UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1]	)	Case No. 15-01145 (ABG)
	)	(Jointly Administered)
Debtors.	)	

OBJECTION OF THE AD HOC COMMITTEE OF FIRST LIEN BANK LENDERS TO DEBTORS' MOTION TO EXTEND THEIR EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF

The ad hoc committee (the "Ad Hoc Bank Lender Committee") of beneficial holders, or the investment advisors or managers for certain beneficial holders, of first lien bank debt issued by the Debtors (the "First Lien Bank Lenders"), by and through its undersigned counsel, hereby files this objection (this "Objection")[2] to the *Debtors' Motion to Extend Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof*, ECF No. 1173 (the "Motion")[3], and in support hereof, respectfully states as follows:

[1] The last four digits of Caesars Entertainment Operating Company, Inc.'s ("CEOC") tax identification number are 1623. Due to the large number of debtors (the "Debtors") in these chapter 11 cases (these "Chapter 11 Cases"), a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.primeclerk.com/CEOC.

[2] The *Preliminary Objection of the Ad Hoc Committee of First Lien Bank Lenders to Debtors' Motion to Extend Their Exclusive Periods to File a Chapter 11 Plan and Solicitation Acceptances Thereof*, ECF No. 1273 (the "Preliminary Objection") is incorporated herein in its entirety as if set forth herein.

[3] Each capitalized term that is not defined herein shall have the meaning ascribed to such term in the Motion.

PRELIMINARY STATEMENT

1. The Debtors have not sufficiently established that cause exists to grant their request for a six-month extension of the Exclusivity Periods. CEC and its equity sponsors (the "Sponsors") continue to control nearly every aspect of these Chapter 11 Cases to the detriment of the Debtors' estates. For example, the so-called "marketing" process raised recently by the Debtors may be nothing more than a device intended to substantiate the "new value" consideration paid by CEC under the plan contrived by the Sponsors to retain significant equity upside in the reorganized company, while shielding themselves from billions of dollars in liability in connection with lawsuits filed prior to the commencement of the Chapter 11 Cases. Likewise, the RSA that the Debtors continue to trumpet has the support of only one creditor constituency, while other creditor groups, including the Ad Hoc Bank Lender Committee, are not presently engaged in substantive negotiations with the Debtors, CEC or the Sponsors. For these reasons alone, the Debtors' actions do not warrant the lengthy exclusivity extension that they seek. Instead, the Debtors' requested extension of the Exclusivity Periods should be halved to provide some time for the Debtors to demonstrate independence and to work with their creditors towards a consensual resolution of these cases.

2. Accordingly, the Ad Hoc Bank Lender Committee supports only a three month extension of the Exclusivity Periods as reasonable under the circumstances. This shorter period will provide the Court and parties-in-interest with sufficient time to assess whether the Debtors and CEOC's board of directors are able to move beyond working for the Sponsors, while also allowing the Debtors time to act in earnest to advance these Chapter 11 Cases through their major creditors. The Debtors are not harmed by a three-month extension; if they are able to

make legitimate progress within this three month window, nothing forestalls the Debtors from requesting additional extensions of the Exclusivity Periods.

OBJECTION

A. Applicable Standard for Extending the Exclusivity Period for a Debtor

3. Section 1121(d)(1) of the Bankruptcy Code provides that after notice and a hearing, a bankruptcy court may "for cause" reduce or increase a debtor's exclusivity period to file a plan of reorganization and complete solicitation of votes for such plan. *See* 11 U.S.C. § 1121(d)(1). A debtor has the burden of proof to make "a clear showing" that cause exists in order to support an extension of the exclusivity period. *See In re Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992); *see also In re Borders Grp., Inc.*, 460 B.R. 818, 821 (Bankr. S.D.N.Y. 2011); *In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990) (stating that "[t]he party seeking a change in this statutory time period bears the burden of proving that the requisite cause exists."). Although "cause" is not defined in the Bankruptcy Code, bankruptcy courts have "great latitude" and flexibility in determining whether a debtor has satisfied its burden to demonstrate cause for an exclusivity extension. *See In re Energy Conversion Devices, Inc.*, 474 B.R. 503, 507 (Bankr. E.D. Mich. 2012); *see also In re All Seasons Indus.*, 121 B.R. at 1004 (stating that "[w]hether or not [a movant] has [proven 'cause' exists] is a question committed to the sound discretion of the bankruptcy judge.").

4. Whether a debtor has established cause is determined on a case-by-case basis based on the facts and circumstances of that specific case. *See, e.g., Geriatrics Nursing Home, Inc. v. Fid. Bank, N.A. (In re Geriatrics Nursing Home, Inc.)*, 187 B.R. 128, 132 (D.N.J. 1995). In making such a determination, bankruptcy courts typically apply a non-exhaustive list of factors to examine. These factors include: (1) the size and complexity of the debtor's case; (2)

the existence of good faith progress towards developing a plan of reorganization; (3) whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the debtor's reorganization demands; (4) whether an unresolved contingency exists; (5) whether the debtor is paying its bills as they come due; (6) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (7) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (8) whether the debtor has made progress in negotiations with its creditors; and (9) the amount of time which has elapsed in the case. *See In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); *see also In re Co. Store, Inc.*, No. 92-21810-11, 1992 WL 12003985, at *1–3 (Bankr. W.D. Wis. Oct. 5, 1992) (considering several factors, including: the size and complexity of the chapter 11 cases; the history and amount of discovery, negotiation and litigation in the cases since the petition date; whether the debtors were attempting to prolong a reorganization to pressure a creditor to accede to the debtors' point of view on a contested issue; and that the creditor will not be unduly prejudiced by the extension).

5. Bankruptcy courts also recognize that a subset of the above factors may be more important than others given the facts of the specific case, and the court has discretion to make that determination. *See Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.*), 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003).

B. <u>The Relevant Factors Weigh in Favor of Limiting the Debtors' Exclusivity Request</u>

6. Bankruptcy courts treat a debtor's request for an exclusivity extension, regardless of whether it is a first request, as a "serious matter" that should not be granted "routinely nor cavalierly." *See In re All Seasons Indus.*, 121 B.R. at 1004 (internal citations omitted). Although the Debtors' cases may be large and complex, "size and complexity alone

cannot suffice as 'cause'" to warrant a debtor's request for an extension of exclusivity—"size and complexity must be accompanied by other factors . . . to justify extension of plan exclusivity." *In re Pub. Serv. Co. of N.H.*, 88 B.R. 521, 537 (Bankr. D.N.H. 1988).

7. The Ad Hoc Bank Lender Committee believes that a shortened exclusivity extension of three months will provide an appropriate period of time in which to evaluate the Debtors' ability to make progress with their major creditor constituencies toward a fair and equitable resolution. *See, e.g., Official Comm. Of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002) (stating that "a transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution" but ultimately granting an extension of exclusivity). The extension period requested by the Ad Hoc Bank Lender Committee also is in line with initial exclusivity extensions granted by bankruptcy courts in large and complex cases (*see, e.g., In re Residential Capital, LLC*, No. 12-12020 (MG) (Bankr. S.D.N.Y. Aug. 23, 2012, Sept. 11, 2012), ECF Nos. 1248, 1413 (granting an initial 100-day exclusivity extension even though the Debtors requested a nine-month exclusivity extension in their motion); *In re Wash. Mutual, Inc.*, No. 08-12229 (MFW) (Bankr. D. Del. Feb. 18, 2009), ECF No. 692 (granting an initial 90-day exclusivity extension)), as well as initial exclusivity extensions granted by this Court (*see, e.g., In re ALT Hotel, LLC*, No. 11-19401 (ABG) (Bankr. N.D. Ill. Sept. 7, 2011), ECF No. 116 (granting an initial 90-day exclusivity extension); *In re Arlington Hospitality, Inc.*, No. 05-34885 (ABG) (Bankr. N.D. Ill. Dec. 21, 2005), ECF No. 510 (granting an initial 30-day exclusivity extension)).

I. The Debtors Have Not Made Progress Towards Developing a Consensual Plan of Reorganization, Cannot Demonstrate Reasonable Prospects for a Viable Plan of Reorganization, and Have Not Made Real Progress in Negotiations with the Ad Hoc Bank Lender Committee and the Other Creditors

8. While the Debtors assert that they "have made significant progress in negotiating with their stakeholders" and that only "some of [the Debtors' key stakeholders] remain vocal critics of the RSA" (*see Motion* ¶¶ 2, 20), that statement is inaccurate. After many months of pre- and post-petition negotiations, the RSA continues to have the support of only one creditor constituency—the first lien noteholders—while the Ad Hoc Bank Lender Committee, as well as the Official Committee of Second Lien Noteholders, who together represent the interests of nearly two-thirds of the Debtors' funded debt, oppose the RSA and the insider "new value" plan on which it is founded.

9. Additionally, since the Preliminary Objection was filed, a milestone in the RSA requiring the Debtors to obtain an order of this Court authorizing them to assume the RSA passed without such an order being entered or even sought by the Debtors, giving the first lien noteholders the right to terminate the RSA. *See* RSA, Exhibit D. CEC's financial advisor did state on May 5, 2015 that there are "ongoing discussions" with the advisors to the first lien noteholders regarding extending the RSA milestones and other considerations (*see Decl. of Steven Zelin in Supp. of Caesars Entm't Corp.'s Opp'n to Defs.' Joint Mot. to Compel*, ECF No. 105, Adversary Case No. 15-00149). However, the Ad Hoc Bank Lender Committee views renegotiating new milestones for a RSA that is premised on a plan of reorganization that is not acceptable to nearly every party in interest as no progress on a chapter 11 plan. If anything, the resetting of the milestones in the RSA will further entrench the relative creditor constituencies in their respective positions.

10. The Debtors also have failed to make progress in negotiations with creditors who oppose the RSA. Since filing its Preliminary Objection on April 22, 2015, CEC and the Ad Hoc Bank Lender Committee have not resumed negotiations, and have no immediate plans to do so. Even more important, the Ad Hoc Bank Lender Committee and the Debtors' other creditors are quickly losing faith in the Debtors' ability to conduct a fair reorganization process, a point which also favors a shortened exclusivity extension. For example, the Debtors' board of directors, which includes two alleged independent directors, may be conflicted because the board's actions have thus far been directed towards releasing CEC and the Sponsors, while also protecting the Sponsors' equity interests in the Debtors, despite numerous allegations of actual fraud on CEC and the Sponsors' behalf and the desire of major creditor groups to pursue those claims. If creditors "los[e] faith in the capability and perhaps the integrity of debtor's management," such loss of confidence "is a factor the court should and must consider in its determination" as to whether the debtor should be granted an extension of its exclusivity period. *See In re All Seasons Indus.*, 121 B.R. at 1005 (denying a debtor's request for an exclusivity extension because the debtor and its major secured creditors were not able to find common ground upon which to build a plan of reorganization since creditors lost confidence in the capability and integrity of debtor's management). What the Debtors need to do is to work with all of their major creditor groups towards something other than the Sponsor-exonerating RSA driven plan, and a three month extension of exclusivity should provide sufficient time for the Debtors to demonstrate progress on this front.

11. Finally, as discussed below, the Debtors' plan as embodied in the RSA is patently unconfirmable; it is neither feasible nor does it satisfy the Supreme Court's ruling in

Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434 (1999) (hereinafter "203 North LaSalle").

II. The Debtors' So-Called "Marketing" Process may be an Inappropriate Attempt to Pressure Creditors to Accede to the Debtors' Reorganization Demands and is Poorly Timed

12. Also weighing heavily against a lengthy extension of the Exclusivity Periods is the fact that the Debtors' efforts to run a "marketing" process appear to be manufactured by CEC and the Sponsors in an attempt to validate CEC and the Sponsors' "new value" to avoid exclusivity termination based on the decision in *203 North LaSalle* by failing to "market test" that new value investment. The ill-timed "marketing" process also will chill bidding and may ultimately force creditors to accede to the Debtors' reorganization demands by extending the Exclusivity Periods for much longer than is appropriate under the facts of these cases. A six month exclusivity extension would be used by the Debtors and their Sponsors as a sword to hold creditors "hostage" to the Debtors' insider plan. *See, e.g., In re Curry Corp.*, 148 B.R. at 756 (exclusivity extensions should not be "a tactical device" used to pressure creditors into accepting an unsatisfactory plan); *In re All Seasons Indus., Inc.*, 121 B.R. at 1004 (stating that "[s]ection 1121 was designed, and should be faithfully interpreted, to limit the delay that makes creditors the hostages of Chapter 11 debtors.") (internal citations omitted).

13. Specifically, the Debtors' plan is a "new value" plan and, if implemented, would result in the sale of 100% of the equity of OpCo and a meaningful portion (more than 12%) of the equity of PropCo to CEC. As a matter of law, "[a]ssuming a new value corollary, plans providing junior interest holders with exclusive opportunities free from competition and without benefit of market valuation" are prohibited by the Bankruptcy Code. *See 203 North LaSalle*, 526 U.S. at 436, 458. Thus, although the Debtors have chosen to undertake a

"marketing" process in an attempt to comply with *203 North LaSalle*, such efforts fall well short of what is required of the Debtors.

14. Indeed, why are the Debtors attempting to run a sales process at all? If the Debtors believe that there are two alternatives to these cases—the RSA or a sale—then exclusivity should not be extended at all. Sales processes can have a detrimental effect on a businesses' operations and should only be undertaken after careful consider with all potential beneficiaries. Here, the Debtors have yet to identify what benefits a sales process would yield before they have negotiated in earnest with their major creditor constituencies on something other than the Sponsor-protecting RSA and plan. In addition, neither the Ad Hoc Bank Lender Committee nor the Official Committee of Second Lien Noteholders are in favor of a sales process. The Debtors also seek to run the sales process outside of the Court's purview and without all material parties in interest having the opportunity to weigh in on how the sales process will be conducted and to what end.

15. Thus, in executing the sales process, the Debtors appear once again to be ignoring the interests of their major creditor constituencies in order to substantiate a deal that has been designed for CEC and the Sponsors' benefit.[4]

III. A Three Month Exclusivity Extension Should Be Sufficient for the Debtors to Resolve a Majority of the Unresolved Contingencies in these Cases, and the Timing of the Examiner's Report is too Contingent to Form the Basis for a Six Month Extension

16. Although bankruptcy courts have extended a debtor's exclusivity period based on the existence of unresolved contingencies, a three month extension of the Exclusivity Periods through the end of August 2015 will provide the Debtors with ample time to complete litigation

[4] The Ad Hoc Bank Lender Committee reserves its rights to seek to have the sales process brought within this Court's authority and to enjoin any attempt by the Debtors to damage the value of these Chapter 11 estates by intentionally conducting the process without a full and fair opportunity for all parties in interest to be heard on such a key issue.

with respect to the extension of the automatic stay to the various prepetition litigations (which is set to be heard starting on June 3, 2015) and the validity of the involuntary proceeding (as that trial is set to commence on August 3, 2015). In addition, the Debtors will also have ample time to make significant progress in their dispute with the National Retirement Fund, as hearings are slated to commence on May 27, 2015. Likewise, several courts have also found that litigation within the bankruptcy court (involving even a key dispute between parties) is not the type of contingency that justifies maintaining exclusivity. *See, e.g., Teachers Ins. & Annuity Ass'n of Am. v. Lake in the Woods (In re Lake in the Woods),* 10 B.R. 338, 345–46 (E.D. Mich. 1981) (holding that the pendency of litigation between the principal parties in the bankruptcy case did not favor an extension of exclusivity because even when resolved by the bankruptcy court, parties would be free to appeal the ruling and further prolong the reorganization proceedings).

17. There is also no reason why the Debtors' exclusivity extension request should be tied to the Examiner's final report. Negotiations leading to consensual resolution of Chapter 11 cases always occurs concurrent with the examination process, and can often obviate the need for the continuation of an examiner's work. The examination is also wholly independent from the plan process, and instead focuses only on one component of value. Regardless, the Examiner's ultimate findings will not be dispositive of any issues. Finally, an interim Examiner report was already filed on May 11, 2015, and two subsequent interim Examiner reports are to be filed on or about June 24, 2015 and August 8, 2015. These reports will give the Court and the parties-in-interest in these Chapter 11 Cases insight into the Examiner's investigation during the proposed three month extension period.

IV. *The Court Should Not Consider the Other Factors*

18. As stated above, this Court has broad discretion in determining whether to extend exclusivity to rely on, and prioritize, those factors it considers most applicable and important to the Chapter 11 Cases at hand. Here, the fact that the Debtors may or may not be paying their bills as they come due, the necessity for sufficient time to permit the Debtors to prepare adequate information, and the amount of time which has elapsed in the cases, should each be of less importance to the Debtors' request for an extension of the Exclusivity Periods as compared to the other factors discussed above, and therefore be less critical to the Court's analysis of the proper amount of time to extend the Exclusivity Periods.

CONCLUSION

19. Despite the Debtors' arguments to the contrary, no meaningful progress is being made in these Chapter 11 Cases to warrant a lengthy, six-month extension of the Exclusivity Periods. Indeed, the fact remains that the Debtors have not engaged in negotiations to build broad creditor consensus and have instead focused on following the lead CEC and its Sponsors.

20. A three month extension of the Exclusivity Periods is all that is appropriate at this point in order to determine whether the Debtors can advance these Chapter 11 Cases in a material way or whether other parties-in-interest should have the opportunity to advance these cases, themselves.

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WHEREFORE, for the reasons set forth above, the Ad Hoc Bank Lender Committee respectfully requests that the Exclusivity Periods be extended for three months, and for such other relief as this Court may deem just, proper and equitable.

Dated: May 13, 2015
Chicago, Illinois

Respectfully submitted,

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