

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MEEHANCOMBS GLOBAL CREDIT OPPORTUNITIES
MASTER FUND, LP, et al.,

Plaintiffs,

v.

CAESARS ENTERTAINMENT CORPORATION and
CAESARS ENTERTAINMENT OPERATING CO., INC.,

Defendants.

CORRECTED ORDER

14-cv-7091 (SAS)

BOKF, N.A. *solely in its capacity as successor Indenture Trustee
for the 12.75% Second-Priority Senior Secured Notes due 2018,*

Plaintiff,

v.

CAESARS ENTERTAINMENT CORPORATION,

Defendant.

15-cv-1561 (SAS)

UMB BANK, N.A., *solely in its capacity as Indenture Trustee
under those certain indentures, dated as of June 10, 2009,
governing Caesars Entertainment Operating Company, Inc.'s
11.25% Notes due 2017; dated as of February 14, 2012,
governing Caesars Entertainment Operating Company, Inc.'s
8.5% Senior Secured Notes due 2020; dated August 22, 2012,
governing Caesars Entertainment Operating Company, Inc.'s 9%
Senior Secured Notes due 2020; dated February 15, 2013,
governing Caesars Entertainment Operating Company, Inc.'s 9%
Senior Secured Notes due 2020,*

Plaintiff,

v.

CAESARS ENTERTAINMENT CORPORATION,

Defendant.

15-cv-4634 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

On January 27, 2016, CEC requested a pre-motion conference on a motion to strike the Expert Rebuttal Reports of Roberta S. Karmel and Michael W. Phillips, both dated January 22, 2016, on the grounds that they did not address or rebut any opinions offered by CEC's experts, and in particular, James Gadsden. In a February 3 letter, CEC stated that "given the straightforward nature of the issue, CEC is also prepared to have the Court rule on the issue based on the parties' letters." A conference was held on February 8, at which time the Court directed plaintiffs to annotate the Karmel and Phillips Reports to indicate the portions of the Gadsden report to which they were responding. Based on all the parties' submissions, CEC's request to strike the reports is DENIED.

Gadsden reviews the Indentures governing the Notes held by plaintiffs in the above-captioned cases (the "Trustee Cases Indentures") *and* the Indenture governing the Notes held by plaintiffs in the MeehanCombs and Danner cases (the "Individual Cases Indenture"). Based on his review of a number of factors, which include the release provisions in the Trustee Cases Indentures *and* the Individual Cases Indenture, he concludes that the guarantees in *both* sets of Indentures were given for purposes of financial reporting, and not for the purpose of providing credit support. *See* Gadsden Report ¶¶ 2(2), 6, 35, 42-43, 48. Gadsden explains that, in part, his "opinion is based on the *terms governing release* of the

guarantee[s,] including the ease with which *those provisions* . . . could have been satisfied.” *Id.* ¶ 48 (emphasis added).

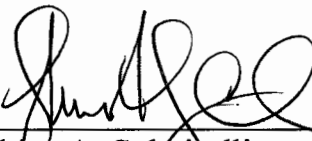
The content identified by plaintiffs in the Karmel and Phillips Reports is a form of rebuttal of these paragraphs in the Gadsden Report. For instance, the sections of the Phillips Report labeled A, B, C, F, G, and H, rebut this aspect of the Gadsden report by describing in detail one of the relevant release provisions, namely section 1503(3) of the Individual Cases Indenture. The same is true for paragraphs 16 through 20 of the Karmel Report. Section 1503(3) releases the guarantee of the Individual Cases Indenture when CEOC ceases to be a wholly owned subsidiary of CEC. The Individual Cases Indenture adopts the definition of “wholly owned subsidiary” found in Rule 1-02(aa) of Regulation S-X. Thus, Karmel’s and Phillips’ analyses of Rule 1-02(aa) relates to Gadsden’s opinion concerning the ease with which the guarantees can be released. Likewise, Phillips’ discussion of section 1.02(aa) of Regulation S-X responds to Gadsden’s discussion of Rule 3-10 of Regulation S-X, which concerns the reporting requirements for parent guarantors, by providing a more complete picture of the regulatory framework. *See* Gadsden Report ¶ 10; Phillips Report D and E.¹ Accordingly, it is hereby

¹ The parties’ expert evidence will of course be subject to *Daubert*, relevancy, and other challenges. In that regard, I note that in *MeehanCombs*, I held there was a question of fact as to whether CEOC remained a wholly owned

ORDERED, that CEC's request to strike is denied;² and it is further

ORDERED, that CEC may depose Karmel and Phillips during the week of February 22, 2016; that within five business days after the completion of these depositions, CEC may make *Daubert* motions concerning the rebuttal reports; and that CEC shall have until March 1, 2016 to serve rebuttal reports.

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
February 18, 2016

subsidiary of CEC within the meaning of Rule 2-10 of Regulation S-X, because I was asked to look at the factors set forth in agency guidance. *See Meehancombs Glob. Credit Opps. Master Fund, LP v. Caesars Entm't Corp.*, No. 14 Civ. 7091, 2015 WL 9478240, at *10-11 (S.D.N.Y. Dec. 29, 2015). However, I also stated that the "guidance is only relevant if there is ambiguity in the meaning of 'substantially all' in Regulation S-X[, but that the MeehanCombs] plaintiffs have not provided a plain meaning analysis." *Id.* at 9 n.81. Before resorting to the use of expert testimony, plaintiffs might consider the Court's invitation, offering citations to CEOC's Amended Certificate of Incorporation and bylaws, as well as Delaware law.

² In the foregoing I referenced specific paragraphs or portions of the Karmel and Phillips Reports that served as rebuttal. It may well be that the portions not identified by plaintiffs' experts in their annotations to their reports do not serve as rebuttal, but this can be resolved in connection with *Daubert* and other challenges.

APPEARANCES

Attorneys for Plaintiff BOKF, N.A.:

Andrew I. Silfen, Esq.
Mark B. Joachim, Esq.
Michael S. Cryan, Esq.
Arent Fox LLP
675 Broadway
New York, NY 10019
(212) 484-3903

Jackson D. Toof, Esq.
Arent Fox LLP
1717 K Street, NW
Washington, DC 20006
(202) 857-6000

Attorneys for Plaintiff UMB Bank N.A.:

David A. Crichlow, Esq.
Karen B. Dine, Esq.
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022
(212) 940-8800

Attorneys for Defendant Caesars Entertainment Corporation:

Eric Seiler, Esq.
Philippe Adler, Esq.
Hallie Levin, Esq.
Friedman Kaplan Seiler &
Adelman LLP
7 Times Square
New York, NY 10036
(212) 833-1100

Lewis R. Clayton, Esq.
Michael E. Gertzman, Esq.
Jonathan H. Hurwitz, Esq.
Ankush Khardori, Esq.
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

Attorneys for Plaintiff MeehanCombs Global Credit Opportunities Master Fund, LP:

James H. Millar, Esq.
Kristin K. Going, Esq.
Clay J. Pierce, Esq.
Drinker Biddle & Reath LLP
1177 Avenue of the Americas
41st Floor
New York, NY 10036
(212) 248-3140