration and Finance. The retainer stated that Fader would be the “primary contact at the firm,” and would “draw from appropriately experienced personnel within our firm as needed.” The retainer also stated that Stevan A. Sandberg, Esq., who was a partner at the firm, but whose name was not listed on the outdated letterhead inadvertently used for the retainer agreement, would work with Fader on the matter. Ingram signed the retainer agreement on

¹¹ Saatkamp and his wife had been friendly with Fader and his wife since 2003; Fader had given the Inauguration Greeting for President Saatkamp at his swearing in. In addition, Schulman, also had relationships with FPSF as a result of her service in Governor Florio’s administration and her prior position as President and CEO of Aqua New Jersey, Inc.

October 9, 2014. Fader remained copied on some but not all correspondence regarding the Showboat transaction; Sandberg, however, bore primary responsibility for the matter, though he is not admitted to the practice of law in New Jersey.¹²

¹² New Jersey Rule of Professional Conduct 5.5(b)(3) permits an out-of-state lawyer to engage in the practice of New Jersey law in certain limited circumstances. *See* Committee on the Unauthorized Practice of Law, Opinion 49, Multijurisdictional or Crossborder Practice Under Rule of Professional Conduct 5.5(b)(3), at 1 (Oct. 3, 2012) (“Opinion 49”). In particular, out-of-state attorneys may engage in the lawful practice of law in New Jersey if his or her practice is “occasional and the lawyer associates in the matter with, and designates and discloses to all parties in interest, a lawyer admitted to the Bar of this State who shall be held responsible for the conduct of the out-of-state lawyer in the matter.” R.P.C. 5.5(b)(3)(iv). In response to our inquiry regarding whether Sandberg was engaged in the unauthorized practice of law in New Jersey, FPSF Partner Michael Perrucci, Esq. contended that Sandberg “is involved in matters in New York, Pennsylvania, Connecticut, New Hampshire, South Carolina, Maine and occasionally handles New Jersey related transactions.” *See* Exhibit 8. But, addressing multijurisdictional practice under R.P.C. 5.5, the New Jersey Committee on the Unauthorized Practice of Law has indicated that “out-of-state lawyers may not maintain a continuous and systematic presence in New Jersey by practicing law from an office in New Jersey.” Opinion 49, at 3. We are concerned that Sandberg has such a presence, practicing as he does, out of FPSF’s Rochelle Park office. However, we are unable to assess whether Sandberg’s New Jersey practice falls within the Professional Responsibility Rule Committee’s definition of “occasional” as “occurring infrequently or from time to time; thus, ‘recurring’ practice is not ‘occasional.’” *Id.* at 6. Certainly, he handled multiple New Jersey matters -- he said there were two other matters in which he was involved in 2014 -- and his work on the Showboat matter went on for some time, and consumed many hours. But a more exhaustive analysis of his activities in New Jersey over time, in contrast to his work elsewhere, would likely be required in order to make this determination; that analysis is beyond the scope of this Report.

That said, as Perrucci also pointed out, “With respect to the Stockton University transactions, Attorney Sandberg was associated and worked with Paul Fader along with a team of licensed, New Jersey attorneys. Billing details previously provided by this firm specifically demonstrate that licensed, New Jersey lawyers actively participated and collaborated with Attorney Sandberg throughout Stockton’s representation.” *See* Exhibit 8. Perrucci is correct: R.P.C. 5.5(b)(3)(iv) requires that the out-of-state attorney “associate” with an attorney licensed in New Jersey, and makes clear that the New Jersey lawyer need not “actively participate in the matter,” in order to establish this association, *see* Report of the New Jersey Supreme Court Professional Responsibility Rules Committee (Jan. 15, 2008), though here, FPSF billing records show that Fader, Perrucci, and several other FPSF attorneys billed time for the matter from November 2014 through March 2015. But R.P.C. 5.5(c)(3) and (6) also require out-of-state attorneys practicing under subsection (iv) to register with the Clerk of the Court and pay annual assessment fees. In response to our inquiry with regard to this matter, Perrucci admitted that this requirement was not fulfilled: “Prior to the instant investigation, Attorney Sandberg was unaware of the filing and assessment requirements. He admittedly failed to file with the New Jersey Supreme Court or pay the necessary assessment fees. However, since this deficiency was brought to the firm’s attention, it has been rectified and Attorney Sandberg has filed the appropriate forms and paid

The Letter of Intent and Due Diligence

21. Saatkamp negotiated the terms of Stockton's Letter of Intent ("LOI") for the Showboat directly with Epstien at Caesars. Fader, Sandberg, and Michael J. DiMarco, Esq. of FPSF drafted the LOI for the Showboat in mid-October 2014. In an email between Fader and DiMarco, Fader indicated that Stockton "will need to close by December 31st" and noted that "they want to take the risk on due diligence issue and approvals." Fader sent an initial draft of the LOI to Ginieczki,¹³ Ingram, and Don Hudson, Stockton's Vice President for Facilities & Construction, on October 14, 2014; on October 17, 2014, Caesars' outside counsel, Costa, sent a "form" LOI to Saatkamp, which included a 20-year prohibition on gaming in the facility. When Sandberg sent proposed changes to the form LOI to Ginieczki, Ingram, and Hudson on October 20, 2014, he proposed amending the prohibition to 5 years. Sandberg discussed the duration of the prohibition with Saatkamp, but Saatkamp was not concerned about it because Stockton did not intend to use the property as a casino.

22. On October 29, 2014, Saatkamp and Eric Hession, Director, Treasurer and President, Showboat Atlantic City Propco, signed the LOI, which included the following terms: (1) the LOI would terminate upon the earliest of execution of a purchase agreement, termination of the LOI, or December 10, 2014, with due diligence to be conducted during this time; (2) a purchase price of \$18 million; (3) that the property was "conveyed on an 'as is' 'where is' basis;" (4) that the "Purchase Agreement" would provide that the "Parties will agree upon appropriate restrictive covenants that will prohibit Buyer or any successor-in-interest from using the Property as a casino or gaming operation for a period of 10 years following Closing;"¹⁴ (5) that the parties would "discuss and attempt to agree upon the terms" by which the Buyer would extend offers of employment to property employees; and (6) that "Caesars Entertainment Operating Company, Inc. or other affiliate of Seller reasonably acceptable to Buyer would

the necessary fees," Exhibit 8; his application was granted on August 18, 2015. Perrucci noted, however, that the other out-of-state attorneys involved in the matter, representing such parties as Caesars and KK Ventures, also failed to fulfill this requirement. Of course, that others may have violated the Rule does not justify Sandberg's failure in this regard. On the other hand, we cannot say with certainty that, had Sandberg been licensed in New Jersey, his conduct would have been altered in any regard. Our greatest concern is that Stockton was never made aware that Sandberg was not admitted in New Jersey, though this fact does appear on FPSF's website.

¹³ Melissa Hager, then-General Counsel of Stockton, was not involved with the negotiation of the LOI or the Showboat purchase.

¹⁴ The language in the 2014 Covenant that Caesars filed on November 18, 2014, is considerably broader than this provision in the LOI. Stockton and Caesars agreed that Stockton would have the opportunity to review and comment on the 2014 Covenant before it was recorded, but Caesars did not, in fact, provide Stockton that opportunity.

guaranty Seller's Post-Closing Use Indemnification Obligations, and Seller Broker Indemnification Obligations." See Exhibit 9.¹⁵

23. The LOI did not identify or address the 1988 Covenant. It did, however, provide that "Seller would convey fee title . . . free and clear of all mortgage liens and similar security interests that encumber the Property . . . , and at closing Buyer shall be satisfied that Buyer can obtain a customary title insurance policy. . . ." See Exhibit 9.

24. Pursuant to terms of the LOI, the due diligence period ran from October 29, 2014, through December 10, 2014. On October 30, 2014, Saatkamp notified Hudson that he had "official approval to move forward on due diligence" and Hudson contracted with SOSH Architects to conduct the due diligence concerning the architectural, structural, mechanical, electrical, plumbing, fire protection, food service, surveillance-security, environmental, land use, and maintenance for the property. After Hudson's team toured the Showboat, he assigned the due diligence tasks to different team members.

25. Hudson and Ingram requested more time to complete the facilities due diligence. Even prior to execution of the LOI, Hudson stated that his "biggest concern is for a 30 day due diligence," and asked Fader to "add clear language to the LOI /Offer that requests all existing reports and studies." Ingram was also concerned that facilities due diligence for a property of this magnitude could not be adequately completed in that time period; he further asked Saatkamp whether the closing could occur closer to December 31 in order to save Stockton money in property taxes, but Saatkamp told Ingram that he did not want to delay the closing. Hudson recalled a "heated" moment when Ingram questioned Saatkamp about the short due diligence period and requested to push the closing until the week between Christmas and New Years, but Saatkamp would not agree to a delay. In any event, facilities due diligence was in fact completed by December 1, on which date Hudson sent Saatkamp the "Executive Summary Due Diligence" which represented that "there are no significant issues that would prevent a closing on 12/10." Saatkamp forwarded this summary to the Board of Trustees on December 2.

Discovery of the 1988 Covenant

26. Caesars set up a "Virtual Data Room" that was to contain the information related to the purchase. On November 7, 2014, Sandberg advised Hudson that he had reviewed the Virtual Data Room and that Caesars had not provided certain information, including title policies and title documents. Hudson asked Saatkamp if Sandberg should speak to Caesars' attorneys to request these documents, and Saatkamp agreed that he should. Accordingly, on November 14, Sandberg emailed Caesars that "essential items" were missing from the Virtual Data Room, including "title policies or documents." Caesars counsel, Stein, responded that he would speak to his "real estate colleague and get back to [Sandberg]." Meanwhile, that same day, Surety Title emailed Sandberg a copy of "the title commitment with searches." Section II contained the exceptions, which included, No. 9, identifying the 1988 Covenant (the AAORP), but not setting forth the substance of the covenant requiring that the property be used as a first class hotel-

¹⁵ At Caesars' request, Saatkamp and Hession also executed a Confidential Disclosure Agreement which prohibited the parties from disclosing certain information to any third party, and from revealing the possible transaction or its terms.

casino. Surety Title did, however, send Sandberg copies of all documents listed in Section II, including the 1988 Covenant, which Sandberg received on November 17, 2014.

27. Sandberg reviewed the title documents over Thanksgiving weekend (November 27-30) and discovered the AAORP with the 1988 Covenant at that time.¹⁶ Sandberg called Caesars' counsel on the following Monday or Tuesday (December 1 or 2) to inquire about the 1988 Covenant and to state that Stockton could not go forward with the purchase with the covenant in place. Stein told Sandberg that he would look into it, and later that day or the next, Stein told Sandberg that he would take care of the 1988 Covenant and get a waiver from Trump. Thereafter (and, in any event, prior to the Board meeting of December 3 discussed below), Sandberg advised Saatkamp of the 1988 Covenant; Sandberg stated that he did not want to advise Saatkamp of the 1988 Covenant until he had "a solution in hand."

28. Sandberg believed that he might again have used the line, "Houston, we have a problem," when he informed Saatkamp of the 1988 Covenant; Sandberg said that Saatkamp was "low key" when he told him about the covenant, likely because Sandberg simultaneously presented a solution. Sandberg and Saatkamp "almost laughed" because the 1988 Covenant would effectively negate the whole transaction, but the outcome of the conversation was that since Caesars agreed to obtain a waiver prior to closing, Saatkamp decided to go forward with the transaction.

29. As is further discussed *infra*, Conclusions ¶¶ 6, 12-14, Saatkamp initially denied that Sandberg told him about the 1988 Covenant prior to the closing on December 12, 2014, and indeed, stated that he did not know about the 1988 Covenant at all prior to the closing. Later, however, he recanted and acknowledged that he must have known about it in light of Deininger's notes from the December 9, 2014 Board meeting, which he said refreshed his recollection. Likewise, although he was initially vague as to his knowledge of Caesars' indemnification obligation prior to closing, Saatkamp later admitted that he knew about that provision before December 12, 2014.

Board of Trustees Meetings

30. On December 2, 2014, in advance of the Closed Session of the Board of Trustees meeting the next day, Saatkamp sent the Trustees a version of the PSA that Sandberg had sent him on November 25, 2014, which version did not mention or otherwise address the 1988 Covenant.¹⁷ He also advised the Trustees that, "Steve Sandberg, our legal representative for this

¹⁶ That Sandberg discovered the 1988 Covenant over Thanksgiving weekend is not corroborated by billing records, which show no time billed for reviewing title documents over Thanksgiving. Nonetheless, Sandberg credibly stated, and FPSF associate, Shana T. Attas, Esq. confirmed, that Sandberg reviewed the documents at home and that when he returned to the office the following week he reported that he found the 1988 Covenant and said something along the lines of, "Houston, we have a problem."

¹⁷ In addition to the November 25 PSA, Saatkamp provided the following documents to the Board: (1) a Stockton - Island Campus and University Park Showboat Higher Education Proposal, a brochure-like draft document describing the repurposing of the Showboat property;

purchase, will attend our Board meeting tomorrow to assist in answering questions.” We were unable to ascertain whether Sandberg had advised Saatkamp of the 1988 Covenant before Saatkamp circulated the November 25 PSA to the Board of Trustees.

31. The Board of Trustees held a Closed Session meeting for about two hours and fifteen minutes on Wednesday, December 3, 2014. Trustee Michael Jacobson, Esq., did not participate in either the December 3 or the December 9 Board meetings (*see infra*, ¶ 33) because his firm, Cooper Levenson, represents Caesars. After an email exchange between Saatkamp and Schoffer, Schoffer also agreed not to participate in the Showboat discussions due to a perceived potential conflict because Schoffer owned vacant property near the Showboat.¹⁸

32. At the December 3 Board meeting, Ingram made a financial presentation about the Showboat; Saatkamp wanted to vote on the matter immediately and even threatened to resign if the Board did not do so, but the Board, which had heard a lengthy presentation, unrelated to the transaction, with regard to its legal and fiduciary responsibilities, determined that it needed more time to consider the issue and ultimately a special closed session meeting was scheduled for December 9 for the sole purpose of discussing the Showboat. Sandberg, who understood that he was present to answer any questions related to the Showboat, waited outside the meeting room in Saatkamp’s office throughout the December 3 meeting but was never called in to discuss the transaction.

33. The Board of Trustees met in a Closed Session Special Meeting from 9:00 a.m. to approximately 3:00 p.m. on December 9, 2014, to discuss the Showboat. Jacobson and Schoffer again recused themselves; Bashaw participated in about half of the meeting by phone, but then hung up because of a potential conflict of interest arising from his ownership of the Chelsea Hotel, which property potentially could have been affected by the Showboat purchase. During the meeting, Ingram gave two PowerPoint presentations regarding financial analyses of the Showboat.¹⁹ Trustees Ray Ciccone and Barbara Morvay discussed their concerns regarding the

(2) Assuring a Successful Transition, “a draft document that discusses the academic plans for the Atlantic City campus and how [to] move forward with a successful transition;” (3) Stockton-Island Campus & University Park Showboat Higher Education Proposal, “a more extensive document that discusses the campus, its role in the community including its economic and social impact;” (4) Executive Summary Due Diligence report; (5) a Showboat vs. Atlantic Club Comparison; and (6) Draft Operational Budgets for the Galloway and Atlantic City Campuses.

¹⁸ There was no evidence that Saatkamp conferred with legal counsel with regard to these recusal issues. One Trustee reported that Saatkamp said that he received a letter from the State Ethics Commission which stated that Schoffer had to recuse himself from voting on the Showboat transaction; Saatkamp denied this and it remained uncorroborated.

¹⁹ Saatkamp told Ingram that it was his job to present a business case to convince the Board that purchasing the Showboat was a good deal. Ingram reported to us (not the Board of Trustees) that he agreed that financially, it was a “phenomenal” deal, but was concerned about the lack of a feasibility study and opening a campus in a depressed city. Saatkamp was, however, unhappy with Ingram’s presentation and when the Board did not vote on December 3, Saatkamp accused Ingram and his staff of trying to sabotage the deal.

details on the financial information. Other trustees were concerned about the \$17 million in funding promised from CRDA, and a lengthy discussion ensued about when the Board should request the funding and whether CRDA should formalize its commitment in writing.

34. Sandberg was not present for the December 9 meeting, but participated telephonically from approximately 11:00 a.m. to 11:30 a.m. Deininger's handwritten notes describe what was discussed: "3 go-arounds w/ purchase + sale agreements" and "new version on Thurs close to final." See Exhibit 10. More specifically, under the phrase "Clear Title," the notes state: "1988 title issue - Showboat req. to use 1st class casino," "restricted covenant," and "waiver from Trump." *Id.* It is unclear as to whether it was Saatkamp and/or Sandberg who mentioned the 1988 Covenant, though it is clear that Sandberg was on the telephone for the discussion. In general, the Trustees, including Deininger, did not remember any discussion of the 1988 Covenant until their recollection was refreshed by Deininger's notes. Whatever discussion there was took up little time: the Trustees did not dwell on the 1988 Covenant or discuss it in any detail because Sandberg and/or Saatkamp advised that Caesars had provided "assurances" that the 1988 Covenant would not be a problem. With regard to what these assurances were, some Trustees believed that Saatkamp and/or Sandberg might have mentioned an indemnification agreement, but, in fact, the indemnification was not raised until December 10, when Stein told Sandberg he was not confident that Caesars would get the waiver from Trump, at which point Sandberg negotiated the indemnification with Dougherty. See *infra*, ¶ 37. Indeed, had the indemnification been mentioned on December 9, it is likely that a longer discussion would have ensued, given the fact that many Trustees understood that Caesars was having financial difficulties and that bankruptcy was likely.

35. While Sandberg was on the phone on December 9, several Trustees inquired whether there was anything that would preclude Stockton from moving forward with the purchase. Sandberg said there was not and did not mention or further discuss the 1988 Covenant or Caesars' potential bankruptcy at that time. At this point, Sandberg did not think that the 1988 Covenant would be an issue because of the assurances he had received from Caesars regarding a waiver from Trump.

36. During the meeting, it became apparent that at least two Trustees (Ciccone and Morvay) had reservations about the transaction. Pappas met with various Trustees in the hallway to garner their support for a unanimous vote because he preferred consensus for the transaction.²⁰ Morvay ultimately decided to abstain from the vote because she could not support the deal based upon the information presented. Ciccone ultimately agreed to vote in favor of the Showboat when Pappas proposed the appointment of an *ad hoc* committee to oversee all actions regarding the Showboat, including approval of contracts in excess of \$5,000, and asked Ciccone and Stanley Ellis to serve on the committee. Prior to the final vote, each Trustee stated his or her position with regard to the transaction. James Yoh, for example, expressed his view that the

²⁰ Morvay reported that Pappas told her, during a private conversation in the hallway outside of the December 9 meeting of the Board of Trustees, that "politicos" wanted the Showboat transaction to occur. Pappas reported to us that he was unsure whether "politicos" were in favor of the transaction because he did not speak to any of "them," but that he felt that "the powers that be" wanted Stockton in Atlantic City.

price of the deal was right, that the availability of the property was immediate, that there was sufficient parking available, and that the school could lease out boardwalk stores to generate income; he moved the resolution and Deininger seconded the motion. Morvay and Bashaw abstained²¹ from the vote, and the remaining Trustees (Pappas, Deininger, Yoh, Emma Byrne, Ciccone, and Ellis) voted to approve the purchase of the Showboat.

Negotiation of the Indemnity

37. As is discussed in paragraph 34, *supra*, on December 10, 2014, Stein told Sandberg that he was not confident that he would be able to obtain the release of the 1988 Covenant from Trump in time for the closing. Sandberg inquired whether his firm or Stockton could help to obtain the release, and told Stein and Costa that Griffin, the CEO of the Trump Taj, was a Stockton graduate and acquaintance of Saatkamp, so perhaps that relationship could foster a resolution. Stein stated that Saatkamp and Epstien should work out the resolution; Sandberg relayed that message to Saatkamp and suggested that he contact Griffin as well, and Saatkamp said that he would talk to Epstien.²²

38. Concerned that the release from Trump was not forthcoming, Sandberg negotiated with Caesars' local counsel, Dougherty, the provision in the PSA whereby Caesars' parent company would indemnify Stockton against any claims in the event Caesars was not able to obtain a release of the 1988 Covenant from Trump; notably, he had previously negotiated an indemnification provision with regard to other Caesars post-closing obligation to remove property and repair damage, and the brokerage covenant. Sandberg was comfortable with the indemnification from Caesars because of the parent company's net worth, which he learned from examining Caesars' Annual Report; no other due diligence on this issue was conducted. Ultimately, Sandberg was pleased that he was able to negotiate the indemnification to protect Stockton, which he explained to Saatkamp on December 11, 2014. In doing so, Sandberg also explained the risks associated with the various options that existed with regard to the Covenant, which he stated as: (1) if Stockton was able to obtain a release from Trump before or at closing, there would be no risk; (2) if Stockton was able to obtain a letter from Trump's General Counsel agreeing to deliver the release and to pursue whatever applications were necessary to obtain bankruptcy court approval, there would be a small risk; and (3) if Stockton could not obtain the release before closing but was able to obtain an indemnification from Caesars with a guarantee from its parent company, there would be some additional risk. Sandberg did not, however, advise Saatkamp that the transaction should not close based upon this risk.

39. Saatkamp did not, prior to execution of the PSA, advise the Board of Trustees that Trump did not waive the 1988 Covenant, as the Board had, at the December 9 Board meeting,

²¹ According to an email, Bashaw "dropped off" the call at approximately 12:10 p.m.; the meeting minutes confirm that Bashaw participated via phone for a portion of the meeting and abstained from the vote.

²² In a March 25, 2015 email to his partners explaining developments in the Showboat matter, Sandberg noted that discussions regarding the 1988 Covenant were "mostly conversations between Stockton President Saatkamp and senior Caesars [sic] executives." In this regard, Sandberg several times reported that Saatkamp was dealing directly with Epstien at Caesars.

been advised would occur, or that as a result, Sandberg negotiated the indemnification from Caesars; Saatkamp also did not provide the Board of Trustees with the revised, final version of the PSA that he received from Sandberg on December 11, 2014, as discussed *infra*, ¶ 43.

The Closing

40. On December 10, 2014, Saatkamp sent Sandberg an email with the subject, “Move forward,” which stated, in part: “Please work on wrapping this up tomorrow. We should sign and close Thursday or early Friday. Danny Epstien indicated he would have the remaining title issue resolved tomorrow.” *See* Exhibit 11. Sandberg stated that the “title issue” referenced in Saatkamp’s email was “absolutely a reference to the 1988 Covenant.” Saatkamp denied that he spoke to Epstien about the 1988 Covenant or that the “title issue” referred to the Covenant; he said that it referred to another title issue, which he could not identify, and thought it might have been the 2014 Covenant, or some easement and boundary issues required for an accurate survey.²³

41. On December 11, 2014, Donnelly, counsel for Trump, received a call from Caesars counsel, Dougherty. The thrust of the call was that Caesars discovered the 1988 Covenant while preparing to sell the Showboat to Stockton and that Caesars wished Trump to waive it. Donnelly told Dougherty that Trump was in bankruptcy so it could not do anything without bankruptcy court approval, that Carl Icahn was “looming,” and that he (Donnelly) needed to talk to Griffin. Donnelly stated that he did not agree to waive the covenant or offer any encouragement about a potential waiver; indeed, Donnelly stated that they did not really discuss it. He did, however, ask Dougherty to send him a copy of the 1988 Covenant.²⁴ Donnelly then received at least three emails from Dougherty, which Donnelly declined to provide to us, though he and Griffin otherwise cooperated with the investigation. However, according to Donnelly, one of the emails contained a copy of the 1988 Covenant; before Dougherty could open or respond to that email, Dougherty sent another email that said the transaction was going to close the next day. Donnelly did not respond to Dougherty’s email; he reiterated that he had conveyed to Dougherty the day before that Trump would not waive the 1988 Covenant, and that even if it wished to do so, such a waiver would require approval from the Bankruptcy Court. Moreover, Donnelly denied providing any encouragement to Dougherty

²³ Another potential “title issue” that we were able to identify was “a termination of the 1983 lease,” per an email from Sandberg on December 11. Through his attorneys, Saatkamp also suggested that the title issue could have been either “encroachments of the canopy onto the boardwalk and the failure of the fences to ‘ride’ the boundary lines and other difficulty with the boundary lines,” or “whether, under the 2014 Covenant . . ., internet gambling was a permitted use.” *See* Exhibit 12. After considering all of these possibilities, we conclude that the “title issue” referenced by Saatkamp, as well as in other emails from Sandberg, *see, e.g.*, Exhibit 13, was, in fact, the 1988 Covenant; none of the others makes sense. That said, we were hampered in our ability to fully explore this issue by Caesars’ refusal to participate in our review.

²⁴ Because, as noted, we were unable to interview Dougherty, or anyone else associated with Caesars, this account is undisputed.

that Trump would waive the 1988 Covenant; nonetheless, Section 3(b)(ii) of the PSA states that “Trump Taj has indicated an initial willingness to consider such release [of the 1988 Covenant].”

42. At 12:59 p.m. on December 11, Sandberg sent an email to Saatkamp with the subject “Title Issue,” which stated: “Herman: Just got off the phone calls with Caesar’s [sic] in-house counsel. I believe we have resolved the title issues. I will confirm later today. Thank you.” Exhibit 13. A few minutes later, at 1:11 p.m., Sandberg emailed Costa and Meckler, with copies to Epstien, Dougherty, Fader, and Attas, an email with the subject, “Stockton - Showboat.” That email stated:

Hi Dan/David: Joe and I spoke and I believe have resolved the title issues:

1. Caesars will record a termination of the 1983 Lease.
2. Caesars will deliver a letter/email from Taj counsel stating intent to remove the casino operation requirement from the 1988 Agreement as to Assumption of Obligations, agreement to make appropriate filings with the Bankruptcy Court, etc.
3. Caesars will add this matter to the Seller Parent Guaranty in Section 7 of the PSA.

Thank you.

Exhibit 14.

43. At 8:03 p.m.,²⁵ Caesars sent Sandberg a version of the PSA that for the first time referenced the 1988 Covenant and Caesars’ indemnification agreement, in redlined language included in Section 3(b)(ii), with a redlined reference to the indemnification in Section 7. *See* Exhibit 15. At 8:11 p.m., Sandberg forwarded the email from Caesars and the attachments (the revised PSA, both clean and redlined) to Saatkamp with a note: “Herman: Hot off the presses!”. *Id.* Saatkamp’s response both then and thereafter did not address the 1988 Covenant or the indemnity agreement. At 9:15 p.m., Sandberg responded to the email from Caesars’ counsel containing the revised PSA, copying Caesars’ attorneys and executives, Saatkamp, Brian Jackson (Saatkamp’s Chief of Staff), Fader, and Attas, with comments on the revisions, including the statement: “I believe you have correctly stated the agreement regarding the AAORP.” Exhibit 16.

44. The transaction closed the next day, December 12, 2014. But before it did, Saatkamp responded to Sandberg’s email (at 6:43 a.m.), attached the final PSA and asked “[a] few questions from a non-lawyer,” about (1) the House of Blues;²⁶ (2) the leases; and (3) the

²⁵ It appears that the email was sent at 8:03 p.m. EST despite Costa’s location in the Pacific time zone.

²⁶ The Showboat included a concert venue, the House of Blues, which closed on August 29, 2014, two days before the Showboat closed on August 31, 2014. Issues arose as to the way in which furniture, artwork and equipment from the House of Blues would be disposed of post-closing.

payment of taxes. *See* Exhibit 17. Thus, although Saatkamp’s questions confirm that he read the PSA because they all relate to redlined edits or new sections of the PSA, none of the questions related to the 1988 Covenant, likely because that was not an open issue in Saatkamp’s mind. At 8:43 a.m., Sandberg responded to Saatkamp’s email addressing his questions. *See id.* At 9 a.m., Sandberg had a teleconference with Caesars’ attorneys, and then emailed Saatkamp at 9:40 a.m.: “Herman: The call went very well. I think all issues are resolved and we are on track to close today. I will send a follow-up email shortly - wanted you to know right away.” Exhibit 18.

45. Meanwhile, at 1:05 p.m., Sandberg -- still concerned about the 1988 Covenant -- emailed Dougherty, “Will we get anything from the Taj?” *See* Exhibit 19. At 1:15 p.m., Dougherty responded to Sandberg, “I have asked for a letter from their counsel but so far I have not received anything.” *Id.* Donnelly, however, states that he did not discuss the release of the Covenant with Dougherty on December 12. If true, then Dougherty’s response to Sandberg was both inaccurate and misleading; nor have we received any evidence to contradict Donnelly’s statement to Dougherty the prior day, as discussed *supra* in paragraph 41, as well as Trump’s later website posting, *see infra*, Findings ¶ 60, that it never agreed to waive the Covenant.²⁷ At 3:29 p.m., Sandberg emailed Saatkamp that “[t]he PSA changes accurately reflect . . . my discussions with Caesars this morning and . . . are otherwise acceptable to me.” Exhibit 20. He did not, however, describe his exchange with Dougherty; nor was the Board informed of it. Sandberg simply asked, “Assuming the commitment is acceptable, I request your authorization to effect the closing.” *Id.* At 3:41 p.m., Saatkamp emailed Sandberg four signed copies of the PSA and asked when he could authorize a press release; at 3:42 p.m., Saatkamp sent Sandberg another email: “You[] have my authorization to effect the closing. Hope you are able to relax and celebrate a bit tonight. Many, many thanks. Let me know when all is done so I can authorize the press release.” *Id.* At 3:45 p.m., Sandberg replied: “Herman: Thank you and will do. We have our firm holiday party tonight, so the timing is impeccable - just like this transaction!” *Id.* At 4:54 p.m., Sandberg emailed that the funds had been transferred and the transaction closed; Saatkamp then notified members of the Stockton community about the Showboat acquisition and invited Ingram, Hudson, Schulman, and Jackson to his home to have a drink with him and his wife to celebrate the closing of the Showboat.

46. Neither Saatkamp nor Sandberg provided the Board of Trustees with the revised, final version of the PSA that contained the new Section 3(b) regarding the 1988 Covenant and indemnification. Nor was the Board otherwise notified about the indemnity agreement that had been reached with Caesars, or, more fundamentally, that Caesars had been unable, as of the time of the closing (or since), to get Trump to waive the Covenant.²⁸

²⁷ As discussed *infra*, Findings ¶ 53(b), Saatkamp explained that he learned for the first time, during a phone call with Griffin on March 6, that Caesars’ lawyers had asked Trump for a waiver before the closing, but Trump would not agree. Accordingly, as discussed *infra*, Findings ¶ 61, Saatkamp told the Board, at its April 1 meeting, that ““there may have been possible misrepresentation by Caesar’s [sic].””

²⁸ Although neither Saatkamp nor Sandberg provided the revised PSA containing the Caesars indemnification to the Board of Trustees, or otherwise advise them of it, Saatkamp relied upon the Caesars indemnification as “an explanation of why the Trustees endorsed my signing of the

The Aftermath of the Closing: Trump's Refusal to Waive the 1988 Covenant

47. Griffin and Donnelly learned that Stockton closed on the Showboat when they read about the purchase in the newspaper around the holidays in December 2014; they were both very surprised that the deal closed in light of the 1988 Covenant. Donnelly sent Dougherty a letter on December 23, 2014, regarding the AAORP and the sale of the Showboat to Stockton. As indicated in note 5, we do not have a copy of this correspondence, but Donnelly confirmed that he sent the letter, which is also referenced in Dougherty's response to Donnelly dated January 11, 2015, in which Dougherty wrote, "Since the property will no longer be used for casino gaming and as you know from our earlier conversations and my email from December 11, 2014, Stockton and Showboat are requesting the consent of the Taj to an amendment of Section 3.1 of the Agreement." On January 12, 2015, Sandberg forwarded Dougherty's January 11 letter to Saatkamp, stating: "We continue our efforts to resolve this title matter."

48. Meanwhile, on January 2, 2015, Dougherty advised Sandberg via email that he was "still working on a resolution" regarding the 1988 Covenant. Dougherty requested a written response regarding Stockton's "intention of the continued use of the property which would be sent to Taj counsel." Dougherty further stated that he "remain[ed] hopeful that our continued discussions will lead to consent on an amendment to Section 3.1 of the Agreement." Sandberg then emailed Saatkamp and put Dougherty's "email into context" by explaining that "Section 3(b)(ii) of the PSA sets forth Seller's obligation to seek from Trump Taj a release from a recorded document that requires the Showboat property to be used as a casino," and asked Saatkamp how he wanted to proceed. Schulman drafted a letter from Saatkamp to Ortzman (Caesars' Regional Vice President and General Manager), describing the way in which the Showboat would be used, *i.e.*, as the Stockton-Island Campus, "complete with classrooms, academic space and meeting rooms, residential living spaces, administrative offices, and community/civic engagement facilities, and of course, the necessary complement of faculty and staff."

49. In the ensuing weeks, Griffin, the Trump CEO, spoke to both Kevin Lavin, emergency financial manager for Atlantic City and Matthew Levinson, the Chairman and Chief Operating Officer of the New Jersey Casino Control Commission about the 1988 Covenant, which Griffin described as "a problem for the Showboat deal." Griffin told Lavin that he might be able to negotiate a resolution that would add value to the Trump bankruptcy estate; later, however, Griffin told Levinson that Trump would not release the covenant and that he had conveyed this message to Caesars.

50. On January 15, 2015, Caesars declared bankruptcy.

contract," in a communication with his assistant, Kathryn Mason, Michael Angulo, then-Assistant General Counsel at Stockton (now General Counsel), Schulman, and Jackson, on April 6, 2015. Exhibit 21. Notably, at that time, Saatkamp did not, in any way, blame Sandberg for Stockton closing with the 1988 Covenant in place; indeed, he did not do so until our first interview on June 13, 2015, and he continues to blame Sandberg to this day, although his initial allegation, that Sandberg had not told him about the Covenant at all, changed when he saw Deininger's notes from the December 9, 2015 Board of Trustees meeting.

The Demise of the Deal

51. In late February and early March 2015, questions again arose regarding the 1988 Covenant. First, Trustee Schoffer received a call from Senator Whelan asking about it, as a result of communication that the Senator had had with Donnelly. Then, Saatkamp received an inquiry about it from John Palmieri, Executive Director of CRDA, as a result of which Saatkamp communicated with Sandberg to follow up on whether Caesars had obtained the waiver of the Covenant from Trump; Sandberg responded in a March 4 email that explained Caesars' obligations pursuant to the PSA, acknowledged CEOC's bankruptcy, and stated that he would "research [Stockton's] defense against enforcement of the [1988] Covenant generally."

52. On March 4, 2015, Saatkamp emailed Hanson, explaining the conflicting covenants and asking for help; there is no evidence, prior to this time, that Hanson had any awareness of the covenants. Saatkamp explained that "[o]ur contractual agreement with Caesars places the responsibility for removing that covenant on Caesars" and "[t]he responsibility for removing the covenant was/is Caesars' responsibility." Saatkamp further stated: "But if this were to drag on, then Stockton will have a difficult time signing contracts for the hotel (I expect to have to sign one in one week's time), operating restaurants, managing housing for students or offering classes on the Island Campus. In the worst case, this could bring CRDA funding to a halt as well as ending our building a university in Atlantic City." Hanson responded that evening: "I am on it; if necessary, I will call Icahn. I spoke to Caesar's [sic] and have the background; I hope that this is easily handled. Do not let the lawyers spoof you." Hanson spoke to Satz that night, who assured Hanson that everything would be resolved. Satz then called Donnelly to discuss the Covenant, but Donnelly told Satz that, as he had already told Caesars, Trump would not release the covenant, and that Caesars would have to offer something of value in exchange for a release because Trump was in bankruptcy and Icahn was "looming." Satz responded that Hanson, representing the Governor, wanted the 1988 Covenant removed, and that Trump was "bucking" Hanson and the State. Donnelly was unmoved, telling Satz that he could "stand in line" with the others who were threatening Trump at the time. Shortly thereafter, Griffin received a call from Ortzman about the Showboat. Griffin advised Ortzman that he could not and would not waive the 1988 Covenant because Trump was in bankruptcy and, as a debtor in possession, would have to receive judicial approval for a waiver in any event.

53. Saatkamp called Griffin to discuss the 1988 Covenant on March 6, 2015. (Donnelly was present for the phone call via speakerphone in Griffin's office.) This was the first and only time that Saatkamp and Griffin spoke about the Covenant.²⁹ The call lasted approximately twenty (20) minutes. Griffin and Saatkamp had very different recollections of the call.

(a) Griffin stated that after some small talk, Saatkamp asked that Griffin waive the 1988 Covenant as a "favor" so that he could start signing contracts for the Showboat. Saatkamp

²⁹ Griffin reported that he and Saatkamp had previously exchanged text messages, which Griffin had retained. We did not, however, identify any text messages between Griffin and Saatkamp from Saatkamp's iPhone6 and, again, Griffin was unwilling to provide these text messages to us, citing the ongoing OPRA litigation between Trump and Stockton.

tried to appeal to Griffin as “a former Stockton guy” and said that Griffin should be “happy to do it.” Griffin told Saatkamp that he would have been happy to meet with him a month ago, and that he would also be happy to consider waiving the Covenant if some consideration were offered, but that he needed something of value to present to the bankruptcy court or he (Griffin) would be “in harm’s way” with both the unsecured creditor’s committee and with Icahn, his senior secured creditor. Griffin pointed out that Trump had waived a restrictive covenant in another situation for about \$5 million a few years earlier. According to Griffin, Saatkamp told Griffin that he worried too much and that no one was going to sue him (Griffin); Saatkamp refused to offer any value to waive the covenant, instead telling Griffin that he would make his life “miserable” and run a public relations campaign against him and Trump.³⁰

(b) Saatkamp painted a very different picture. According to Saatkamp, he called Griffin in an effort to understand Trump’s refusal to waive the 1988 Covenant. Griffin told Saatkamp that Icahn would decide whether to enforce the covenant, but that it did not look promising because of concerns about having college students next to the Taj. Saatkamp denied threatening Griffin in any way.³¹ Saatkamp also stated, in a subsequent interview, that Griffin told him that Trump was not open to negotiating a waiver of the 1988 Covenant for monetary consideration, and that if he had, Stockton could have “easily offered \$2 to \$5 million.” Saatkamp stated that he learned during this phone call, for the first time, that Trump had been asked for a waiver prior to the closing, but declined.

Griffin and Saatkamp were scheduled to meet in person on April 21, 2015. The meeting never occurred; Griffin and Saatkamp each accuse the other of cancelling the meeting.

54. Immediately after the call with Griffin on March 6, Saatkamp emailed Hanson that he needed to talk because he had spoken with Griffin “off the record.” Saatkamp also advised Sandberg and Fader: “Not good news. We may have to abandon the property. We should talk.” In response, Hanson spoke with Satz and asked him how Caesars could have sold the property and created the 2014 Covenant in light of the 1988 Covenant, a question to which, Hanson stated, he never received a satisfactory answer. Hanson also spoke directly to Icahn about an exchange of rooms at the Showboat for release of the 1988 Covenant, and engaged in

³⁰ Indeed, Griffin blamed Saatkamp for orchestrating a Stockton student protest at the Taj on April 2 and 3, 2015. Specifically, Griffin met with the students on April 2 prior to their protest; at that meeting, a student raised an issue regarding Griffin’s record at Stockton that Griffin believed was planted by Saatkamp to embarrass him at the meeting. Saatkamp, however, denied providing the student with any information about Griffin’s record or sending the students to the Taj for an improper purpose. Indeed, Saatkamp met with the students prior to the protest to remind them that they represented the University and must behave appropriately. That said, Jackson, Stockton’s Chief of Staff, reported that at some point, Saatkamp asked him to obtain Griffin’s student records, which Jackson did, relaying information about the records back to Saatkamp. There is, however, no evidence that this information was in turn relayed to the student demonstrators at the Taj, or even that Jackson had provided it to Saatkamp by that time.

³¹ Although Saatkamp denied threatening Griffin, Stockton CEO for External Affairs Schulman reported that Saatkamp admitted to her that he had “lost his temper” during the call with Griffin, and threatened to “ruin Griffin” and to run a “PR campaign against him.”

an email exchange with Saatkamp on the issue, but Saatkamp would not agree to any exchange of rooms with Trump.

55. Also on March 6, Saatkamp called Maley to discuss the 1988 Covenant and Trump's intention to enforce it. Maley was previously unaware of the 1988 Covenant, but discussed the matter with Dougherty and told Saatkamp that he could amend the Redevelopment Plan to prohibit a casino at the Showboat, thus invalidating the Covenant. Following that call, Maley, Saatkamp, Schulman, Sandberg, and others from Atlantic City, including Mayor Donald Guardian, Atlantic City Planning and Development Director Elizabeth Terenik, and Atlantic City Council President Frank Gilliam, communicated regarding modifying the Redevelopment Plan to prohibit casino use; an Ordinance was also proposed. Although a proposal to amend the City Redevelopment Plan accordingly was accepted by the Atlantic City Planning Board on April 1, its scheduled final passage on April 8 was tabled at Saatkamp's request, after Trump notified the City that it objected to the Ordinance and Redevelopment Plan; Saatkamp was afraid that KK Ventures would not place the \$26 million in escrow for the purchase of the Showboat if it passed. *See supra*, Background ¶ 4, *infra*, Findings ¶ 63. Ultimately, KK Ventures in fact made the escrow payment and Saatkamp texted Maley at about 7:00 p.m. in an effort to get the Ordinance back on the agenda since KK Ventures placed escrow, but it was too late. The Ordinance was tabled indefinitely, and has never been voted upon, notwithstanding that, reportedly, Caesars had offered to pay Atlantic City up to \$100,000 in litigation expenses to defend the Ordinance, if necessary.

56. Saatkamp reported that sometime after his call with Griffin, he (Saatkamp) called Icahn, who told him that the 1988 Covenant could possibly be resolved if Stockton gave Trump all 1,331 hotel rooms in the Showboat for the Taj's use during the summer. Saatkamp told Icahn that this proposal would not work because Stockton needed the rooms to generate income, which was an important aspect of the acquisition. Icahn told Saatkamp that he could not offer any other suggestions because he did not own the Taj yet.

57. During a March 11, 2015 meeting with Ingram, Schulman, Jackson and Hudson, Saatkamp stated that there was a problem with the 1988 Covenant. Hudson asked Saatkamp if he knew about the 1988 Covenant prior to closing, and Saatkamp reported that he did. Handwritten notes on Hudson's agenda from that meeting confirm that they discussed the 1988 Covenant.

58. On March 13, 2015, Griffin sent Saatkamp a letter regarding Caesars' sale of the Showboat to Stockton, and the 1988 Covenant. The letter stated: "Stockton accepted the property with actual knowledge that the Taj and its affiliates were the beneficiaries of the deed restrictions and covenants. In fact, prior to closing, Caesars requested that the Taj waive these restrictions and covenants. As you know, that request was specifically denied and continues to be denied." *See* Exhibit 1 at 1. A later paragraph in Griffin's letter stated: "It is also of interest that prior to closing we were called to request that we waive this restriction. We said no, but also stated that we would be willing to further discuss the issue. You did not give me the courtesy of a phone call until last week. Instead and in your wisdom, you decided to close your transaction and ignore our rights." *Id.* at 2. In the letter, Griffin notified Saatkamp that the Taj had sustained and continued to sustain "substantial economic damages and will be forced to exercise all available remedies at law and equity." *Id.* at 1.

59. On March 23, 2015, Fader, Dougherty, and Donnelly met to discuss a potential resolution of the 1988 Covenant. During the meeting, the parties discussed, in general terms, the potential for Trump to use some hotel rooms. Saatkamp had authorized Fader to offer up to \$100,000 in return for a waiver of the Covenant, but neither side was willing to make an opening offer and no agreement was reached. Following the failed meeting on March 23, Saatkamp advised the Board that Trump was unwilling to talk about a monetary amount to waive the 1988 Covenant; Ciccone inquired “what monetary amount is [T]rump looking for at this time? Is it still \$5,000,000?” In response, Saatkamp reiterated that Trump was “unwilling to talk about a monetary amount.” It is unclear whether the Board was made aware that Saatkamp had authorized Fader to pay up to \$100,000 for a waiver, or that there was money available to resolve the issue. That said, Saatkamp had advised the Board that Trump might be willing to accept \$5 million for the waiver of the 1988 Covenant; it is unclear why negotiations broke down if, as Saatkamp reported, Stockton could have “easily offered \$2 to \$5 million.” *See supra*, Findings ¶ 53(b).

60. Two days later, on March 25, 2015, the Trump Taj posted a statement on its website, “Stockton/Caesars Sale of the Atlantic City Showboat Casino,” *see* <http://www.trumptaj.com/> (last visited September 14, 2015), which reads, in part: “In mid-December of 2014, Caesars asked the Taj to voluntarily waive the casino/hotel covenant to permit Stockton College to acquire Showboat and convert it into a college campus. We advised that because the Taj is in bankruptcy, as a matter of our fiduciary responsibilities to our creditors, we could not waive our valuable rights under this covenant without obtaining bankruptcy court approval and without receiving appropriate consideration. We were not offered any consideration for this waiver. This was over three months ago. . . . Both Caesars and Stockton elected to proceed with the Showboat sale even though they were fully aware that we could not waive the casino/hotel covenant as they were asking.”³²

61. On April 1, 2015, the Stockton Board of Trustees held a closed session meeting, which Sandberg, Fader, and Maley attended. During the meeting, “President Saatkamp stated that on 12/12/14, a contract of sale was signed between Caesar’s [sic] and Stockton, with the assurance from Caesars that a 1988 covenant between Caesars and Trump Entertainment would be handled.” Exhibit 22 at 1. Saatkamp also noted that there “‘may have been possible misrepresentation by Caesar’s [sic],”” which comment, he explained, derived from his phone call with Griffin on March 6, when he learned for the first time that Caesars’ lawyers had asked for a waiver before the closing, but Griffin would not agree. The Board approved a Sale of Property Resolution that allowed Stockton to “execute a sale agreement and to complete due diligence for a Purchase Sale Agreement of the Island Campus (formally [sic] Showboat Hotel & Casino property).”

62. On April 8, 2015, Saatkamp issued an Administrative Announcement, “Message from the President & Board of Trustees,” which was sent to the Stockton University Community. *See* Exhibit 23 at 1. The message described the 1988 Covenant and Caesars’ indemnification, and further stated: “While we were aware of the covenant, we do not believe it applies to the Island Campus, and we believed that the indemnification provision protected Stockton

³² This statement corroborates Donnelly’s account of the call he received from Dougherty on December 11, 2014.

University and our use of the Island Campus from any issues that might arise through its attempted enforcement.” *Id.* The message further stated that the language of the PSA confirms that “consultation among attorneys for all parties had taken place and that we had taken appropriate steps to protect ourselves. Media releases from Trump Entertainment stating otherwise are simply inaccurate.” *Id.*

The KK Ventures Transaction

63. With the Showboat acquisition in jeopardy because of Trump’s refusal to waive the 1988 Covenant, Saatkamp turned to the possibility of selling the property to Straub. Saatkamp had considered such a possibility before: as early as September 18, 2014, Saatkamp had contemplated contacting Straub after the Atlantic City Press reported that Straub wanted a university at the Revel site, *see supra*, n.2, and Saatkamp in fact met with Straub at Seaview on January 12, 2015, and at the Showboat on February 7, 2015. On or about March 23, 2015, at Saatkamp’s direction, Sandberg began negotiations with Craig Galle, Esq. (“Galle”), Straub’s attorney, regarding the sale of the Showboat to Straub. Other buyers expressed interest in purchasing the Showboat, as well, but Saatkamp did not seriously consider them because he remained confident that he could resolve the 1988 Covenant issue with Trump, and believed that Straub was the only buyer who would agree to a 90-day cancellation provision, which would allow him the time to obtain a release from Trump.

64. Sandberg inserted the 90-day termination provision in a March 27, 2015 draft Purchase and Sale Agreement. Under this provision, Stockton had the sole right to terminate the contract within the 90-day period; KK Ventures had no such right to terminate the contract. As initially drafted, the PSA thus provided: “Seller may cancel this Agreement by giving written notice to such effect to Purchaser at any time during such ninety-day period, whereupon the Escrow (with all interest earned thereon) shall be returned to Purchaser and the parties shall be released of all further obligations hereunder.” In response to this proposal, Galle emailed Sandberg that same day, with copies to Saatkamp, Angulo, Fader, and Attas, that he had made “some further tweaks to the agreement.” Specifically, Galle added the following language to Sandberg’s redlined edits in Section 4(a): “if, and only if, Seller is unable to resolve to Purchaser’s satisfaction title issues pertaining to the Use Covenant and the Declaration of Restrictive Covenants.” Galle’s redlined comments appeared in a different color than Sandberg’s redlined comments and are, accordingly, readily apparent. Sandberg, however, printed the revised PSA on the black-and-white printer close by his office. Upon reviewing the black-and-white revised PSA, Sandberg did not notice that Galle substantively modified the language in a way that undermined Stockton’s ability to unilaterally cancel the contract, which was essential to the deal.

65. Sandberg forwarded the revised PSA to Saatkamp, who had also received the revised agreement from Galle, stating: “Straub has agreed to the 90-day cancellation provision. See Section 4(a).” On March 30, 2015, Saatkamp sent the Board of Trustees a copy of the revised PSA, including the language in Section 4(a) inserted by Galle, writing: “Initially, the changes do not seem to alter the basic terms of the contract, but we are looking at it more closely as the day goes on. There remain some spelling errors that need to be corrected.” But the version of the KK PSA sent to the Trustees and Saatkamp in fact gave KK Ventures the right to cancel the contract: that is, if Straub/KK was not satisfied with Stockton’s efforts to resolve the

issues raised by the conflicting covenants, Straub/KK could allow the deal to lapse and then terminate it. Saatkamp also sent a copy of a summary of the PSA's "central points," which Sandberg drafted. The summary stated that "Stockton University has a 90-day period within which it can terminate the Contract. Purchaser has to [sic] no right to terminate the Contract."

66. Sandberg did not discover that Galle had substantively modified the 90-day termination provision until the evening of April 3, 2015 (Good Friday), the "Effective Date" of the PSA. While working on the New York Times crossword puzzle at home in the evening, Sandberg suddenly felt the need to review the KK PSA. He went to his home office to examine the agreement, and for the first time, noticed the language that Galle had inserted into Section 4. According to Sandberg, his "heart stopped." He immediately emailed Galle to advise that the language that Galle had inserted was not consistent with their agreement. Sandberg continued efforts to resolve the issue with Galle over the Easter weekend via email and phone. In an April 5 email, Sandberg requested Galle to confirm that "Mr. Straub has agreed to the deletion we discussed yesterday." Sandberg stated he spoke with Galle on Easter day; Galle told Sandberg that his insertion intended to prohibit Stockton from terminating the contract and selling the Showboat to another purchaser at a higher price. On April 8, 2015, Sandberg sent Galle a "revised Section 4(a)" to be inserted into the KK PSA. Meanwhile, Saatkamp also identified the improper language in 4(a) and notified Sandberg and Fader via email on April 8; Sandberg replied that he had "been working with Craig Galle to correct it" by removing the provision from the contract, but Sandberg did not have a revised version of the KK PSA at that time. Nonetheless, the deal proceeded: Straub's escrow was received on April 8 at approximately 3:30 p.m.

67. On April 12, 2015, Sandberg told Saatkamp that Galle admitted that the added language made no sense and was an error. Saatkamp informed the Trustees of the ambiguous language in Section 4(a) of the KK PSA via email that day: "The exact interpretation and implications of this clause are complicated by some insertions made by the other party's legal counsel. Our legal counsel is working with the other legal counsel to clarify the meaning of Clause 4A, and discussions are continuing. Our legal counsel maintains that despite this issue we are on 'solid ground' in moving forward to sell the former Showboat property to KK Ventures-Atlantic City, LLC, if that is the option we choose." Over the following weeks, however, in correspondence with Saatkamp, Straub made clear his view that in order to close, Stockton was required to obtain either a release of the covenants or a declaratory judgment that the covenants were void or unenforceable. It was apparent, then, that litigation would ensue. And, in fact, as noted above, Findings ¶ 5, on July 1, 2015, KK Ventures filed a lawsuit against Stockton in the Superior Court of New Jersey, Law Division, Atlantic County seeking an Order declaring the KK PSA null and void and "at the very least extending the time for closing to a date when the underlying conflicts making the title unmarketable are determined, as well as unjust enrichment resulting from S[tockton's] unreasonable insistence on a July 2, 2015 closing date." The complaint also alleged that Stockton did not do all that it could to resolve the conflicting covenants. *See KK Ventures - Atlantic City, LLC v. Stockton University*, ATL-L-1490-15. To date, that litigation has not succeeded: a lawsuit filed by Stockton on July 10, 2015, resulted in the grant of a Temporary Restraining Order that allowed it to move forward with plans to find another buyer for the Showboat, and prohibited KK Ventures from interfering with Stockton's title to, or right to convey, the Showboat property. Then, on August 10, 2015, the court held that the KK PSA was properly terminated and that Stockton was free to market and

sell the Showboat without interference from KK Ventures, dismissing KK Ventures' complaint against Stockton.

68. Fader and Perrucci attended the April 23, 2015 Board of Trustees meeting. At the meeting, Fader apologized to the Board of Trustees and took responsibility for Sandberg having missed the language added by Galle in the KK Ventures PSA, and has thus far successfully represented Stockton in its effort to rectify the problem; Fader also advised the Board that Sandberg would not continue to work on the matter. Although Saatkamp originally claimed that Fader also took responsibility for the initial purchase of the Showboat notwithstanding the 1988 Covenant, Fader said this was not the case, and the Trustees who were interviewed agreed; Saatkamp later admitted that he might have misinterpreted Fader's apology to be broader than it was.

CONCLUSIONS

A. Introduction

1. There can be little question but that, viewed with 20-20 hindsight, the decision to purchase the Showboat from Caesars appears to have been a poor one: it cost Stockton \$18 million for the purchase of property which is subject to restrictive covenants that both require that it be used as a casino (the 1988 Covenant) and prohibits that use (the 2014 Covenant), and thus remains vacant some 9 months later, at great monthly cost to Stockton, providing neither education to Stockton students nor a boost to Atlantic City's economy. Below we analyze who bears responsibility for this state of affairs, with regard to each of the parties that are potentially responsible for this decision: Herman Saatkamp, then-President of Stockton; FPSF, the attorneys who represented Stockton in the transaction; the Stockton Board of Trustees; the State actors; and Caesars. Our conclusions are set forth below.

B. Responsibility of President Saatkamp

2. President Saatkamp was deeply committed to the Showboat transaction, for a number of entirely legitimate reasons; these included his desire for Stockton to expand into Atlantic City, and for Stockton to be the first to do so (before Rowan, in particular), which he saw as in furtherance of the legitimate growth of the University, and the provision of facilities and programs for its students; it was also consistent with Saatkamp's long-time belief that Stockton could and should be a positive force in the urban revitalization of Atlantic City. As he neared retirement, with his health failing, he also wished to cement his legacy of accomplishment at Stockton. And finally, Saatkamp believed that the purchase of the Showboat engendered an extremely advantageous deal from an economic perspective: Stockton's purchase of the Showboat for \$18 million, equated to the extraordinarily low price of \$10.36 per square foot, and included nearly 3,500 parking spaces and an expected 852 badly needed dormitory rooms.³³ Moreover, the Showboat had been renovated in 2003, 2005, and 2008; as a result, the property was reported to be in good condition.

³³ According to Saatkamp's notes, Straub had made an offer of \$35 million for the Showboat in October 2014, which was nearly twice the \$18 million Caesars accepted from Stockton.

3. The Board was not unanimously supportive of the merits of the Showboat purchase; ultimately, however, after delaying its decision making from December 3 through December 9 for purposes of fully considering and debating the issues, and after conditioning approval on the appointment of an *ad hoc* Committee that would have oversight responsibility with regard to Stockton's Atlantic City operations, the Board approved the purchase without any dissenting votes, though there was one abstention and three recusals based upon potential or perceived conflicts of interest.

4. That said, the process by which the Showboat transaction was proposed to and considered by the Board of Trustees raised some concern about the nature of Saatkamp's leadership style and relationship with the Board at the time of the decisions here at issue. In particular, multiple Trustees expressed concern that, as effective and even visionary a leader as Saatkamp had been, he discouraged, and even took steps to preclude opinions or the expressions of differences of opinion among Board members, through a variety of techniques, including using the Board's time at meetings on less controversial issues and, with some frequency (including in this case), threatening to resign if his positions were not adopted. Concern was also expressed that Saatkamp was not fully transparent with the Board, and did not provide critical facts to Trustees that should have been shared. *See supra*, Findings ¶ 46; *infra*, Conclusions ¶¶ 7-10. Likewise with staff, Saatkamp micromanaged issues and divided responsibilities in a way that allowed only him to have the full picture of an issue, excluded dissenters (including former General Counsel Melissa Hager, who did not, for example, have any involvement in this transaction), and created an environment which discouraged open discussion of issues; as a result, one Board member resigned and several members of senior staff considered resignation. These concerns appear to have been alleviated by the current Interim President Harvey Kesselman, who is much more open, inclusive, transparent and modest.

5. We considered, and investigated, whether Saatkamp might have been motivated by some illicit or inappropriate motive for entering into the transaction, or for expediting its closing, discussed further below. We did not find evidence of any such motive. Specifically,

(a) Saatkamp denied receiving any bribe, kickback or other illicit payment from Caesars, or any other party, for entering into the Stockton transaction. Although Caesars did not participate in, let alone cooperate with, our investigation, and we were thus unable to "follow the money," by tracing whether any of the \$18 million that was paid by Stockton to Caesars went to Saatkamp, or anyone else to whom it should not have, Saatkamp credibly denied receiving any of these funds and we found no contrary evidence. Nor, did we find any conflict of interest whereby Saatkamp would receive some other financial benefit, as a result of other investments or interests by which he would benefit from the transaction, though we also did not perform a forensic audit of Saatkamp's financial records, which was beyond the scope of this review.

(b) In particular, we considered whether one of the reasons for Saatkamp's support for the Showboat purchase and/or rush to close was that he would, had the project been completed, been provided with an ocean-front residence on the 14th floor of the building, in which he and his wife would reside. The Saatkamps were clearly interested in this possibility: Saatkamp told certain Trustees and high-ranking Stockton officials that his wife "liked to be by the water." We heard evidence that Saatkamp had the 14th floor of the Showboat measured to see whether it would accommodate his furnishings. Saatkamp presented to the Board of Trustees

the idea of his moving to the Showboat; the Board was very supportive of the President of the University establishing a residence at the proposed Island Campus, believing it would send a message that would enhance the potential success of the project by reassuring students and their families with regard to the safety and security of the area. They also believed it would make a powerful statement of support for the project that would benefit both Stockton and Atlantic City, and allow President Saatkamp to focus on Stockton's activities in Atlantic City while then-Provost Kesselman would have primary responsibility for overseeing the Galloway campus. Accordingly, Saatkamp began to work at the Showboat one or two days per week; Hudson, an architect, toured the property with the Saatkamps and provided preliminary drawings for a year-round residence. However, as time passed, particularly after the closing, the Saatkamps became less enthusiastic about the possibility, at least in part because it would mean living in substantially less space and taking a loss on the sale of the Galloway home. On March 24, 2015, Saatkamp advised Ingram and Hudson, as well as the external architects, that he would not be moving to the Island Campus and so "all plans" should be "halted." Overall, we concluded that a potential move to the Showboat was not a significant, if any, reason for Saatkamp's support for the project.

(c) We also considered whether State officials exerted any undue influence on Saatkamp's decisionmaking with regard to proceeding with the purchase of the Showboat. As is set forth below, although Trustee Bashaw reported that Saatkamp told him that he (Saatkamp) had received "marching orders" from Hanson to purchase the Showboat at their September 16 meeting, Hanson denied conveying and Saatkamp denied receiving such a message. Although there is no question but that the State supported the notion of Stockton opening a campus in Atlantic City as a matter of urban revitalization, neither Saatkamp nor Hanson viewed Hanson's suggestion of the Showboat as a directive from the State.³⁴ Nor was that the general sense of the Board members whom we interviewed. And there is absolutely no evidence that Hanson, or anyone else from the State, knew about the 1988 Covenant prior to the closing, let alone in any way pressured Stockton to close notwithstanding that Covenant.

6. Although he initially denied it, which denial is discussed in further detail below, Saatkamp was aware of the 1988 Covenant prior to closing. Nonetheless, he determined that Stockton should proceed to closing because he understood that, pursuant to the Purchase and Sales Agreement, (a) Caesars (the seller) was in the process of obtaining a release of the Covenant from Trump,³⁵ and (b), were there to be a problem, Caesars would indemnify Stockton

³⁴ We also considered what role, if any, Saatkamp's disappointment, or even anger, at not having been invited to the summit meeting convened by the Governor regarding Atlantic City on September 8, 2014, might have played in his decision to promote the Showboat project, but concluded that any findings in that regard would be speculative. Indeed, that failure might just as well have caused him to be less cooperative with the State. In any event, there was no evidence from contemporaneous accounts or communications, including phone conversations, text messages and emails, that the desire to curry favor with the State played any role in the process.

³⁵ As noted *supra*, Findings ¶¶ 41, 45, Caesars appears to have misled Stockton into believing that such a release would be forthcoming, even when Trump's counsel had told Caesars' attorneys otherwise. Unfortunately, we were not able to further explore this issue because

for any resulting expense. *See* Exhibit 4 at § 3(b)(ii). Indeed, in the days leading up to the closing, Saatkamp was much more concerned about other issues, including union-related issues regarding the obligations that Stockton might have to existing Showboat employees and to honor existing Showboat leases, than he was about the 1988 Covenant.

7. The Showboat transaction was rushed to a December 12, 2014 closing,³⁶ at a time before a release of the 1988 Covenant could be secured from Trump, or Trump's refusal to consider such a waiver was brought to the attention of the Board of Trustees; nor was the Board advised of, or provided with the final PSA, which included the indemnification provision that was occasioned by Caesars' failure to provide a release from Trump. Saatkamp attributed the rush to Caesars, pointing, in particular, to a December 9 email from Sandberg which states that "Caesars has cautioned that, if the closing doesn't occur by the 16th, it may not happen for months, if at all." One witness reported that Saatkamp said that Epstien told him (Saatkamp) that if the deal did not close by December 16, then there would be "no deal." Saatkamp said, however, that although he wanted the deal to close, he was also willing to delay it if necessary -- for example, in order to resolve the union issue that arose at the last minute. Others involved in the transaction, including Sandberg, Ingram (who was concerned about additional property taxes that would be owed as a result of closing prior to year end), Hudson, and nearly every member of the Board attributed the rush to close to Saatkamp, who was concerned (some said "obsessed") that if the transaction did not close on the schedule demanded by Caesars, then Stockton might lose the opportunity, and Rowan might subsequently win the race to open a campus in Atlantic City.³⁷ There was even some concern expressed that Saatkamp may have pressed for a December 12 closing so that he could announce the acquisition at Stockton's Holiday Party, which was at 3:30 p.m. that afternoon; Saatkamp denied this. His emails on December 12 suggest only that he was very concerned about issuing an immediate press release.

8. Had the closing date been delayed, it may be that counsel, the Board of Trustees or perhaps even Saatkamp would have reconsidered the Showboat transaction on the basis of the 1988 Covenant or upon, for example, Caesars' financial ability to provide a meaningful indemnity. Indeed, Senator Sarlo questioned whether Saatkamp was "aware, while you were

Caesars refused to participate in this investigation; it is, however, a significant issue, albeit one that will now be addressed in Caesars' bankruptcy proceedings. *See* Exhibit 6, Addendum at ¶¶ 16-18.

³⁶ Saatkamp stated that any rush to close was due to Caesars, by way of Sandberg, but also pointed out that the Showboat transaction closed in a similar amount of time as had Stockton's purchase of Seaview.

³⁷ Chair Deininger reported that she heard that the rush to close may have had something to do with proposed legislation (the Casino Property Taxation Stabilization Act, proposed by Senators Sweeney and Whelan, and endorsed in Hanson's Updated Report of November 12, 2014) which would have resulted in substantial tax savings for casinos in 2014, savings which, Deininger believed, might have flowed to Stockton. Trustee Morvay also said that she believed that the legislation was the impetus for the rush to close. The legislation was then scheduled for a vote on December 18, 2014; in fact, it did not pass the Legislature until June 2015, and it still awaits the Governor's signature.

negotiating the contract with Showboat, that its parent corporation (Caesars) was in the process of filing for bankruptcy and would do so less than 30 days later.” *See supra*, Findings, ¶ 6; Exhibit 7. Certainly, had the Board of Trustees been advised of, after its approval of the Showboat purchase based upon the representation that Caesars would secure a waiver from Trump, that no such waiver was received, or had it been provided with the new PSA that reflected the resulting indemnification agreement, further discussion might well have ensued, and the matter might have been delayed, or perhaps the transaction would not have been consummated. But this is less a matter of rushing to close and more one of non-disclosure; if the latter occurred as a result of the former -- that is, if the rush to close caused the non-disclosure -- then such rush was a direct cause of the events at issue. That said, as discussed *supra*, Conclusions ¶ 5, we do not believe that the evidence is sufficient to support an argument that the closing date was expedited for improper reasons, such as Saatkamp’s desire to move into the 14th floor apartment before the summer. Indeed, it is more likely that the early closing date was to assure that the Showboat would be ready for income-generating guests in the summer and students in the fall.

9. Although Sandberg has admitted his failure to have noticed the change made by Galle to the KK PSA, Saatkamp also initially failed to notice it, although he was copied on Galle’s transmittal of the KK PSA from Galle, and although Sandberg pointed Saatkamp directly to Section 4(a) of the KK PSA. Saatkamp then distributed the KK PSA to the Board of Trustees, commenting that the basic terms of the agreement were unaltered and observing that spelling errors need to be corrected, demonstrating that he had, per his usual attention to detail, reviewed the KK PSA. Of course, as noted above, *see* Findings ¶ 65, Saatkamp, like Sandberg, ultimately discovered it, but the closing on that transaction occurred in any event, prior to the Board’s having been informed of the issue.³⁸

10. We also have concerns with regard to Saatkamp’s refusal to negotiate a resolution of the 1988 Covenant with Trump, and of his apparent failure to meaningfully engage with the Board on the subject. Beginning in March 2015, and potentially as early as December if Trump CEO Griffin is correct (though Trump refused to provide the pertinent text messages or other documents on the subject), Trump communicated to Caesars and later to Stockton, through Saatkamp, that it could not consider waiving the 1988 Covenant unless it received value in return sufficient to satisfy the Bankruptcy Court and Icahn, Trump’s senior secured creditor; Icahn apparently confirmed this in a conversation with Hanson. Nonetheless, no meaningful discussions regarding a potential negotiated resolution were pursued. Saatkamp stated that this was because Griffin never made an express demand. However, even if this is true, the evidence is clear that Trump (and/or Icahn) conveyed two pieces of information to Stockton through its representatives: first, that it had previously waived a similar covenant for \$5 million, and second, that it might be willing to waive the 1988 Covenant in exchange for the use of rooms in the Showboat over the summer. Neither of these openings was explored by Saatkamp. Indeed, although Saatkamp stated to us that Stockton had funds available to pay between \$2 million and \$5 million for relief from the Covenant, he only provided Fader with authority to settle for \$100,000; Fader believes that, with greater authority, he could have settled the matter. Saatkamp

³⁸ There is evidence that Saatkamp, as was his practice, *see, e.g., supra* Findings ¶ 21, engaged in some direct negotiation with Straub, but we cannot discern whether (and there is no evidence that) they discussed the cancellation provision of the PSA.

told us that the request for rooms was a “non-starter” because those rooms were to provide a significant income stream for the University. While the Board appears to have known generally about both of these possibilities, a full discussion of settlement was never initiated. Had such discussions taken place, then this matter might very well have been resolved long before now, and students might well be populating and getting an education at the Stockton Island Campus as this Report is being completed.

11. Also of great concern is the nature of Saatkamp’s participation in this investigation. In particular, and although there is no question but that Saatkamp, personally and through his counsel, made himself available for repeated interviews (before and after he underwent heart surgery) and provided information upon request, we have serious concerns with regard to his truthfulness.

12. Specifically, as noted above, Saatkamp initially, and for some time, unconditionally and adamantly denied having any knowledge of the 1988 Covenant prior to signing the PSA on December 12. Specifically, at our first interview of Saatkamp, on June 13, 2015, he stated that he had “zero conversations” with Sandberg before he executed the contract and that he did not see the clause in the contract -- Section 3(b)(ii) -- which discussed the AAORP, and Caesars’s obligation to obtain a release from Trump Taj and a corresponding amendment to the AAORP or indemnify Stockton for its expenses. Indeed, during that first interview, Saatkamp (who had been provided with all of the documents about which we intended to question him) initially stated that he did not learn that the 1988 Covenant was an issue until mid-January or mid-February 2015. When confronted with the January 2 email request for a letter with regard to Stockton’s intended use of the property, *see supra*, Findings ¶ 48, and the letter he signed specifically in response thereto, Saatkamp admitted that, in fact, he was aware of the 1988 Covenant prior to January 2.

13. After interviewing Sandberg, we told Saatkamp, through his counsel, that Sandberg’s position was that he revealed the 1988 Covenant to Saatkamp on December 2 or 3, *see supra*, Findings ¶¶ 27-28. Nonetheless, during his second interview on July 7, 2015, Saatkamp stood his ground and reiterated, in no uncertain terms, that “there was no conversation with his lawyers about the 1988 Covenant prior to closing.” He emphasized the lack of FPSF documents corroborating such a conversation and claimed that he did not review the PSA prior to closing because he received assurances from Sandberg that “the documents were fine.” Saatkamp also asked us to interview additional witnesses to corroborate his account.

14. We then raised with Saatkamp, through his counsel, his email correspondence with Sandberg on the night of December 11, 2014, and early the morning of December 12, which showed that he had read the PSA, *see supra*, Findings ¶¶ 43-44. Saatkamp replied, through a letter from his counsel, Exhibit 12, that he received the December 11 version of the PSA that contained new language with regard to the AAORP, but stated that “Dr. Saatkamp may not have seen the added language [in Section 3(b)(ii)]. He cannot remember seeing it although of course it is possible.”

15. Finally, on July 21, 2015, we provided Saatkamp, through his counsel, with Deininger’s notes from the December 9 Board meeting, which clearly confirm that he (and the Board) knew about the 1988 Covenant before closing, *see supra*, Findings ¶ 34; Exhibit 10; we

also provided the April 8 Administrative Announcement stating that Saatkamp and the Board of Trustees “were aware of the covenant.” *See supra*, Findings ¶ 62; Exhibit 23. Nonetheless, Saatkamp, through correspondence from his counsel dated July 22, 2015, continued to insist that he had no recollection of seeing the newly added paragraph relating to the 1988 Covenant on December 11, 2014. Nor did he recall any conversation with Sandberg on December 2 or 3 relating to the restrictions, though he now, for the first time, “assumed” such a call occurred. Further, he now stated that “a wareness was present at least by the December 9 Special Meeting of the Board” and the Board had “assurances . . . that the 1988 Covenant was being resolved and Stockton was indemnified against harm.” We know, however, that in fact the indemnification agreement was *not* raised at the December 9 Board meeting because Stein did not inform Sandberg of his lack of confidence about obtaining the waiver from Trump until December 10, 2014, after which Sandberg negotiated the indemnification. At a subsequent in-person interview on July 27, 2015, Saatkamp stated that “Mady’s notes sparked a memory” of the Board members asking Sandberg whether there was anything they should be worried about with signing the agreement; Sandberg responded that there was not. Saatkamp also changed his version of events with regard to his knowledge of the addition of Section 3(b)(ii) in the December 11 version of the PSA -- Saatkamp explained that he “clearly saw” the provision at issue but “having been assured on Sandberg’s account that there was not a problem, [he] did not look at it carefully.” Saatkamp, through counsel and otherwise, placed responsibility for his prior failure of recollection on a lack of documentation from FPSF, upon his failing health, and upon medication that he was taking, which affected his energy and recall.³⁹

16. Regrettably, we conclude that Saatkamp was not, through this process, candid in this regard. Although that conclusion is more difficult to reach because Sandberg did not memorialize his communications with Saatkamp with regard to the 1988 Covenant and Caesars indemnification, we nonetheless reach it based upon the following, as well as upon our own judgments as to Dr. Saatkamp’s credibility, reached after multiple in-person or telephonic meetings:

- Board meeting notes, and the specific recollection of some Board members of having discussed the matter at the December 9 Special Board meeting;
- emails from the pre-closing period discussing his conversations with Epstien from Caesars regarding the resolution of a “title issue,” and Saatkamp’s inability to persuasively point to any “title issue” other than the 1988 Covenant;
- that Saatkamp, known for his sophistication with regard to transactions, and for his attention to detail, reviewed the revised, final PSA prior to closing, including certain redlined modifications, among which were the pertinent language;
- the statements not only of Sandberg, but also of Stockton executive staff and Cabinet members that, based upon their conversations with him, Saatkamp was aware of the

³⁹ Saatkamp’s counsel provided us with documentation regarding the side effects of that medication Sotalol (for irregular heartbeat) which Saatkamp has taken, in various doses, since August 2014. When we inquired of Saatkamp how the medication was relevant, he responded, “I’m not sure it is,” and said that he was exhausted and relied heavily on his notes; he denied that the medication caused him to rely more on Sandberg.

Covenant, and especially about the indemnification obligation undertaken by Caesars, prior to closing;⁴⁰

- that, based upon email regular mail correspondence, Saatkamp certainly knew about the 1988 Covenant as early as January 2, 2015, and that at no time subsequent to the closing date, when the issue of the 1988 Covenant was raised, did Saatkamp express any surprise about the existence of a Covenant that would preclude the use of the Showboat for the purpose for which it was purchased;⁴¹
- Saatkamp's misstatement to Jackson, Schulman, Angulo, and his assistant, Kathryn Mason, on April 6, 2015, that the indemnification provision in the PSA provided "an explanation as to why the Trustees endorsed my signing of the contract," when, in fact, the Trustees approved a prior version of the PSA on December 9, 2014, which did not contain the indemnification provision since it was negotiated thereafter, and neither Saatkamp nor Sandberg advised the Trustees of this material change in the PSA after their approval on December 9 and before closing on December 12; and
- that Saatkamp's subsequent statements, including, for example, his April 8 press release, admit that he was aware of the 1988 Covenant prior to closing ("While we were aware of the covenant, we do not believe it applies to the Island Campus, and we believed that the indemnification provision protected Stockton University and our use of the Island Campus from any issues that might arise through its attempted enforcement.").

Under the circumstances, as we made clear to Saatkamp, we did not believe his strenuous denials of any knowledge that the 1988 Covenant existed as of the closing, though he adhered to them for well over a month, causing delay and increasing the expense with regard to this investigation.⁴²

17. We note that in our July 27, 2015 interview of Saatkamp, he denied that he had any notes until his counsel (who were extremely professional, forthright and cooperative throughout) revealed, in an email thereafter, that Saatkamp had provided notes to counsel early in the process, which notes had then been returned to Saatkamp.⁴³ Counsel then provided the

⁴⁰ In our interviews, multiple trustees and high-ranking Stockton officials stated that Sandberg was the type of lawyer who would have advised Saatkamp of the 1988 Covenant if he (Sandberg) knew about it.

⁴¹ Prior to our interview of June 13, 2015, there was also no indication that Saatkamp ever blamed Sandberg for closing notwithstanding the 1988 Covenant, or had failed to disclose the existence of it to him.

⁴² Gibbons P.C. has calculated the additional fees incurred by the obligation to investigate this claim at approximately \$175,000.

⁴³ We learned from Kathryn Mason, Saatkamp's Executive Assistant, that Saatkamp kept a notepad by his office phone and regularly took notes during phone calls; she recalled that Saatkamp took notepads with him when he resigned.

notes to us. Those notes, which cover a fairly continuous period from November 2014 through April 2015 (albeit with some gaps), did not contain any pertinent information, but also did not include notes from the relevant periods covered by this investigation, namely December 5-14, 2014; March 3-25, 2015; and April 2-16, 2015, gaps for which Saatkamp did not provide an adequate explanation. That said, although this is somewhat suspicious, there is insufficient basis at this time to conclude that notes were purposely destroyed and we draw no conclusions from their absence.

C. Responsibility of Counsel

18. FPSF, which fully cooperated with this investigation, making personnel and records available, shares responsibility for the Showboat transaction, primarily in that Sandberg did not recognize, and accordingly did not share with Stockton, the real risk of closing without clear title -- that is, without a waiver of the 1988 Covenant.⁴⁴ As one notable authority puts it, “an attorney has the duty ‘to see that his client obtains a marketable title, and to reject titles involved in doubt, unless the client is fully informed of the nature of the risk, and is willing to accept it.’” Robert S. Frost, *Liability of an Attorney for Negligence in Title Examination - Failure to Disclose Information to Client*, 13 *J. Legal Prof.* 263, 265-66 (1988) (quoting *Byrnes v. Palmer*, 18 A.D. 1, 4 (N.Y. App. Div. 1897)). FPSF and Sandberg did not breach that duty by failing to disclose a known risk; they simply failed to recognize the extent of that risk, which is, of course, far clearer with the 20-20 hindsight that the passage of time has afforded. Indeed, at the Board’s December 9 meeting, in which Sandberg participated telephonically, he was specifically asked whether there was any reason that the transaction should not go forward. He provided none, but not because he saw one and failed to disclose it; he just did not see it, intuitive though it may have been.

19. It may also be that Sandberg bears some responsibility for failing to insist that the Board was made aware of the indemnification agreement with Caesars, which the evidence showed Sandberg was proud to negotiate and obtain from Caesars. This agreement was finalized subsequent to Sandberg’s call with the Board on December 9, 2014, at the point when it became clear that Caesars would be unable, prior to closing, to obtain a waiver of the 1988 Covenant from Trump, *see supra*, Findings ¶¶ 37-38; Sandberg did not advise Saatkamp to assure that the Board was aware of it or of the circumstances that made it necessary. Nor did he otherwise memorialize his oral communications with Saatkamp about the attendant risk. Further, Sandberg did not take adequate steps to assure that the indemnity was with a solvent entity: his research with regard to Caesars was limited, and included obtaining no representations or warranties from Caesars; ultimately, the indemnity ran from a bankrupt entity rather than, as Stockton’s Board and President believed, a solvent company. Neither an escrow (as occurred with respect to the KK Ventures transaction), nor any other appropriate mechanism to assure that the indemnification provision would be meaningful, was discussed, let alone created.

⁴⁴ As referenced *supra*, Findings ¶ 34, Exhibit 10, Chair Deininger wrote “Clear Title” in her notes during the time that Sandberg was on the phone during the Board of Trustees meeting on December 9, but it is unknown if Sandberg and/or Saatkamp represented that “clear title” existed or if there were issues, one of them being the “1988 title issue,” that affected “clear title.”

20. In addition, whether or not his practice in New Jersey was sufficiently “occasional” to be appropriate under R.P.C. 5.5(b)(3), or constituted the unauthorized practice of law because of his presence in New Jersey, Sandberg admittedly did not register with the State as he is required to do under the Rule, though he has done so now. Further, there is no evidence that either Sandberg, Fader or anyone else associated with FPSF ever disclosed to Saatkamp, the Board or anyone else that he was not so licensed (though this did appear on FPSF’s website). Indeed, Sandberg’s name, and the fact that he was not admitted in New Jersey, was inadvertently omitted from the letterhead used for the engagement letter with Stockton; apparently, this resulted from the use of the wrong template. Meanwhile, Stockton relied on Sandberg’s expertise with regard to New Jersey law. Thus, on November 26, 2014, Saatkamp emailed Sandberg, with copies to Fader and Attas at FPSF, and conveyed the following:

The Board of Trustees meets on December 3, Wednesday, in Closed Session, 1:30 - 3:45 pm. We will be discussing the purchase of the Showboat property and the contract for purchase. Would it be possible for you to attend this meeting to help answer questions regarding the purchase and contract? *There are a number of unique aspects related to New Jersey* and to the purchase of this particular property that your expertise will be of considerable help.

(emphasis added). Sandberg responded that he would be able to attend; not then, when the issue was front and center, or at any other time, did he reveal that, perhaps, he was ill-suited to advise with regard to “unique aspects related to New Jersey” because he was not admitted in New Jersey (whether or not that phrase addressed New Jersey law). That said, and although there is no evidence that Sandberg’s material actions, discussed above, were specifically related to his licensure, it may be that Sandberg’s failure to file the notification to the State Comptroller required by N.J.S.A. 52:15C-10b in cases involving the expenditure of \$10 million or more, was the consequence of his lack of familiarity with New Jersey law; on the other hand, no negative consequences befell Stockton as a result.

21. Finally, of course, Sandberg initially failed to note the changes that counsel for KK Ventures made in the PSA into which Stockton entered for the sale of the Showboat, and inaccurately described the 90-day provision in his summary for the Board of Trustees, begetting months of litigation. That said, FPSF accepted full responsibility for Sandberg’s failure and fortunately, that litigation appears to have ended well for Stockton, at least pending any possible appeals.

D. Responsibility of the Board of Trustees

22. The Board of Trustees was entitled to rely upon the University President (Saatkamp) and its attorneys, FPSF, with regard to such matters as the risks posed by the 1988 Covenant. Its failure to perceive those risks are, then, difficult to blame on the Board, particularly a Board that, while conscientious and sophisticated, was deprived of the insights of its attorney members (Jacobson and Schoffer) because of recusals, including at least one recusal (that of Schoffer) with which Saatkamp was involved. Moreover, there can be little question but that, as the Board acknowledged, over time, it increasingly deferred to Saatkamp, based upon his

substantial accomplishments and his larger-than-life personality, which demanded such deference. And Saatkamp, even as he complained to Hanson (on March 17, 2015) that he had “a Board that is overly engaged and exercised,” took steps to quell debate, including threats to resign should the Board disagree with him, and careful control over the information that was provided to the Board and the time allotted to discuss the matters that arose. That said, the Board sought to act responsibly with regard to this matter, including postponing a vote on the Showboat transaction, over Saatkamp’s vehement objection, and ultimately insisting upon greater oversight over any Atlantic City activities.

23. In this case, for example, the Board was reassured that the 1988 Covenant posed no risk, it never received the final PSA (including the indemnification provision) prior to closing, and it was not told that Trump would not provide a waiver of the 1988 Covenant to Caesars as had been discussed when Sandberg participated in the December 9 meeting telephonically. Nor was the Board provided a meaningful opportunity to pass on the possibility of a negotiated resolution with Trump, though it expressed concern about it. It is, for example, unclear whether the Board was informed that Saatkamp had authorized only \$100,000 to resolve the issue, though there was \$2 million - \$5 million available to do so; it does not appear that it was aware that so much money was available for that purpose.

24. This is not to say that the Board has not, with 20-20 hindsight, engaged in some self-blame. Board members, who consistently cooperated fully, and often repeatedly and at length, with our inquiry, state that they wish they had asked more questions about the 1988 Covenant, given its obvious inconsistency with the purposes of the Showboat acquisition. They second-guess themselves as to why they did not insist upon meaningful negotiations with Trump during the late winter and early spring, before engaging with Straub, whom they knew to be litigious. They wonder aloud how they could have missed the critical language change in the KK Ventures PSA. Having now worked with a less domineering and egotistical President in Dr. Kesselman, they criticize themselves for not having insisted upon the open, democratic and transparent process that now pervades Board meetings, deliberations and other functions. But, at the end of the day, we conclude that the Board, though it perhaps could have done better, was a victim of the failings of others, and cannot, as a matter of fact or law, be blamed for a process that spun out of control in part because the Board was at best not well-informed and at worst misled.

E. Responsibility of State Actors

25. There is no question but that significant State Government actors, in both the Executive and Legislative branches, believed that a Stockton campus in Atlantic City would serve New Jersey well, including by revitalizing that part of the City. And Jon Hanson, Chairman of the Governor’s Advisory Commission on New Jersey Gaming, sought to be helpful, albeit passively and largely in response to requests from others, including Saatkamp, in helping to secure the \$17 million commitment from CRDA, and in resolving the stalemate that arose, as a result of the 1988 Covenant. But, notwithstanding a number of communications during various periods between Hanson and Saatkamp, the content of those communications establishes that Hanson did not play a particularly active role, and neither he, nor anyone else within the State government apparatus, pushed Stockton to close on the Showboat transaction notwithstanding the 1988 Covenant; indeed, the evidence reflects that they did not know about that Covenant

until much later. Indeed, the first indication of a State actor's knowledge of the Covenant was when Senator Whelan called Schoffer to inquire about it in February 2015. Nor did State officials discourage Stockton from negotiating with Trump; to the contrary, they sought, unsuccessfully to facilitate such a negotiation -- for example, Hanson called David Satz of Caesars and Carl Icahn, Trump's largest secured creditor in an effort to resolve the matter -- but failed, in part because the matter was in the hands of the Bankruptcy Court. Whether or not the State could have done more is, perhaps, debatable (it likely could not, given the parties involved, and the bankruptcy proceedings that were ongoing). But there is no evidence that the State was in any way complicit in forcing this transaction to close though it should not have; no witness so testified, and no document we saw supported such a theory, though we actively looked for such evidence.

F. Responsibility of Caesars

26. As noted *supra*, Findings ¶¶ 41, 45, although we were not able to fully explore this issue because Caesars refused to participate in this investigation, Caesars appears to have misled Stockton into believing that a release of the 1988 Covenant would be forthcoming when, according to Trump, there was no reason to believe that this was so. Indeed, the record reveals that Caesars and its counsel repeatedly assured Saatkamp and Sandberg, both before and after the December 9, Board meeting, that it could and would resolve this "title issue." *See supra*, Findings ¶¶ 34-46 (and Exhibits cited therein). Nonetheless, Section 3(b)(ii) of the PSA stated: "Trump Taj has indicated an initial willingness to consider such release [of the 1988 Covenant], but has indicated that such action will likely require bankruptcy court approval."⁴⁵ Specifically, when, on December 11, 2014, Dougherty asked Donnelly to waive the 1988 Covenant, Donnelly advised Dougherty that Trump could not do so without Bankruptcy Court approval, and without approval from Griffin and perhaps Icahn. Although Donnelly also asked Dougherty to send him a copy of the 1988 Covenant, perhaps suggesting that Trump might be willing to waive the Covenant if those "conditions precedent" were satisfied, Donnelly specifically denied providing any encouragement whatsoever to Dougherty that Trump would waive the 1988 Covenant. In particular, Donnelly did not respond to Dougherty's subsequent emails, even when Dougherty advised Donnelly that the transaction was scheduled to close the next day.

27. When Sandberg emailed Dougherty on the afternoon of December 11, 2014, to inquire about the status of a letter from Trump, Dougherty responded that he did not receive anything "so far." *See supra*, Findings ¶ 45; Exhibit 19. Insofar as there was no basis for Dougherty to believe that any such letter would be forthcoming, that statement was, at the very least, misleading. However, because Dougherty declined to participate, and because Donnelly did not provide his December 11 emails from Dougherty, we cannot draw any firm conclusions in this regard.

⁴⁵ Since Caesars declined to participate in our investigation, we also cannot fairly determine whether it fulfilled its obligation to "use commercially reasonable efforts, at its sole cost and expense, to obtain from Trump Taj (with such bankruptcy court approval) an executed written release of the [1988 Covenant] in recordable form and a corresponding [sic] amendment to the AAORP." Exhibit 3 at Section 3(b)(ii); *see supra*, Findings ¶ 3.

28. Further, on March 25, 2015, the Taj posted a statement on its website that is consistent with Donnelly’s statements to us. It read, in pertinent part: “In mid-December of 2014, Caesars asked the Taj to voluntarily waive the casino/hotel covenant to permit Stockton College to acquire Showboat and convert it into a college campus. We advised that because the Taj is in bankruptcy, as a matter of our fiduciary responsibilities to our creditors, we could not waive our valuable rights under this covenant without obtaining bankruptcy court approval and without receiving appropriate consideration. We were not offered any consideration for this waiver. This was over three months ago. . . . Both Caesars and Stockton elected to proceed with the Showboat sale even though they were fully aware that we could not waive the casino/hotel covenant as they were asking.” *See supra*, Findings, ¶ 60.

29. At best, as Griffin wrote in his letter to Saatkamp on March 13, Trump “said no” when asked to waive the 1988 Covenant prior to closing, “but also stated that we would be willing to further discuss the issue.” Exhibit 1. While not ruling out the possibility of a waiver, this statement does not justify Caesars’ representations to Stockton that such a waiver was forthcoming. *See supra*, Findings, ¶ 42 and Exhibit 14 (December 11, 2014 email from Sandberg to Caesars’ outside counsel confirming that “Caesars will deliver a letter/email from Taj counsel stating intent to remove the casino operation requirement from the 1988 Agreement as to Assumption of Obligations, agreement to make appropriate filings with the Bankruptcy Court, etc.”). Without question, that representation was the basis of Stockton’s consummation of the transaction, including Saatkamp’s and Sandberg’s determination to proceed and the Board’s approval thereof. As stated in Stockton’s Proof of Claim against CEOC and Showboat Atlantic City Propco, LLC, “Although representatives of [Caesars] . . . knew that such representations were material and that Stockton University reasonably relied upon the same in deciding to enter into the Purchase Agreement [for the Showboat], representatives of [Caesars] took no steps to correct their material misstatements.” *See supra*, Findings ¶ 5; Exhibit 6, Addendum at ¶ 18.

30. Thus, when Saatkamp stated to the Board of Trustees on April 1, 2015, that “there might have been possible misrepresentation by Caesar’s [sic],” he was correct: although no conclusive findings are possible without Caesars’ participation in this investigation and a complete review of the documents at issue, it certainly appears as if Caesars conveyed the impression to Stockton that a waiver was forthcoming, when that was inconsistent with the statements of Trump, as conveyed by Donnelly. If true, those misrepresentations represent the starting point for this episode: without them, the events described in this report would not have occurred.

* * *

APPENDIX A

List of Witnesses*

President's Cabinet & Other Stockton Representatives

1. Dr. Herman J. Saatkamp, Jr., Former President
2. Dr. Harvey Kesselman, Interim President and Ex-Officio
3. E. Michael Angulo, Esq., General Counsel
4. Brian K. Jackson, Chief of Staff
5. Kathryn Mason, Executive Administrative Assistant to the President
6. Sharon Schulman, CEO External Affairs
7. Charles Ingram, Vice President Administration & Finance
8. Donald Hudson, Assistant Vice President Facilities & Construction
9. Robert Heinrich, Executive Director of Computer and Telecommunications Services

Board of Trustees

10. Dean C. Pappas, Former Chair
11. Madeleine Deininger, Chair
12. Curtis J. Bashaw, Ex-Officio
13. Emma N. Byrne, Secretary
14. Raymond R. Ciccone, CPA CFF, Trustee
15. Stanley M. Ellis, Trustee
16. Leo B. Schoffer, Esq., Vice Chair
17. Dr. James W. Yoh, Trustee
18. Barbara Morvay, Former Trustee

Florio Perrucci Steinhardt & Fader

19. Michael Perrucci, Esq., Partner
20. Paul Fader, Esq. Partner
21. Stevan Sandberg, Esq., Partner
22. Brian Tipton, Esq., Partner
23. Shana Attas, Esq., Associate
24. Veronica Hallett, Esq., Associate

* Denominating an individual as a witness does not necessarily denote a full, formal interview; in some cases, we received information via email or informal telephone or in-person meetings or conversations.

Other Witnesses

25. John Donnelly, Esq., Trump Entertainment Resorts
26. Robert Griffin, CEO Trump Entertainment Resorts
27. Jon F. Hanson, Principal, Hampshire Real Estate Companies; Governor's Advisory Commission on New Jersey Gaming, Sports and Entertainment; Chairman NJ Sports and Entertainment Commission
28. James Maley, Esq., Consultant for the Atlantic City Planning Board

APPENDIX B

Documents Gathered and/or Reviewed

Showboat Purchase and Sale-Related Documents:

- Letter of Intent dated October 29, 2014;
- Confidential Disclosure Agreement dated October 29, 2014;
- Purchase and Sale Agreement and Joint Escrow Instructions between Showboat Atlantic City Propco, Stockton and Caesars Entertainment Operating Company, including Exhibits and Schedules;
- Proforma Title Policy and Commitment for Title Insurance;
- Stockton Cost Analyses and Due Diligence Reports;
- Bulk sale notification and certificate;
- Exchange and Assignment Agreements;
- Affidavits of Consideration;
- Leases and related documents; and
- Purchase and Sale Agreement and Joint Escrow Instructions between Stockton and KK Ventures dated April 3, 2015, including Exhibits and Schedules.

Covenants and Agreements:

- Agreement as to Assumption of Obligations with Respect to Properties recorded on November 17, 1988;
- Caesars's Declaration of Restrictive Covenants dated November 18, 2014; and
- Caesars's Confirmation of Release Price and Related Matters dated November 18, 2014.

Board of Trustees-Related Documents:

- Board agendas and minutes from July 9, 2014 forward, including Archived Open/Public Meeting Materials from www.stockton.edu; and
- Notes and other written materials pertaining to the Showboat purchase and sale of Trustees Madeleine Deininger and Emma Byrne.

FPSF Documents:

- FPSF Retention Agreement;
- FPSF invoices from November 2014 through June 2015 (incorporating records from October 2014 through May 2015);
- Draft letters and statements;
- Internal memoranda;

- Preliminary and blacklined versions of the Purchase and Sale Agreements and Joint Escrow Instructions;
- Preliminary and blacklined versions of the Letter of Intent;
- Preliminary and blacklined versions of the Confidential Disclosure Agreement; and
- Copies of text messages from Paul Fader and Steven Sandberg with Dr. Saatkamp, Michael Angulo, and Sharon Schulman.

Hard Copy Notes:

- Dr. Saatkamp's notes and other written materials and files pertaining to the Showboat purchase and sale, including but not limited to, transcribed notes from Board and Cabinet meetings and Saatkamp's hand written notes, contained in five notebooks covering the following time periods: May 3, 2013 to February 12, 2014, February 20, 2014 to January 6, 2015, January 8, 2015 to March 2, 2015, March 26, 2015 to April 17, 2015, and a logbook covering unknown time period due to alleged water damage; notably, the notebooks exclude notes from December 5-14, 2014, March 3-25, 2015, and April 2-16, 2015;
- Notes and other written materials pertaining to the Showboat purchase and sale of Donald Hudson; and
- Copy of Paul Fader's hand written notes.

Phone / Electronic Device Related Documents:

- Saatkamp's Stockton-issued mobile phones (iPhone5S and iPhone6) and iPad text messages, including deleted messages, and contacts from September 1, 2014 through May 15, 2015; and
- Verizon billing records for Saatkamp's Stockton issued mobile phones from August 23, 2014 to April 23, 2015.

Electronically Stored Information:

- Contact lists for Dr. Saatkamp, Charles Ingram, Sharon Schulman, Donald Hudson, and Michele Ginieczki, and corresponding comments;
- Hard drives of email and computer data, including Outlook calendar entries and emails from September 1, 2014 through May 19, 2015, from the following custodians: Dr. Saatkamp, Charles Ingram, Sharon Schulman, Donald Hudson, and Michele Ginieczki; and
- PST files of Paul Fader and Stevan Sandberg from October 3, 2014 through June 7, 2015, with regard to FPSF's representation of Stockton in the purchase and sale of former Showboat property.

OPRA-Related Documents:

- Seventeen (17) selected OPRA requests from November 2014 through May 2015 from various news or press outlets, and from Archer & Greiner, with redacted and unredacted responses.

Litigation-Related Documents:

- Stockton's Proof of Claim in Caesars Entertainment Operating Company and Showboat Atlantic City Propco Chapter 11 case, and corresponding addendum and exhibits; and

Pleadings and Motions Filed in the Following Matters:

- *KK Ventures v. Stockton Complaint*, Docket No. ATL-L-1490-15
- *Stockton University v. KK Ventures - Atlantic City, LLC*, ATL-C-47-15
- *Trump Entertainment Inc. v. Stockton University*, ATL-L-1048-15

Litigation Hold-Related Documents:

- Litigation hold letter received from Trump;
- April 20 litigation hold notice issued to Stockton custodians, *i.e.*, Dr. Saatkamp, Brian Jackson, Kathryn Mason, Melissa Hager, E. Michael Angulo, Sharon Schulman, Donald Hudson, and Charles Ingram;
- Custodian litigation hold acknowledgements; and
- Stockton's Document Retention Policy.