

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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In re:) Chapter 11
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CAESARS ENTERTAINMENT) **Case No. 15-01145 (ABG)**
OPERATING COMPANY, INC. *et al.*,¹) (Jointly Administered)
))
Debtors.) Hon. A. Benjamin Goldgar
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EXAMINER’S THIRD INTERIM REPORT

**TO THE HONORABLE A. BENJAMIN GOLDGAR
UNITED STATES BANKRUPTCY JUDGE:**

Richard J. Davis, the Court-appointed examiner (the “Examiner”) of Caesars Entertainment Operating Company, Inc., *et al.* (collectively, the “Debtors”) submits this third interim report (the “Third Interim Report”) pursuant to the Court’s *Order Granting in Part and Denying in Part Motions to Appoint Examiner* [Docket No. 675] (the “Examiner Order”).

BACKGROUND

1. On January 15, 2015, the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois.

2. On March 12, 2015, the Court entered the Examiner Order directing the United States Trustee (the “UST”) to appoint an examiner.

¹ The last four digits of Caesars Entertainment Operating Company, Inc.’s tax identification number are 1623. Due to the large number of Debtors in these jointly-administered chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is available at <https://cases.primeclerk.com/CEOC>.

3. In accordance with the Examiner Order, the UST filed a motion seeking appointment of Richard J. Davis as the Examiner [Docket No. 946] (the “Examiner Motion”), which was approved by Court order dated March 25, 2015 [Docket No. 992].

4. Pursuant to Paragraph 3 of the Examiner Order, the Examiner is directed to investigate (a) the “Challenged Transactions” as defined and described in the *Debtors’ Motion for Entry of an Order (I) Appointing an Examiner and (II) Granting Related Relief* [Docket No. 363]; (b) the “Insider Transactions” as defined and described in the proposed order accompanying the *Motion of the Official Committee of Second Priority Noteholders for Appointment of Examiner with Access to and Authority to Disclose Privileged Materials* [Docket No. 367]; (c) 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; and (d) any apparent self-dealing or conflicts of interest involving the Debtors or their affiliates (collectively, the “Investigation”).

5. Pursuant to Paragraph 5 of the Examiner Order, the Examiner was directed to file with the Court interim reports on the Investigation every forty-five (45) days from the date his appointment was approved.

6. On May 11, 2015, the Examiner filed his first interim report [Docket No. 1520] (the “First Interim Report”).

7. On May 18, 2015, the Court entered the *Order (I) Approving Protocol and Procedures Governing Examiner Discovery, (II) Approving Establishment of a Document Depository, and (III) Granting Related Relief* [Docket No. 1576] (the “Discovery Protocol Order”). Among other things, the Discovery Protocol Order approves of the (a) Examiner’s proposed protocol and procedures governing discovery (as amended and supplemented in

advance of Court-approval, the “Discovery Protocol”) and (b) establishment of a centralized document depository (the “Document Depository”).

8. Also on May 18, 2015, the Court entered the *Agreed Protective Order* [Docket No. 1575] (the “Protective Order”). The Protective Order is intended to govern any information, document or thing that has been or will be produced in discovery or otherwise in this case or any related adversary proceedings (i.e., Discovery Material).

9. On June 23, 2015, the Examiner filed his second interim report [Docket No. 1805] (the “Second Interim Report”).²

THE EXAMINER’S ACTIVITIES TO DATE

10. The Examiner, Debtors, Noteholder Committee, UCC, Ad Hoc Group of First Lien Bank Lenders, and the Ad Hoc Committee of First Lien Noteholders negotiated and reached agreement as to a protocol governing the conduct of witness interviews and depositions throughout the Examiner’s Investigation (the “Witness Protocol”), which was memorialized in the *Amended Motion of the Examiner for Entry of an Agreed Order on Interviews and Depositions by the Examiner* [Docket No. 1715] (the “Witness Protocol Motion”). Among other things, the Witness Protocol contemplates that the Examiner will conduct his interviews on the subjects of the Investigation prior to the depositions that may be taken by the other parties (i.e., the Debtors, Noteholder Committee, and UCC).

11. The Court held a hearing on the Witness Protocol Motion on June 22, 2015 and approved the relief sought, subject to certain modifications. The parties in interest addressed the Court’s modifications and submitted a revised agreed order, which was approved by the Court on June 25, 2015 [Docket No. 1831].

² The Examiner incorporates herein by reference the statements made in the First Interim Report and the Second Interim Report. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the First Interim Report and/or the Second Interim Report.

12. Since the Second Interim Report was filed, the Examiner and/or his counsel and financial advisors have continued to have extensive communications with certain key constituents and their counsel and financial advisors, regarding matters relating to discovery and to the substance of the Investigation. The Examiner's financial advisors also continue to meet with the financial advisors for other interested parties. The meetings that the Examiner has conducted so far will not be the last such meetings, nor are the parties with whom the Examiner has already met the only parties who may assist the Investigation.

13. For some of the aforementioned meetings, the Examiner, his counsel and his financial advisors travelled to Atlantic City, New Jersey to visit the various Debtors' properties, meet with various witnesses, and learn more about the structure and function of the Debtors' operations and important decisions made relating to such properties.

14. The Examiner and his counsel and financial advisor are still diligently assembling and reviewing materials available publicly and otherwise provided by key parties in interest in the case that might be relevant to the Investigation. Relevant public documents include pleadings filed in connection with the Debtors' cases, such as the first day pleadings, schedules, and statements, and the pleadings filed in support thereof and opposition thereto, the UST's motion regarding the appointment of the Examiner, motions for discovery from the Noteholder Committee and the UCC, pleadings relating to the involuntary case fashioned *In re Caesars Entertainment Operating Company, Inc., et al.*, Chapter 11 Case No. 15-03193 (ABG) (Bankr. N.D. Ill.), pleadings filed in the adversary proceeding and related appeal whereby plaintiffs seek, *inter alia*, to stay certain prepetition litigation, fashioned *Caesars Entertainment Operating Company, Inc. et al., v. BOKF, N.A. et al.*, Adv. Pro. No. 15-00149 (ABG), and other pleadings relating to the litigation commenced in or related to the bankruptcy cases.

15. In addition to the assembly and review of publicly available documents, and other documents provided by various parties on an informal and confidential basis, the Examiner has issued thirty-five (35) subpoenas to various parties in interest in the Investigation in furtherance of the Investigation.

16. Other than those very recently served, all subpoenaed parties have either responded to their respective subpoena and/or are in discussion with the Examiner's counsel regarding the requests contained in the subpoenas. The Examiner's counsel has been diligently conducting meet and confers with the subpoenaed parties to further clarify the scope of the subpoenas and address other related issues. In addition, the Examiner—in consultation with his counsel, financial advisor, and the relevant parties in interest (as required under the Discovery Protocol) has generated and provided the subpoenaed parties a set of universal search terms which the subpoenaed parties are to utilize in the production of documents to the Examiner.

17. Of note, counsel to the Examiner and certain subpoenaed parties have spent a substantial amount of time addressing issues relating to the decision by certain third parties to withhold documents on the basis of an assertion of privilege held by certain non-debtor entities (namely the parent company, CEC). The Examiner believes he is entitled to many of those documents under the terms of the Discovery Protocol Order. After extensive negotiations, CEC has agreed to allow the parties in possession of those allegedly privileged materials to produce them to the Examiner, subject to certain limitations that may require further discussion and negotiation. In the Examiner's view, resolution of these issues, however, has not been finalized and Court intervention may still need to be sought.

18. The Examiner has begun to receive document productions in response to his subpoenas on a rolling basis. To date, the Examiner has received over 130,000 documents, communications and other data consisting of more than 1.2 million pages, but based on these

productions and his discussions with the key parties, the Examiner estimates that the quantity of data will far exceed the more than 1.2 million pages of documents, communications, and other data already received.

19. The productions made to the Examiner thus far include documents at various levels of confidentiality, including documents that are Confidential, Attorneys' Eyes Only, and Examiner's Eyes Only, as is provided by the Discovery Protocol Order and Protective Order. These productions appear to be a small subset of the documents that the Examiner anticipates may ultimately be made available through the course of his Investigation.

20. While some of the subpoenaed parties have completed or substantially completed their productions, the Examiner has experienced difficulty in obtaining substantial production of documents from some of the subpoenaed parties, with some having only just begun to provide a first set of documents to the Examiner. Some of these parties have promised to make substantial productions by the end of August. These delays in production have only further delayed the Examiner in his Investigation and, ultimately, in the production of his final report, and if production is not completed by the end of August, there is a real risk of even further delays.

21. The Examiner and his counsel has been notified as to certain revisions to the milestones set forth in the *Third Amended and Restated Restructuring Support and Forbearance Agreement* [Docket No. 260] (the "RSA") that are currently subject to negotiation by and between various parties-in-interest in this case. Particularly, the parties contemplate that the Debtors will have obtained Court approval of the disclosure statement, solicitation procedures and a certain Backstop Commitment Agreement (as defined therein) by the earlier of February 15, 2016 and 60 days after the filing of the Examiner's final report. In order to reach this milestone, the parties contemplate that the Examiner will file his final report on or before November 15, 2015 or, at the latest, on or before December 15, 2015.

22. Unless production is substantially complete from all subpoenaed parties within ten (10) days of this Third Interim Report, it will be difficult for the Examiner to reach the parties' desired milestones set forth in the proposed revisions to the RSA.

23. A thorough review of the documents received is underway. During this process, the Examiner has been and will continue to identify any additional third parties that may be in possession of information relevant to the Investigation. The Examiner has been and will continue to serve subpoenas and document requests on those parties in order to facilitate prompt production of information.

24. In addition to the informal meetings with various constituent parties, the Examiner has begun conducting preliminary interviews of a number of certain key witnesses in an effort to focus his Investigation. The Examiner and/or his counsel and financial advisors have also conducted various background meetings. The Examiner also has begun scheduling more formal interviews which he hopes to commence this month.

25. During the course of the Investigation, the Examiner has continued to maintain open lines of communication with the UST, the Debtors, the official and unofficial committees, and other key interested parties. The Examiner's counsel will continue to monitor and review pertinent filings with the Court (and other relevant litigation) regarding or involving any issues related to the Investigation.

26. The Examiner's view of the Investigation is based upon currently available information and presumes the full and complete cooperation of the Debtors, the official and unofficial committees, CEC, the Debtors' and CEC's affiliates, Apollo, TPG, and other key parties in interest in these cases, and the respective current and former representatives and advisors of each. As the process unfolds, the plan for the Examiner's Investigation may need to be amended to fulfill the Court's direction to deliver a comprehensive report. The inclusion or

discussion of any matter in this Third Interim Report should not be construed as limiting the Examiner prospectively. The Examiner reserves his right to modify his plan for the Investigation accordingly.

Respectfully submitted,

Dated: August 7, 2015
Chicago, Illinois

By: /s/ Daniel J. McGuire

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