

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

	)		
In re:	)	Chapter 11	
	)		
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 15-01145 (ABG)	
	)	(Jointly Administered)	
Debtors.	)	Status Date: August 5, 2015, at 10:00 a.m. (CT)	
	)		
	)		

**DEBTORS’ REPLY IN SUPPORT OF THEIR 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 reply (the “Reply”) in support of the *Debtors’ Motion for Entry of an Order Expanding the Scope of the Examiner’s Investigation* [Dkt. No. 1847] (the “Motion”).<sup>2</sup> In support of this Reply, the Debtors respectfully state as follows.

**Introduction**

1. Approximately four months ago, this Court appointed the Examiner to investigate a broadly defined universe of estate claims, including the Challenged Transactions (alleged to be worth several billion dollars) and any other estate causes of action. As part of that process, the Examiner asked all parties to provide a list of any potential claims that they believe should be investigated as part of the Examiner Order, and all such claims were included (plus the catch-all

<sup>1</sup> 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>.

<sup>2</sup> Capitalized terms used but not defined herein will have the meanings given to them in the Motion and/or the *Objection of Statutory Unsecured Claimholders’ Committee of Caesars Entertainment Operating Company, Inc., et al. to Debtors’ Motion for Order Expanding Scope of Examiner’s Investigation* [Dkt. No. 1866] (the “Objection”) filed by the statutory unsecured claimholders’ committee (the “UCC”).

of any other potential estate claims). Now, apparently to prevent the Examiner's independent assessment of any claims arising from a \$30 billion LBO that closed more than seven years ago, the UCC objects to clarifying the Examiner's investigation scope based on an alleged — and artificial — distinction between potential claims arising from the LBO and potential claims arising from the so-called Challenged Transactions. Potential LBO claims, the UCC argues, are not “claims belonging to the estates” because “if the liens [arising from the LBO] are avoided, it does not produce value to the estate. It produces value to the unsecured creditors.” Hr'g Tr. 12:2–4, July 13, 2015.<sup>3</sup> Further, the UCC incorrectly argues that “this motion, if granted, would effectively shut [it] down” with respect to the UCC's own investigation of potential LBO claims. Id. at 12:18–19.

2. Both arguments are wrong. First, there is simply no relevant distinction for purposes of this Court's Examiner Order between potential avoidance claims arising from the LBO and those arising from the Challenged Transactions. Both necessarily rely on the avoidance powers of the estate and both necessarily require establishing that either the estate did not receive “reasonably equivalent value” for the prepetition transfer(s) in question or the transfers were made with an actual intent to delay, hinder, or defraud creditors. Contrary to the UCC's arguments, this Court did not limit the scope of the Examiner's investigation to “claims that only benefit secured creditors,” to “claims that might benefit both secured and unsecured creditors equally,” or to “claims that do not only involve lien avoidance.” The Court was clear that the Examiner has authority to investigate any “potential claims belonging to the estates.” Examiner Order ¶ 3. Indeed, the Examiner is already investigating certain Challenged Transactions that may ultimately generate value only for unsecured creditors (including

---

<sup>3</sup> A copy of this transcript is attached hereto as Exhibit A.

deficiency claims) or raise issues that are nearly identical to those he would investigate with respect to the LBO. For example, in the Challenged Transaction referred to as the “B-7 Refinancing,” certain of the First Lien Lenders provided an additional \$1.75 billion to CEOC under a term loan and obtained liens securing those obligations. No one — including the UCC — has objected to the Examiner investigating the B-7 Refinancing, even though he may conclude that those liens should be avoided and even though the B-7 Refinancing refinanced secured bank debt that originated from the LBO, which, if avoided, would generate value for unsecured creditors.

3. Second, it is simply not true that granting the Debtors’ Motion would effectively shut down the UCC from performing its statutory function to investigate. As this Court noted at the July 13 presentment hearing, the UCC has “already secured for itself the right to do things that were parallel, as long as they weren’t duplicative” of the Examiner’s investigation. Hr’g Tr. 6:2–5. If the Court grants the Motion, the UCC can continue investigating the LBO and the Debtors will continue to cooperate with the UCC in its investigation. Subject to the agreed-upon Examiner Protocols, there would be no prejudice to the UCC if the Examiner also investigates claims regarding the LBO.

4. In contrast, the Debtors believe that their estates would be prejudiced if the Examiner does not investigate the LBO. The Debtors and other parties in interest agree that the appointment of the Examiner in these chapter 11 cases was an important step on the path to reaching greater consensus on a plan of reorganization. Over the coming months, the Examiner will provide an independent assessment of hotly-disputed prepetition transactions involving the Debtors. If the outcome of the investigation is going to push the parties towards consensus, it is critical that the Examiner’s investigation be comprehensive. When the parties sought the

appointment of an examiner in these cases, it was never the Debtors' desire, nor do they believe it was any other party in interest's desire, to exclude — affirmatively or by knowing omission — any potential material prepetition transactions. It simply makes no sense for the Examiner to spend significant time and resources investigating the Challenged Transactions involving several billion dollars and then to ignore potential claims arising from a \$30 billion LBO. Such a result could leave large potential claims unaddressed by the Examiner, which would upend plan negotiations. This result could, in many ways, undermine the many benefits that the Debtors believe will come from the Examiner's investigation and report and cost the Debtors' estates potentially millions of dollars in additional and unnecessary litigation expenses. For these and other reasons set forth below, the Court should overrule the UCC's Objection and grant the Debtors' Motion.

### **Argument**

#### **I. Claims Arising from the LBO Are Claims “Belonging to the Estate” and Are the Proper Subject of the Examiner’s Investigation.**

##### **A. The Examiner Order authorizes the Examiner to investigate “potential claims belonging to the [Debtors’] estates.”**

5. The UCC incorrectly asserts that investigating the LBO would be “contrary to the Examiner Order” and that the Examiner Order “only refer[s] to actions that would add value to the Debtors’ estates.” Objection 2, ¶ 10. But the Examiner Order could not be clearer: “The examiner is directed to investigate . . . any [] transactions involving the Debtors, to the extent those transactions suggest *potential claims belonging to the estates.*” Examiner Order ¶ 3 (emphasis added). There is no dispute that the LBO is a “transaction involving the Debtors” in that various Debtors granted liens on their assets in connection with the LBO. Thus, to the extent the Examiner’s investigation of the LBO could lead to potential estate claims under any of the avoidance provisions of the Bankruptcy Code, the existing scope of the Examiner Order

already authorizes the Examiner to investigate those transactions.<sup>4</sup> This is consistent with other chapter 11 cases where debtors or other estate representatives have brought claims to avoid leveraged buyout transactions on behalf of their estates. See, e.g., In re Metro. Plant & Flower, Inc., Nos. 96 C 7804, 96 B 3816, 96 A 1528, 1997 WL 638454 (N.D. Ill. Sept. 30, 1997) (debtor in possession bringing claim); Wieboldt Stores, Inc. v. Schottenstein, 94 B.R. 488 (N.D. Ill. 1988) (same); In re Bachrach Clothing, Inc., 480 B.R. 820 (Bankr. N.D. Ill. 2012) (same); In re Joy Recovery Tech. Corp., 286 B.R. 54 (Bankr. N.D. Ill. 2002) (chapter 11 trustee bringing claim); In re Aluminum Mills Corp., 132 B.R. 869 (Bankr. N.D. Ill. 1991) (official creditors' committee with derivative standing bringing claim). Cf. Boyer v. Crown Stock Distribution, Inc., 587 F.3d 787 (7th Cir. 2009) (chapter 7 trustee bringing claim); In re Telesphere Commc'ns, Inc., 179 B.R. 544 (Bankr. N.D. Ill. 1994) (approving debtors' settlement of avoidance action claims related to failed LBO). Moreover, courts often authorize examiners to investigate potential avoidance claims that may be brought on behalf of the debtor's estate with respect to failed LBOs. See, e.g., In re Tribune Co., 464 B.R. 126, 160–75 (Bankr. D. Del. 2011) (discussing examiner's review of LBO claims); In re Best Prods. Co., Inc., 168 B.R. 35, 52 (Bankr. S.D.N.Y. 1994) (same); In re Revco D.S., Inc., 118 B.R. 468, 469–70 (Bankr. N.D. Ohio 1990) (discussing appointment of examiner to investigate LBO). Although the Debtors believe that the Examiner Order already authorizes the Examiner to proceed with his investigation of the LBO, the Examiner has asked the Debtors to bring the Motion to make that authorization explicit before he formally investigates those claims.

---

<sup>4</sup> Indeed, the UCC identifies the fact “that the Prepetition Liens were granted by subsidiaries for no value while they may have been insolvent or under-capitalized” as one potential basis for challenging the LBO. Objection ¶ 9. Such a claim would clearly implicate the estate's avoidance powers under section 544 of the Bankruptcy Code.

**B. Avoidance actions arising from the LBO are claims “belonging to the estate.”**

6. The UCC’s objection rests on a false premise: that claims arising from an LBO do not belong to the Debtors’ estates. The UCC asserts that section 541(a) of the Bankruptcy Code “is clear that avoidance actions are not property of the estate” and therefore the Motion improperly seeks to expand the scope of the Examiner Order. Objection ¶ 13.<sup>5</sup>

7. However, case law is clear that the avoidance provisions of the Bankruptcy Code create estate causes of action that belong to the debtor in possession in the first instance. See, e.g., Nat’l Tax Credit Partners, L.P. v. Havlik, 20 F.3d 705, 708–09 (7th Cir. 1994) (“[T]he right to recoup a fraudulent conveyance, which outside of bankruptcy may be invoked by a creditor, is property of the estate that only a trustee or debtor in possession may pursue once a bankruptcy is under way.”); Koch Ref. v. Farmers Union Cent. Exch., Inc., 831 F.2d 1339, 1342 (7th Cir. 1987) (“Pursuant to [section 544] the trustee, in his capacity as a creditor, may bring suit to reach property or choses in action belonging to the estate that will then be distributed to all creditors.”); Klingman v. Levinson, 158 B.R. 109, 113 (N.D. Ill. 1993) (“[T]he commencement of bankruptcy gives the trustee the right to pursue fraudulently conveyed assets to the exclusion of all creditors.”); In re Integrated Agri, Inc., 313 B.R. 419, 427 (Bankr. C.D. Ill. 2004) (“Bankruptcy trustees are expressly authorized to bring direct actions to avoid transfers voidable under applicable state law. . . . [O]nce activated, the power is exercisable by the trustee acting in his own name for the benefit of the bankruptcy estate.”); In re Cutty’s-Gurnee, Inc., 133 B.R. 929,

---

<sup>5</sup> Of course, the Examiner Order also permits any party in interest to move to modify the Examiner Order if they “conclude[] that expanding the scope of the examiner’s investigation is reasonably likely to lead to the discovery of *potential claims belonging to the estates.*” Examiner Order ¶ 3 (emphasis added). Thus, if investigation of the LBO could lead to potential avoidance claims under the Bankruptcy Code, the Examiner should include those transactions within the scope of his investigation, and the Examiner Order permits the Debtors to petition the Court to modify the Examiner Order so that the Examiner does so.

932 (Bankr. N.D. Ill. 1991) (“The Bankruptcy Code does not give avoidance powers to creditors. . . . [I]t is only the trustee or the debtor-in-possession who may exercise this power.”). Indeed, the UCC does not suggest that the LBO claims belong to any party other than the debtor in possession, and even concedes that it would need to obtain standing to prosecute those claims on behalf of the Debtors’ estates. See Objection ¶ 14 (“[I]f the UCC lacks time to obtain standing when necessary . . .”). Thus, if investigation into the LBO might lead to potential causes of action that could be brought by an estate representative pursuant to the avoidance powers of the Bankruptcy Code, they “belong to the estate” and fall squarely within the purview of paragraph 3 of the Examiner Order.

8. The UCC incorrectly relies on In re Cybergenics Corporation, 226 F.3d 237 (3d Cir. 2000), to argue that claims arising from the LBO do not belong to the estate. In Cybergenics, the court held that causes of action brought pursuant to a trustee’s strong-arm powers could not be conveyed to a third party in an asset purchase agreement. Id. at 245. But the UCC’s reliance on Cybergenics is misplaced. As an initial matter, Cybergenics is not binding on this Court and is subject to a circuit split. See, e.g., In re Moore, 608 F.3d 253, 262 (5th Cir. 2010) (holding that fraudulent conveyance claims become “estate property under § 544(b) and — like other estate property — may be sold pursuant to § 363(b)"); Simantob v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R. 282, 288 (9th Cir. B.A.P. 2005) (“[T]he Ninth Circuit permits [statutory avoidance powers] to be sold or transferred.”) (collecting cases). Although it has not directly addressed this split, it is likely that the Seventh Circuit would disagree with Cybergenics and find that fraudulent transfer claims are property of the estate. See Mellon Bank, N.A. v. Dick, 351 F.3d 290, 291 (7th Cir. 2003) (holding that “the right to recover

a preference [pursuant to section 547] is an asset of the estate that may be assigned or distributed”).

9. In any event, Cybergenics is also wholly distinguishable. The issue in Cybergenics was whether the debtor could transfer section 544 causes of action as part of its postpetition sale of its assets. See 226 F.3d at 239. Here, the question is simply whether the LBO-related claims belong to the estate. The Cybergenics court recognized this difference, noting that “a debtor in possession is empowered to pursue those fraudulent transfer claims for the benefit of all creditors,” even though it determined that those causes of action could not be transferred to a non-estate representative. Id. at 245. Courts in this jurisdiction similarly recognize that the debtor in possession “has the sole right and responsibility to bring claims on behalf of the estate.” In re Teknek, LLC, 563 F.3d 639, 646 (7th Cir. 2009); see also Fisher v. Apostolou, 155 F.3d 876, 879 (7th Cir. 1998) (“[T]he trustee has the sole responsibility to represent the estate, by bringing actions on its behalf to marshal assets for the benefit of the estate’s creditors”). These cases do not condition the power to bring an estate claim on the alienability of the underlying claim and the Court should not infer such a requirement here. See also In re Railworks Corp., 325 B.R. 709 (Bankr. D. Md. 2005) (distinguishing Cybergenics and holding that avoidance actions brought by post-confirmation litigation trust “belonged” to the estate for purposes of section 1123(b)(3) because they were created by section 544, even if those avoidance actions were not property of the prepetition debtor).

**C. Potential remedies do not affect whether LBO claims “belong to the estate.”**

10. The UCC also argues that the Examiner should not investigate LBO-related claims because they would not bring value to the estate, but only to the unsecured creditors, and the Examiner Order “only referred to actions that would add value to the Debtors’ estates.” Objection ¶ 10; see also Hr’g Tr. 12:1–4 (“[The UCC’s] position is that if the liens are avoided, it

does not produce value to the estate. It produces value to the unsecured creditors.”). In other words, the UCC argues that because no money will come into the estate from these claims, they do not belong to the estate and are simply an intercreditor dispute. See Hr’g Tr. 9:16–20. The UCC is wrong.

11. First, the Debtors’ *power to avoid* is legally distinct from the *right to recover* governed by section 550 of the Bankruptcy Code. See, e.g., 11 U.S.C. § 550(a) (“[T]o the extent that a transfer is avoided under [section 544], the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property”); In re Berg, 387 B.R. 524, 569 (Bankr. N.D. Ill. 2008) (“[A]voidance and recovery are covered by two different sections of the code, and have two different statutes of limitation.”); In re Xonics, Inc., 63 B.R. 785, 787 (Bankr. N.D. Ill. 1986) (“The legislative history of this section says that Code § 550 prescribes the liability of a transferee of an avoided transfer, and enunciates the separation between the concepts of avoiding a transfer and recovering from the transferee.”) (citing legislative history). Thus, the question of whether the Debtors may use powers granted by section 544 of the Bankruptcy Code to avoid liens is separate from the question of whether the Debtors may recover as a result of such avoidance. All that matters to the initial inquiry is that avoidance actions belong to the estate. See Levinson, 158 B.R. at 113.

12. Second, the UCC’s position that any recovery only will benefit its constituency is inconsistent with the scope of section 550’s recovery provision as interpreted by courts in this jurisdiction. See, e.g., Dick, 351 F.3d at 293 (“Section 550(a) speaks of benefit to *the estate* — which in bankruptcy parlance denotes the set of all potentially interested parties — rather than to any particular class of creditors. What happens to recoveries that reach the estate’s coffers depends on contractual and statutory entitlements.”) (emphasis in original); Xonics, 63 B.R. at

787 (“Defendants’ dialogue about the power to avoid preferential transfers not being property of the estate is a dichotomy unsupported by proper analysis of the code. Code § 547 provides the power to avoid preferential transfers. There is no limitation on who or how this power is to be exercised. The trustee’s recovery ‘for the benefit of the estate’ is not the limitation that defendants suggest. Defendants must realize that Code § 550 governs recovery [under sections 544 and 547].”). Thus, the UCC’s focus on recoveries is not the proper inquiry for whether a claim belongs to the Debtors. Indeed, the UCC’s position, taken to its logical extreme, implies that all potential claims that may ultimately inure to the primary benefit of unsecured creditors should be subject to the UCC’s power to investigate and not part of the Examiner’s purview, including the Challenged Transactions. That would turn the idea of both the debtor in possession and the appointment of an examiner on their head, forsaking the estate for the benefit of one parochial subset of creditors.

13. Finally, the UCC’s arguments ignore the possibility that there may be other theories of recovery that might result from avoidance of transactions arising from the LBO in addition to potential lien avoidance. See, e.g., Boyer, 587 F.3d at 796–97 (allowing bankruptcy trustee to recover dividends issued in connection with avoided LBO transaction). Certain LBO remedies potentially could therefore inure to the benefit of stakeholders other than unsecured creditors. In fact, by jumping to potential recoveries, the UCC misses the point of the Motion: one reason why this Court, the Debtors’ estates, and parties in interest will benefit from a neutral party’s independent examination of potential claims arising from the LBO is that any such analysis will look at all potential claims, defenses, and remedies. In sum, the LBO-related claims belong to the estate and are a proper subject of the Examiner’s investigation.

**D. It is irrelevant for purposes of the Examiner's investigation who will ultimately bring claims on behalf of the Debtors' estates.**

14. The UCC also asserts that it is the "only eligible party in interest to prosecute Lien Challenges" on account of the LBO because the Debtors stipulated to the "validity, perfection, and non-avoidability of the Prepetition First Priority Liens" in their Cash Collateral Order and the Second Lien Committee is "barred by [its] intercreditor agreement from" doing the same. Objection ¶ 6. Not only does this argument all but concede that LBO-related claims belong to the Debtors' estates, but the UCC's argument is also premature.

15. It is immaterial at this point which estate fiduciary would ultimately have standing to assert potential claims arising from the LBO. Even assuming the UCC is correct that neither the Debtors nor the Second Lien Committee has the ability to bring these causes of action, that does not matter to the Motion. Rather, the Motion requests that the Examiner's investigation be expanded to determine what claims and defenses may exist in connection with the LBO, not who may bring those claims on behalf of the estate or parties in interest.<sup>6</sup>

16. To the extent the UCC believes the estate possesses colorable claims arising from the LBO, it can move for standing to pursue them on the estate's behalf. See In re Perkins, 902 F.2d 1254, 1257–58 (7th Cir. 1990) (noting that the Bankruptcy Code grants the *trustee* the power to collect the estate's assets, and a trustee may only be divested of this power in narrow

---

<sup>6</sup> The UCC made a similar argument in its objection to the Debtors' motion to appoint an examiner. See Omnibus Objection of Statutory Unsecured Claimholders' Committee of Caesars Entertainment Operating Company, Inc., et al. to Debtors' and Statutory Committee of Second Priority Noteholders' Motions for Appointment of Examiner ¶ 12 [Dkt. No. 445] ("[I]t is equally obvious the Debtors' claims [relating to the Challenged Transactions] against CEC and other entities cannot be prosecuted by the Debtors while they are controlled by Apollo and TPG. The natural party to obtain derivative standing to prosecute and negotiate the claims is the UCC."). The Examiner Order impliedly rejects this argument for purposes of the Examiner's investigation in that it makes no reference to which party in interest will ultimately have standing to pursue potential claims arising from the Challenged Transactions.

circumstances) (emphasis added). The UCC has not done so to date, nor would it be prevented from so moving if this Court orders the Examiner to investigate potential LBO claims.

**II. The UCC Will Not Be Prejudiced by the Examiner's Investigation of the LBO.**

17. Contrary to the UCC's assertions, the Motion is not an effort to prejudice the UCC or its constituents. Rather, the Debtors' request is intended to ensure that the Examiner, as an independent and neutral third party, analyzes any potential estate causes of action arising from the LBO. If the Examiner does not investigate these claims, the Debtors believe that parties in interest may use the absence of any such analysis to impede the Debtors' efforts to reach a consensual chapter 11 plan. The Debtors therefore believe that their estates would be prejudiced if the Examiner does not independently analyze the LBO-related claims — including any defenses — that the UCC argues could potentially invalidate the liens of approximately \$11.7 billion in first lien debt and \$5.24 billion in second lien debt. See Objection ¶ 9.

18. The Debtors also have worked diligently to ensure that the UCC is not prejudiced by any expansion of the Examiner's investigation. Currently, the UCC's deadline to challenge any liens arising from the LBO is August 7. See Third Stipulation Pursuant to Final Cash Collateral Order Extending Challenge Period [Dkt. No. 1862]. The Debtors, however, reached agreement with their first lien creditors to consensually extend the UCC's ability to challenge liens arising from the LBO if the Court grants the Motion and authorizes the Examiner to investigate the LBO. See Stipulation Pursuant to Final Cash Collateral Order Extending Challenge Period Regarding Leveraged Buyout [Dkt. No. 1874] (the "Cash Collateral Stipulation"); see also Motion ¶ 7 n.2. Under the Cash Collateral Stipulation, the UCC and/or Wilmington Trust may bring an action based on the LBO up to 30 days after the Examiner issues his final report addressing the LBO claims. Thus, if the Motion is granted, the UCC will no longer be scrambling to complete its investigation in the next several weeks and instead will

have several additional months to analyze documents related to the LBO that the Examiner has subpoenaed from numerous parties in part at the UCC's request.

19. Moreover, the Debtors have made clear that they do not seek to stop the UCC's investigation of Lien Challenges, including with respect to the LBO. The Debtors simply request that any party — including the UCC — coordinate with the Examiner and avoid duplication where possible. This is not only a common sense way to streamline otherwise burdensome investigations, but it is required by the Examiner Order. See Examiner Order ¶ 8 (“The examiner, the Debtors, the Creditors’ Committee, and the Noteholders’ Committee must use their best efforts to coordinate their investigations and avoid interference or needless duplication.”). Indeed, the UCC has already provided document requests to the Examiner related to the LBO as contemplated by the Examiner’s Discovery Protocol. See Discovery Protocol ¶ 3. Based on that input from the UCC, the Examiner, as an accommodation to the UCC, the Debtors, and other parties in interest, pending the determination of the Examiner’s role with respect to the LBO investigation, agreed to issue eight subpoenas seeking a wide range of LBO-related documents, including from the Debtors, CEC, certain non-debtor affiliates, Citibank, N.A. (a bank involved in the LBO), and Deloitte & Touche LLP (the Debtors’ auditor).

20. Thus, the only potential discovery-related issue that remains at this time is whether the UCC should coordinate any potential Rule 2004 depositions with the Examiner. Under the Examiner’s Witness Protocol, the UCC agreed to provide notice if it seeks to examine a witness “for any purpose” under Bankruptcy Rule 2004. See Witness Protocol ¶ 3. If the UCC provides notice that it intends to depose a witness involved in the LBO, the Examiner can then determine if the witness is someone he intends to interview or depose. If he does not, then the UCC is free to take such examination. See id. The Debtors only request that the UCC’s

investigation into the LBO continue to be guided by those rules, which will help reduce potentially duplicative examinations and reduce the burden on the estates and other parties in interest, as required by this Court. See Examiner Order ¶ 8.

21. Finally, the Debtors believe that expanding the Examiner's scope will be an efficient use of estate resources. The estate is funding each of the Debtors, the Examiner, and the UCC, as well as the ad hoc committee of first lien noteholders, the ad hoc committee of first lien bank lenders, and the Official Committee of Second Priority Noteholders. As noted above, the Examiner Order, Discovery Protocol, and Witness Protocol each call for a coordinated effort by all of these parties (among others) to ensure that any investigation is not duplicative. The Examiner is already analyzing the LBO as context for the financial issues facing CEOC that led to the Challenged Transactions and these chapter 11 cases. As noted above, the Examiner has already coordinated with the UCC on document requests that relate to the LBO transactions and has asked about LBO issues in initial informal interviews. In this context, it is efficient for the Examiner to continue and expand upon that work to ensure that he will provide a comprehensive, impartial analysis of all estate claims and causes of action.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Dated: July 20, 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*

**Exhibit A**

**July 13, 2015 Hearing Transcript**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

4	CAESARS ENTERTAINMENT OPERATING )	
5	COMPANY, INC., et al., )	No. 15 B 01145
6		Chicago, Illinois
		9:30 a.m.
	Debtors. )	July 13, 2015

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

12	For the Debtors:	Mr. Jeffrey Zeiger;
13	For the Unsecured	
14	Claimholders Committee:	Mr. Paul Possinger;
15	For the First Lien	
16	Noteholders:	Mr. Robert Radasevich;
17	For the Examiner:	Mr. Daniel McGuire;
18	For the Official Noteholder	
19	Committee:	Mr. Joshua Mester;
20	For the Ad Hoc Bank Lender	
21	Group:	Mr. James Pasquale.
22	Court Reporter:	Amy Doolin, CSR, RPR
23		U.S. Courthouse
24		219 South Dearborn
25		Room 661
		Chicago, IL 60604.

1 THE CLERK: Caesars Entertainment  
2 Operating Company, Incorporated, debtors' motion to  
3 authorize examiner.

4 MR. ZEIGER: Good morning, Your Honor.  
5 Jeffrey Zeiger, Kirkland & Ellis, on behalf of the  
6 debtors.

7 MR. POSSINGER: Good morning, Your  
8 Honor. Paul Possinger on behalf of the unsecured  
9 claimholders committee.

10 THE COURT: Good morning.

11 MR. RADASEVICH: Robert Radasevich on  
12 behalf of the first lien noteholders.

13 MR. MCGUIRE: Good morning, Your  
14 Honor. Dan McGuire on behalf of the examiner.

15 MR. MESTER: Good morning, Your Honor.  
16 Joshua Mester of Jones Day on behalf of the official  
17 noteholder committee.

18 MR. PASQUALE: Good morning, Your  
19 Honor. Jim Pasquale from Stroock & Stroock & Lavan  
20 for the ad hoc bank lender group.

21 THE COURT: Good morning.

22 Well, I'm puzzled by the motion. I'm  
23 really puzzled by the objection. The motion suggests  
24 that the examiner is already authorized to  
25 investigate the leveraged buyout. The objection,

1 among other things, suggests that the examiner  
2 doesn't want to investigate the leveraged buyout.

3 If he's authorized to do it and  
4 doesn't want to, then why are we here?

5 MR. ZEIGER: Well, Your Honor, it's  
6 our motion, so why don't I take the first shot at  
7 it.

8 The LBO is a significant event in  
9 these cases, \$30 billion LBO that essentially put all  
10 of this in motion. My understanding is, and the  
11 examiner's counsel can speak for the examiner better  
12 than I can, was that there was some question as to  
13 whether it was in the scope of what he was looking  
14 at.

15 He is looking at it in the context of  
16 background for all of the other transactions that  
17 he's looking at already. He's served eight subpoenas  
18 related to the LBO and has been asking witnesses  
19 questions about the LBO in the context of the other  
20 transactions.

21 But before he added it officially to  
22 the list of issues that he's looking at, he wanted to  
23 have us file a motion and make sure that the court  
24 was aware that he would be looking at it, and that  
25 all the parties in interest had a chance to weigh in.

1 THE COURT: The objection says that  
2 the examiner advised the debtors that he would not  
3 investigate the LBO without an order requiring him to  
4 do so.

5 MR. ZEIGER: Well, we had a different  
6 conversation that I was involved in.

7 THE COURT: Well, maybe we should hear  
8 from the examiner's counsel.

9 MR. MCGUIRE: Certainly, Your Honor.

10 THE COURT: What's the examiner's  
11 position in all of this?

12 MR. MCGUIRE: The examiner's position  
13 is that the original order may or may not give him  
14 authority to do so, given that it includes the listed  
15 transactions, and also other transactions that could  
16 involve causes of action of the estate. But given  
17 the scope of what the LBO involves, he felt that he  
18 shouldn't undertake such an additional expansion of  
19 what was clearly covered in terms of the listed  
20 transactions without first getting approval of the  
21 court to include this within the scope.

22 In terms of his willingness to do so,  
23 the examiner takes no position on whether or not he  
24 should or should not investigate the LBO. He is  
25 happy to do so if the court and the parties think it

1 is advisable. He is not here advocating that he do  
2 it. He will do it if the parties and the court  
3 believe that it is in the best interest of the  
4 estate.

5 THE COURT: Well, it seems to me that  
6 the order authorized the examiner to investigate  
7 transactions involving the debtors, and I'm quoting  
8 now, "to the extent those transactions suggest  
9 potential claims belonging to the estates."

10 So if the examiner thinks that the LBO  
11 would suggest potential claims belonging to the  
12 estates, then I guess he's authorized to look at it  
13 if he wants to look at it, and we don't really need  
14 to be here.

15 It would be an interesting  
16 conversation, I think, to have about why he would  
17 reach that conclusion, given that the LBO was in  
18 2008, but I will leave that to him because I imagine  
19 he understands how statutes of limitation work. But  
20 I just don't think that there is really anything for  
21 us to discuss today.

22 As far as the unsecured claimholders  
23 committee's objection, it seemed to be along the  
24 lines that the committee wanted to investigate this  
25 and so the examiner shouldn't. But I thought we went

1 through all of that already in this case and there  
2 really isn't a problem. I thought the committee had  
3 already secured for itself the right to do things  
4 that were parallel, as long as they weren't  
5 duplicative.

6 MR. POSSINGER: Yes, Your Honor. I  
7 think -- and I apologize, Mr. Bienenstock is, I  
8 think, on the Kennedy. He flew in this morning.

9 THE COURT: Well, he'll probably be  
10 there for awhile.

11 MR. POSSINGER: Yes.

12 THE COURT: So you can answer the  
13 question, if you want to.

14 MR. POSSINGER: Okay. My  
15 understanding is that this particular investigation  
16 has been authorized to the unsecured creditors  
17 committee pursuant to the final cash collateral  
18 order. We've had this investigation underway for  
19 several months.

20 And I think this motion is an attempt  
21 to take the investigation out of the committee's  
22 hands and turn it over to the examiner, and basically  
23 putting us in the back seat under the witness and  
24 discovery protocol until the examiner's job is done,  
25 at which point I understand, based on the stipulation

1 that was filed on Friday or Saturday, would give us  
2 then 30 days after the examiner's report is issued to  
3 complete an investigation at a time when we may well  
4 be under the gun of a pending confirmation hearing.

5 We've had this investigation underway.  
6 To have us stop doing so and take a back seat to the  
7 examiner, and then cause the examiner to duplicate  
8 what we have been doing for the last several months  
9 would be at best an inefficient use of the estate's  
10 resources.

11 THE COURT: Is it the debtors' or the  
12 examiner's position that if the examiner looks at  
13 this, the committee can't?

14 MR. ZEIGER: Well, Your Honor, that's  
15 not our position, but there are protocols in place --

16 THE COURT: Right.

17 MR. ZEIGER: -- to make sure that the  
18 committee's investigation doesn't interfere with the  
19 examiner's investigation, number one. And, number  
20 two, you've ordered all of us, the debtor, the  
21 examiner --

22 THE COURT: Right.

23 MR. ZEIGER: -- the creditors  
24 committee, to ensure that we use best efforts not to  
25 duplicate, you know, efforts, duplicate

1 investigations or proceed in an inefficient manner.

2 THE COURT: Right.

3 MR. ZEIGER: And I don't think anybody  
4 is contending that this court's order doesn't apply  
5 to them on that front. So I do think there will be  
6 some staging issues that would need to occur.

7 The examiner has already served  
8 subpoenas that incorporate the creditors committee's  
9 requests related to the LBO. And so the only  
10 question would be then whether there's a Rule 2004  
11 deposition notice that would impede the examiner's  
12 progress. And at that point we could, obviously, you  
13 know, work that out or bring it before the court on  
14 that -- on the expedited proceedings that the  
15 discovery protocol contemplates.

16 THE COURT: I take it the committee's  
17 position is that the LBO isn't covered by the  
18 original order?

19 MR. POSSINGER: That's correct.

20 THE COURT: How do you reach that  
21 conclusion based on the language of the order?

22 MR. POSSINGER: Because unlike other  
23 causes of action or transactions that the examiner is  
24 looking at, these claims relating to the LBO, as  
25 against the secured creditors anyway, are claims that

1 cannot be brought by the debtors and cannot be  
2 brought by the other committee in this case. So they  
3 really are the purview of our committee.

4 And so unlike other claims that the  
5 examiner is looking into --

6 THE COURT: Oh.

7 MR. POSSINGER: -- these claims are  
8 claims for leverage, or however it ends up being  
9 asserted, that will be asserted by our committee and  
10 our committee alone.

11 THE COURT: So, in other words, the  
12 transaction would not be one that could suggest a  
13 potential claim belonging to the estate?

14 MR. POSSINGER: Well, the --

15 THE COURT: -- right?

16 MR. POSSINGER: -- claims relating to  
17 lien avoidance are not, claims that will bring money  
18 into the estate. These are claims that will avoid  
19 the lien for the benefit of essentially our  
20 constituency.

21 MR. ZEIGER: Well, Your Honor, the  
22 standard as to what an examiner can investigate under  
23 1106 is not whether the cause of action brings money  
24 into the estate. You know, the examiner can  
25 investigate acts, liabilities, financial condition of

1 the debtors --

2 THE COURT: Right.

3 MR. ZEIGER: -- or any other matter  
4 relevant to the case or the formulation of a plan.

5 THE COURT: But that isn't my  
6 question. I'm not talking about the examiner's  
7 authority under the statute. I'm talking about the  
8 examiner's authority under the order that I entered.  
9 So there are a couple of different questions here.

10 If the examiner is already authorized  
11 to do this, then I don't need even to entertain this  
12 motion. I could deny it as unnecessary. So forget  
13 about what the examiner can do under the Code. The  
14 contention is that the LBO is not a transaction that  
15 could suggest a potential claim belonging to the  
16 estate, as I understand it.

17 MR. ZEIGER: I understand that's what  
18 they're arguing, that's right.

19 THE COURT: Well, so when I say what  
20 about that, that's the "that" part.

21 MR. ZEIGER: Understood, Your Honor.  
22 We disagree with that -- with that "that."

23 THE COURT: Sorry. I started the  
24 whole --

25 MR. ZEIGER: No, no, yeah, but I

1 finished it, I guess, so...

2           Your Honor, the examiner is looking at  
3 all sorts of claims, including the B-7 refinancing,  
4 that are almost identical to this. And to the extent  
5 there's either a lien avoidance or a fraudulent  
6 transfer that results in a recovery to the estate,  
7 he's looking at both of those elements. And before  
8 this, nobody has ever objected to him looking at lien  
9 avoidance as part of his fraudulent transfer analysis  
10 on issues such as the B-7 refinancing. And so I  
11 think he's already, you know, including claims just  
12 like this within the scope of his analysis.

13           THE COURT: I thought the kind of  
14 claims that we're talking about here are the same  
15 kinds of claims the debtors insisted so fervently  
16 back in June were one of the main assets of the  
17 estate.

18           MR. ZEIGER: That's right.

19           THE COURT: So I just don't understand  
20 the distinction.

21           Is the committee saying that all of  
22 those claims the debtors say they have against CEC  
23 aren't really assets of the estate at all because the  
24 debtors can't bring those claims, or is there  
25 something different about this?

1 MR. POSSINGER: Our position is that  
2 if the liens are avoided, it does not produce value  
3 to the estate. It produces value to the unsecured  
4 creditors.

5 But I think also, Your Honor, the  
6 timing of the motion is interesting. The unsecured  
7 claimholders committee has had this investigation  
8 underway since March. We've obtained several  
9 consensual extensions of the investigation period.  
10 The current period expires on August 7. We've been  
11 at this for a long time. To grant this motion, and I  
12 quote from the motion, it says, "under the discovery  
13 protocol, parties in interest, including the UCC,  
14 agree to provide their document requests to the  
15 examiner for service as part of the subpoenas and,  
16 with few exceptions, defer depositions on topics  
17 within the scope of his investigation."

18 So this motion, if granted, would  
19 effectively shut us down. Why are they bringing this  
20 motion now when we are so far into our investigation  
21 period?

22 THE COURT: Why are you bringing this  
23 motion now?

24 MR. ZEIGER: Well, because, Judge, we  
25 brought the original examiner motion as a part of an

1 effort to get to a consensual plan. And our concern  
2 is that if the examiner does all this work on the  
3 challenged transactions, and then we get the report  
4 and then we come back and we have the creditors  
5 committee saying but, look, even though the LBO  
6 occurred eight years ago, there are really  
7 significant claims here that the examiner never  
8 looked at, and they have great value. And then I  
9 think we have everybody else standing up here saying  
10 no, they don't. You know, I think the first lien  
11 notes and first lien banks say no, they don't.

12           And what we don't want to do is be  
13 left in a position where our efforts to get to a  
14 consensual plan through the examiner's analysis, a  
15 fair and impartial analysis of all material claims,  
16 omits one, and leaves us kind of, you know, hanging  
17 out there at the moment in time where we want to get  
18 to a consensual deal. So that's why it's so  
19 important to the debtors to have the examiner look at  
20 this.

21           MR. POSSINGER: The committee  
22 certainly will not allow its constituency or the  
23 estate to be hanging out there. We've got a job to  
24 do and we certainly intend on doing it.

25           THE COURT: Well, I think what I would

1 like is I'd like a response to the objection that the  
2 committee has interposed.

3 MR. ZEIGER: Okay.

4 THE COURT: There was expressed some  
5 urgency about all this. I don't really understand  
6 why. But that's okay. We can keep this on a  
7 non-omnibus date.

8 I am a little busy between now and the  
9 22nd. When would you like to file something?

10 MR. ZEIGER: Whenever is convenient  
11 for the court. We could do it in a week's time, and  
12 then --

13 THE COURT: If you want.

14 MR. ZEIGER: -- come back on whatever  
15 date is convenient for the court. It could be after  
16 the -- I think it could be after the 22nd.

17 THE COURT: Oh, yes, definitely, if  
18 you want me to read it.

19 MR. ZEIGER: Very well. Understood.

20 THE COURT: Why don't we have, let's  
21 call it a reply. If you can really get it in a week,  
22 that would be great. We'll have that due on the  
23 20th.

24 Did the bank lenders want to file  
25 something too? You've supported the motion.

1 MR. RADASEVICH: We are the  
2 noteholders, Your Honor.

3 THE COURT: Oh, I'm sorry. I've got  
4 a --

5 MR. RADASEVICH: The bank --

6 THE COURT: I've got a bank lender  
7 response.

8 MR. PASQUALE: That's correct.

9 THE COURT: I'm sorry to look at you,  
10 Mr. Radasevich.

11 MR. PASQUALE: Ken Pasquale from  
12 Stroock, Your Honor. Yes, we filed what I think --

13 THE COURT: What you want to file --

14 MR. PASQUALE: -- could serve as a  
15 response to the UCC's objection.

16 THE COURT: Okay. All right. So I  
17 guess I'm just going to be hearing from the debtors  
18 on the 20th.

19 MR. POSSINGER: And then, Your Honor,  
20 would you like a further reply from the committee or  
21 would that be sufficient?

22 THE COURT: Oh, why not. It doesn't  
23 have to go on at great length. I mean, you can see  
24 what my concerns are here.

25 MR. POSSINGER: We'll be quick.

1 THE COURT: How about a week after  
2 that? That would be the 27th. Is that satisfactory?

3 MR. POSSINGER: Yes, Your Honor.

4 THE COURT: Okay. And then let's come  
5 back on August 5. That's not so far off. August 5  
6 at 10:00. We'll keep this on a non-omnibus day.

7 MR. RADASEVICH: Your Honor, would it  
8 be appropriate, since we and the first lien banks are  
9 roughly in the same position, if we were to join in  
10 the materials filed by the first lien banks? It  
11 shouldn't be a problem, I would think.

12 THE COURT: If that's what you'd like  
13 to do, that's fine.

14 MR. RADASEVICH: Thank you.

15 THE COURT: All right. Good. Thanks  
16 very much, everybody.

17 MR. ZEIGER: Thank you very much, Your  
18 Honor.

19 (Which were all the proceedings had in  
20 the above-entitled cause, July 13,  
21 2015, 9:30 a.m.)

22 I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY  
23 THAT THE FOREGOING IS A TRUE AND ACCURATE  
24 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-  
25 ENTITLED CAUSE.