

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

EXAMINER’S FIFTH 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 fifth interim report (the “Fifth 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”).

10. On August 7, 2015, the Examiner filed his third interim report [Docket No. 2022] (the “Third Interim Report”).

11. On September 21, 2015, the Examiner filed his fourth interim report [Docket No. 2236] (the “Fourth Interim Report” and together with the First Interim Report, Second Interim Report, and Third Interim Report, the “Prior Interim Reports”).²

THE EXAMINER’S ACTIVITIES TO DATE

12. Since the Fourth 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.

² The Examiner incorporates herein by reference the statements made in the Prior Interim Reports. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Prior Interim Reports.

13. 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. Additionally, the Examiner's counsel has attended a number of the depositions in the Delaware Chancery Court action fashioned *Wilmington Savings Fund Society, FSB v. Caesars Entertainment Corporation et al.*, C.A. No. 10004-VCG (Del. Ch. Ct.).

14. 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 46 document subpoenas to various parties in interest in the Investigation and third parties in furtherance of the Investigation.

15. The Examiner is receiving document productions in response to his subpoenas on a rolling basis. 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.

16. As previously mentioned in the Prior Interim Reports, there was, and in some cases continues to be, substantial delay in the production of documents to the Examiner from certain key parties. Unfortunately, production is still ongoing, albeit on a lesser scale than during the time of the Fourth Interim Report.

17. To date, the Examiner has received more than 867,000 documents, communications and other data consisting of more than 6.4 million pages. The Examiner and his professionals have been working diligently to review and analyze the substantial volume of documents and information that has been produced, recognizing that a significant number of these documents were produced late in the process.

18. Also, since August 24, 2015, the Examiner has issued 62 subpoenas for witness testimony from various individuals at CEOC, CEC, the Sponsors, their respective legal and financial advisors, CEC and CEOC's auditors, and other professionals and third parties who were involved in the transactions that are the subject of the Investigation. To date, the Examiner and his professionals have prepared for and conducted thorough interviews of over 40 witnesses on a transcribed basis, in addition to other informal interviews.

19. As mentioned in the Fourth Interim Report, the Examiner expected to complete these interviews by the end of October 2015. *See* Docket No. 2236, ¶ 21. Although the Examiner notified the subpoenaed parties when he issued his subpoenas of the tight timeframe and need to limit flexibility, based mostly on an attempt to comport with the key parties' desired milestones, the Examiner has received a significant number of requests to reschedule the witness interviews for later dates, which resulted in delay of the Examiner's articulated timeline for completion of the interviews as set forth in the Fourth Interim Report, and the Investigation.

20. The Examiner and his professionals have devoted (and are continuing to devote) significant time and effort to scheduling these witness interviews with a current view to

completing as many of them as possible in the next two weeks. Given the tight timeframe and the large volume of documents recently produced, the Examiner has notified all of the key parties that certain witnesses may need to be recalled at a later date to complete their interviews. In fact, the Examiner and his professionals have begun scheduling the recall of certain witnesses.

21. The Examiner and his counsel have 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. In particular, the parties to the RSA 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 or 60 days after the filing of the Examiner’s final report. In order to reach this milestone, the RSA contemplates that the Examiner will need to file his final report, if at all possible, sometime between November 15, 2015 or, at the latest, December 15, 2015.

22. While the Examiner is mindful of the milestones in the proposed revisions to the RSA, his primary obligation is to conduct a full and fair investigation. After much consideration, and given the delays in document production, the substantial volume of documents recently produced, and the repeated requests of the parties to reschedule interviews to later dates, the Final Report will not be filed on or before December 15, 2015.

23. However, the Examiner and his professionals intend to meet with the key parties beginning after Thanksgiving to discuss his preliminary views on key issues and to allow the parties an opportunity to provide additional information concerning these issues.

24. A thorough review of the documents produced to date is underway. During this process, the Examiner has been and will continue to identify any additional parties and witnesses 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 and witnesses as necessary in order to facilitate prompt production of information.

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 Fifth Interim Report should not be construed as limiting the Examiner prospectively. The Examiner reserves his right to modify his plan for the Investigation accordingly.

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Respectfully submitted,

Dated: November 5, 2015
Chicago, Illinois

By: /s/ Daniel J. McGuire

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