

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
)	
Debtors.)	(Jointly Administered)

**NOTICE OF DEBTORS' MOTION FOR AN ORDER EXPANDING
THE SCOPE OF THE EXAMINER'S INVESTIGATION**

PLEASE TAKE NOTICE that on the **13th day of July, 2015, at 9:30 a.m. (prevailing Central Time)** or as soon thereafter as counsel may be heard, the Debtors shall appear before the Honorable A. Benjamin Goldgar or any other judge who may be sitting in his place and stead, in Courtroom 642 in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, and present the attached *Debtors' Motion for an Order Expanding the Scope of the Examiner's Investigation* (the "Motion"). The Court has given the Debtors permission to file the Motion for a hearing on an off omnibus date. See June 22, 2015, Hr'g Tr. 26:19-22.

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all documents filed in these chapter 11 cases are available free of charge by visiting <https://cases.primeclerk.com/CEOC> or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court's website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Dated: June 30, 2015
Chicago, Illinois

/s/ David R. Seligman, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C.

Nicole L. Greenblatt

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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In re:)	Chapter 11
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CAESARS ENTERTAINMENT OPERATING)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
)	(Jointly Administered)
)	
Debtors.)	Hr’g Date: July 13, 2015, at 9:30 a.m. (CT)
)	
)	

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER EXPANDING
THE SCOPE OF THE EXAMINER’S INVESTIGATION**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, expanding the scope of the Examiner’s investigation to include the January 2008 leveraged buyout of Harrah’s Entertainment Inc. (which is now known as Caesars Entertainment Corporation (“CEC”).

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested are sections 1104(c) and 1106 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rules 2007.1(a) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Background

2. On January 28, 2008, affiliates of Apollo Global Management, LLC (“Apollo”) and TPG Capital, LP (“TPG”) acquired the public shares of CEC and its affiliates, including certain of the Debtors, for more than \$30 billion in a leveraged buyout (the “LBO”).

3. On March 12, 2015, the Court ordered the U.S. Trustee to appoint an Examiner to investigate various transactions and potential claims belonging to the Debtors. (*Order Granting in Part and Denying in Part Motions to Appoint Examiner* [Dkt. No. 675] (the “Order”).) The Order does not expressly reference the LBO as one of the transactions that the Examiner should investigate. Although it likely falls within the provision of the Order directing the Examiner to investigate other transactions suggesting potential estate claims, for clarity the Debtors move to expand the scope of the Examiner’s investigation to expressly include the LBO.

Argument

I. The Court Should Expand the Examiner’s Investigation to Include the LBO.

4. This Court has broad discretion to establish the parameters of the Examiner’s investigation. See In re Revco D.S., Inc., 898 F.2d 498, 501 (6th Cir. 1990) (“[T]he bankruptcy court retains broad discretion to direct the examiner’s investigation, including its nature, extent, and duration.”); In re UAL Corp., 307 B.R. 80, 84 (Bankr. N.D. Ill. 2004) (“[A]ppointment of an examiner is mandatory if the four conditions are met, but the court retains the discretion to determine the nature and scope of the examiner’s investigation.”); In re Schepps Food Stores, Inc., 148 B.R. 27, 30 (S.D. Tex. 1992) (“The statute allows the court to determine the scope, length, and conduct of the investigation, rather than the appointment itself.”).

5. The Court previously defined the “Scope of Investigation” by reference to the “Challenged Transactions” identified by the Debtors and the “Insider Transactions” listed by the Noteholders’ Committee. (Order ¶ 3.) It also directed the Examiner to investigate “any other

transactions involving the Debtors, to the extent those transactions suggest potential claims belonging to the estates, including causes of action against any current officers or directors of the Debtors, any former officers or directors of the Debtors, or any affiliates of the Debtors,” as well as “any apparent self-dealing or conflicts of interest involving the Debtors or their affiliates.” (Id.) The LBO was not specifically listed as one of the “Challenged Transactions” or “Insider Transactions.” But the Debtors believe it falls within the scope of the Order as a transaction that suggests “potential claims belonging to the estates.” (Id.)

6. Because the LBO was not expressly identified as one of the transactions that the Examiner should investigate, however, for clarity the Debtors seek to expand the scope of the Examiner’s investigation to expressly include the LBO. Under the Order, “[i]f the examiner or any other party in interest concludes that expanding the scope of the examiner’s investigation is reasonably likely to lead to the discovery of potential claims belonging to the estates, the examiner or party in interest may file a motion to modify this order.” (Id.)

7. The Examiner should investigate the LBO. LBOs have been analyzed in bankruptcy cases to determine if they give rise to potential claims. See, e.g., Boyer v. Crown Stock Distribution, Inc., 587 F.3d 787, 790 (7th Cir. 2009); In re Plassein Intern. Corp., 590 F.3d 252, 256 (3d Cir. 2009) cert. denied sub. nom. Brandt v. B.A. Capital Co. LP, 2010 WL 1180360 (Apr. 26, 2010). Here, at least one party already has raised questions regarding potential LBO claims, which if unresolved may impede the Debtors’ efforts to reach a consensual plan. Thus, the Examiner’s conclusions with respect to the strengths or weaknesses of any claims related to

the LBO—like the other transactions he is investigating—will be particularly helpful in assisting the parties in plan negotiations.²

8. Finally, expanding the Examiner’s investigation to include the LBO will streamline discovery and ensure that the Examiner can continue his investigation in the most efficient manner. As a result of extensive efforts by the Examiner, his counsel, the Debtors, and other parties in interest, the Examiner successfully negotiated an agreed discovery protocol that eliminates nearly all of the potential distractions and expense from competing investigations until the anticipated completion of the Examiner’s report. Under the discovery protocol, parties in interest—including the UCC—agreed to provide their document requests to the Examiner for service as part of his subpoenas and, with few exceptions, to defer depositions on topics within the scope of his investigation. (See Order (I) Approving Protocol and Procedures Governing Examiner Discovery, (II) Approving Establishment of a Document Depository, and (III) Granting Related Relief [Dkt. No. 1576] ¶ 4; *Proposed Agreed Order to Amended Mot. of the Examiner for Entry of an Agreed Order on Interviews and Depositions by the Examiner* [Ex. A to Dkt. No. 1715] ¶ 7.) Indeed, the Examiner already will be conducting inquiries into the LBO as the genesis of certain of the Debtors’ restructuring challenges.

² The Debtors have requested that the senior secured first lien lenders and noteholders agree to extend the challenge period of the Statutory Unsecured Claimholders Committee (the “UCC”) and Wilmington Trust, National Association, as Successor Indenture Trustee for the 10.75% Senior Unsecured Notes issued by CEOC under that certain indenture dated February 1, 2008 (“Wilmington Trust”), under the cash collateral order (as amended) [Docket Nos. 988, 1420, 1577, 1735] to the extent it applies to any LBO-related claims until after the Examiner has completed his investigation into such claims. As of the date of the filing of this Motion, the challenge period expires on July 10, 2015, for the UCC and Wilmington Trust and such challenge period has not yet been extended. The Debtors hope to have confirmation by the time of the hearing on this Motion that such challenge period has been extended until after the Examiner has completed his investigation. The Debtors have made this request so that there would be no prejudice to the UCC’s and Wilmington Trust’s rights under the final cash collateral order related to potential LBO claims while the Examiner conducts his investigation.

Notice

9. The Debtors have provided notice of this Motion to the entities on the Service List (as defined in the Case Management Order and available on the Debtors' case website at <https://cases.primeclerk.com/CEOC>). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request entry of an order, in the form attached hereto as **Exhibit A**, granting the relief requested herein, and granting such other relief as is just and proper.

Dated: June 30, 2015
Chicago, Illinois

/s/ David R. Seligman, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

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KIRKLAND & ELLIS LLP

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300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

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KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Chapter 11
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CAESARS ENTERTAINMENT OPERATING)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. _____

ORDER EXPANDING THE SCOPE OF THE EXAMINER'S INVESTIGATION

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") expanding the scope of the Examiner's investigation, all as more fully set forth in the Motion; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Examiner is directed to investigate any claims and defenses arising from the LBO, which now is expressly designated to be one of the "Challenged Transactions" referenced in the Court's *Order Granting in Part and Denying in Part Motions to Appoint Examiner* [Dkt No. 675].

Dated: _____, 2015
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.