

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

**ORDER (I) APPROVING PROTOCOL AND PROCEDURES
GOVERNING EXAMINER DISCOVERY, (II) APPROVING
ESTABLISHMENT OF A DOCUMENT DEPOSITORY, AND
(III) GRANTING RELATED RELIEF**

WHEREAS, on March 12, 2015, the Court entered its *Order Granting In Part and Denying In Part Motions to Appoint Examiner* [Docket No. 675] (the “Examiner Order”) in these chapter 11 cases (the “Chapter 11 Cases”).

WHEREAS, in accordance with the Examiner Order, the Office of the United States Trustee (the “U.S. Trustee”) filed a motion seeking approval of the Examiner [Docket No. 946] (the “Examiner Motion”), and on March 25, 2015, the Court held a hearing on the Examiner Motion and entered an order approving the appointment of Richard J. Davis as the Examiner (the “Examiner”) [Docket No. 992];

WHEREAS, pursuant to Paragraph 3 of the Examiner Order, the Examiner has been directed to investigate: (a) the transactions described as the “Challenged Transactions” in the *Debtors’ Motion for Entry of an Order (I) Appointing an Examiner and (II) Granting Related*

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>.

Relief [Docket No. 363] filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”); (b) the transactions described as the “Insider Transactions” in the proposed order accompanying the *Motion of Official Committee of Second Priority Noteholders for Appointment of Examiner with Access to and Authority to Disclose Privileged Materials* (the “Noteholder Committee”) [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”);

WHEREAS, pursuant to Paragraph 6 of the Examiner Order, the Examiner has been authorized without further order of the Court to take discovery pursuant to, *inter alia*, Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) of any person or entity through the issuance of subpoenas pursuant to Rule 45 of the Federal Rules of Civil Procedure (made applicable by Bankruptcy Rule 9016);

WHEREAS, on April 22, 2015, the Examiner filed a motion (the “Motion”)² pursuant to 11 U.S.C. §§ 105(a), 1106(a)(3)-(4) & (b), 1109(b), and Bankruptcy Rule 2004, for the entry of an order: (i) defining a protocol governing Examiner discovery (the “Discovery Protocol”); (ii) approving the establishment of a centralized document depository (the “Document Depository”); and (iii) granting related relief;

WHEREAS, the Examiner has consulted with counsel for the U.S. Trustee, the Debtors, the Noteholder Committee, the Statutory Unsecured Claimholders’ Committee of the Debtors (the “UCC,” and together with the Noteholder Committee, the “Committees”), the First Lien

² Capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the Motion and Protective Order (defined herein).

Bank Lender Committee,³ the First Lien Notes Committee,⁴ and certain other parties in interest with respect to the relief requested in the Motion; and

WHEREAS, after due deliberation and sufficient cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is granted solely to the extent set forth herein.

2. The Examiner is authorized to seek documents, materials and information from the Debtors, other parties in interest and third parties through, among other methods, the issuance of Bankruptcy Rule 2004 document and/or deposition subpoenas, requests for production of documents and witness interviews, to be conducted as set forth herein.

3. The Examiner will consult with counsel for the U.S. Trustee, Debtors, Committees, First Lien Bank Lender Committee, First Lien Notes Committee, and such other parties in interest as the Examiner deems appropriate in an effort to channel all requests for documents concerning the Investigation such parties in interest may have through the Examiner so that consolidated Bankruptcy Rule 2004 document subpoenas and requests can be issued. The Examiner will also consult with counsel for the U.S. Trustee, Debtors, Committees, First Lien Bank Lender Committee, First Lien Notes Committee and such other parties as the Examiner deems appropriate in identifying material, documents, testimony and other information (whether written or oral) in these Chapter 11 Cases concerning the Investigation (collectively, the "Discovery Material") to be obtained; provided, however, that both the Discovery Material to be

³ The composition of the First Lien Bank Lender Committee is set forth in the *Verified Statement of the Ad Hoc Committee of First Lien Bank Lenders Pursuant to Bankruptcy Rule 2019* [Docket No. 479], as may be supplemented from time to time.

⁴ The composition of the First Lien Notes Committee is set forth in the *Verified Statement of Kramer Levin Naftalis & Frankel LLP and Neal, Gerber & Eisenberg LLP Pursuant to Federal Rule of Bankruptcy Procedure 2019* [Docket No. 474], as has been supplemented [Docket No. 632] and may be supplemented further from time to time.

collected in connection with the Investigation and the particular method(s) of discovery to be employed by the Examiner in connection with the Investigation will be determined by the Examiner in his sole discretion or as otherwise ordered by the Court.

4. Pursuant to Paragraph 6 of the Examiner Order, the Examiner has been authorized without further order of the Court to take discovery pursuant to Bankruptcy Rule 2004, and pursuant to the *Order Granting in Part, and Denying in Part Without Prejudice Motion to take Rule 2004 Examinations of Certain Parties* dated May 11, 2015 [Docket No. 1521], the UCC has been authorized without further order of the Court to take discovery pursuant to Bankruptcy Rule 2004 of certain parties. Except for the Examiner and the UCC, all other parties must first obtain authority of the Court to take discovery pursuant to Bankruptcy Rule 2004. To the extent the Examiner declines to subpoena or request documents that counsel for any of the U.S. Trustee, Debtors, Committees, First Lien Bank Lender Committee, First Lien Notes Committee, Noteholder Committee and/or Ad Hoc Committee of 12.75% Second Lien Bondholders, believe are relevant to the Investigation, such party or parties may seek authority from the Court to do so pursuant to Bankruptcy Rule 2004 (and, in the case of the UCC, to the extent already granted such authority, may issue such subpoena or request), and any objection to any such subpoena or request may be resolved using the procedures for resolving disputes set forth in Paragraphs 17-19 herein. To the extent the Examiner enters into a compromise limiting the production of documents that counsel for U.S. Trustee, Debtors, Committees, First Lien Bank Lender Committee, First Lien Notes Committee and/or Ad Hoc Committee of 12.75% Second Lien Bondholders believe are relevant to the Investigation, such party or parties may request relief from the Court using the procedures for resolving disputes set forth in Paragraphs 17-19 herein. Nothing in this Order shall be deemed to restrict the rights of any Designating Party (as that term

is defined in the Protective Order) to object to any such subpoena or request for documents or any other Discovery Material on any grounds.

Establishment of a Depository for Documents

5. The Examiner will establish and maintain the Document Depository into which all non-Privileged (as defined below) documents provided to the Examiner or produced in the Chapter 11 Cases related to the Investigation and/or the subjects being investigated by the Examiner will be deposited. Access to the Document Depository will initially be granted to (i) the Examiner, (ii) the Debtors, (iii) the Committees, (iv) the First Lien Bank Lender Committee, (v) the First Lien Notes Committee, (vi) UMB Bank, N.A., solely in its capacity as successor indenture trustee for the Debtors' first lien notes (the "First Lien Notes Trustee"), (vii) Caesars Entertainment Corporation, (viii) the Ad Hoc Committee of 12.75% Second Lien Bondholders, (ix) TPG Global, LLC, (x) Apollo Global Management LLC, and each of their respective Advisors⁵ (collectively, the "Initial Depository Access Parties"), as soon as reasonably practicable following (i) the establishment of the Document Depository and (ii) the execution by each of the Initial Depository Access Parties of the agreement to be bound by the Agreed Protective Order to be entered in the Debtors' cases to which the Examiner is also a party (the "Protective Order"). The Document Depository will be established subject to the following procedures:

- a. The Document Depository will maintain documents in the form in which they are produced to the Examiner. The Examiner will not be responsible for loading such documents onto any other electronic platform or application, or for processing or formatting the documents in any way, provided, however, that the Examiner requires that all productions of documents requested by the Examiner be made in accordance with a production protocol to be circulated

⁵ The term "Advisors" refers to counsel, consultants, accountants, experts, auditors, examiners, financial advisors, appraisers or other agents or professionals of parties in interest (including, without limitation, the Examiner).

by the Examiner, which will include, among other things, production format guidelines.

- b. The Document Depository will store all non-Privileged documents that are produced to the Examiner and segregate documents designated as “Confidential” or “Advisors’ Eyes Only” from those that are not designated as “Confidential” or “Advisors’ Eyes Only.” Parties producing documents are responsible for clearly electronically segregating and identifying any “Confidential” or “Advisors’ Eyes Only” documents that they may produce to the Examiner separate from all other documents produced to the Examiner, at the time of such production. If “Confidential” or “Advisors’ Eyes Only” documents are produced to the Examiner without being clearly electronically segregated and identified as “Confidential” or “Advisors’ Eyes Only” documents, the Examiner will not be responsible for identifying or electronically separating and removing such “Confidential” or “Advisors’ Eyes Only” documents from the productions of documents in which they were commingled before depositing such productions into the Document Depository. Documents that have been properly segregated and identified as “Confidential” or “Advisors’ Eyes Only” will be stored in the Document Depository in a manner such that it is accessible only to those duly authorized representatives of Depository Designees (defined below) to whom “Confidential” and/or “Advisors’ Eyes Only” documents may be disclosed under the terms of the Protective Order.
- c. The Examiner or the Court may designate from time to time additional parties that are to be granted access to some or all of the documents upon signing the Acknowledgment to be bound by the terms of the Protective Order (each such party, a “Depository Designee”). The Examiner will provide written notice via e-mail to counsel for the Initial Depository Access Parties, each Designating Party (as defined in the Protective Order) and each existing Depository Designee of any such additional proposed Depository Designee. Any Initial Depository Access Party, Designating Party, or any existing Depository Designee will have no later than five (5) days from its receipt of such notice to inform the Examiner of its objection to any additional proposed Depository Designee. If no objection is received and the Examiner also does not object, the Examiner will provide the additional Depository Designee access to the Document Depository. If the Examiner, any Initial Depository Access Party, any Designating Party, or any existing Depository Designee timely objects to any additional proposed Depository Designee having access to the Document Depository, the Court (using the procedures for resolving disputes set forth in Paragraphs 17-19 herein) may resolve whether or not such additional proposed Depository Designee will be able to access the Document Depository, and until such resolution the proposed Depository Designee may not access the Document Depository.
- d. Subject to the terms of this Order, those persons who have to the satisfaction

of the Examiner identified themselves in writing as duly authorized Initial Depository Access Parties or Depository Designees, including, without limitation, Advisors of Initial Depository Access Parties and Depository Designees, will be given an account and password by the Examiner that will enable them to have access to all of the documents in the Document Depository to which they are permitted access under the terms of the Protective Order, provided that person has executed either the Non-Disclosure Declaration or the Acknowledgement attached to the Protective Order.

- e. The Examiner will promptly notify each Initial Depository Access Party and Depository Designee by e-mail of the addition of any documents to the Document Depository.

6. Following entry of this Order, the Debtors will serve a copy of this Order on the Master Service List in accordance with the Case Management Procedures Order. In addition, the Examiner will attach a copy of this Order and the Protective Order to any subpoena or request for documents by the Examiner. A copy of any document subpoena or request issued by the Examiner will be placed in the Document Depository within two business days after its issuance. A copy of any objection to any document subpoena or request received by the Examiner will be placed in the Document Depository within two business days of its receipt. A copy of any writing containing or memorializing any resolution of any objection to any document subpoena or request will be placed in the Document Depository within two business days after they have been agreed to by the Examiner.

7. Unless otherwise agreed to by the Examiner or ordered by the Court (using the procedures for resolving disputes set forth in Paragraphs 17-19 herein), witnesses or parties will have ten (10) days from the service of a subpoena seeking the production of documents (except as set forth in Paragraph 9 below) to: (a) begin producing, on a rolling basis, all documents responsive to the Examiner's subpoena; and/or (b) serve all objections and/or responses to the Examiner's subpoena on the Examiner, the Initial Depository Access Parties and any Depository Designees. Nothing in this Order will be construed as a waiver of any objection by any

Designating Party to any subpoena or request for documents.

8. Unless otherwise agreed by the Examiner or ordered by the Court (using the procedures for resolving disputes set forth in Paragraphs 17-19 herein), all document production must be completed no later than thirty (30) days following the later of (a) service of a subpoena by the Examiner (except as set forth in Paragraph 9 below) and (b) the resolution consensually or judicially of the Receiving Party's (as that term is defined in the Protective Order) objections.

9. Notwithstanding the time limitations for production of all documents set forth in Paragraphs 7 and 8 above, Designating Parties will not be subject to such time limitations with respect to the production of electronic documents. Unless otherwise agreed by the Examiner or ordered by the Court (using the procedures for resolving disputes set forth in Paragraphs 17-19 herein), witnesses or parties must produce electronic documents no later than thirty (30) days following the later of (a) receipt of a set of universal search terms, to be established by the Examiner after consultation with the Initial Depository Access Parties and such other parties in interest as the Examiner deems appropriate and (b) the resolution consensually or judicially of the Receiving Party's objections.

Privileged Discovery Material

10. Without causing any waiver of any attorney-client privilege, work-product immunity, or any other legally cognizable privilege or other protection (collectively, any "Privilege"), the Examiner will have access to all Discovery Material that is subject to any Privilege ("Privileged Discovery Material") that is within the possession, custody or control of the Debtors and their debtor and non-debtor affiliates and Advisors to the same extent as the Debtors are entitled to access, or could access, such Privileged Discovery Material; provided, however, (i) internal communications and (ii) internal work product, in each case shared solely

between and among Kirkland & Ellis LLP (“K&E”) personnel from the date of engagement of K&E by the Debtors on or about July 1, 2014, need not be produced or included on any Privilege log unless the Court orders otherwise (using the procedures for resolving disputes set forth in Paragraphs 17-19 herein), and the Examiner reserves the right to seek such Privileged Discovery Material or such Privilege log and K&E reserves the right to oppose any such request. The Examiner and his Advisors will maintain Privileged Discovery Material as confidential and with the same prudence, manner and care used by the Examiner and his Advisors for their other material that is subject to any Privilege. Privileged Discovery Material will not be deposited in the Document Depository; instead, the Examiner and his Advisors will maintain such Privileged Discovery Material in a depository that is completely separate from the Document Depository.

11. So as to avoid duplication, Privileged Discovery Material relevant to the Investigation may be obtained through the issuance of joint Bankruptcy Rule 2004 subpoenas by the Examiner and the Debtors, except to the extent the addressee of the subpoena is the Debtors, in which case a subpoena will be issued solely by the Examiner.

12. Pursuant to FED. R. EVID. 502(d), the production of Privileged Discovery Material to the Examiner will not result in any waiver of any applicable Privilege. In addition, the Examiner will not have the right independently to waive any Privilege. Nothing herein will preclude any party in interest from challenging at any time the designation of any Discovery Material as Privileged Discovery Material or from claiming that any Privilege applicable to Privileged Discovery Material has been waived in any manner or for any reason other than by virtue of its production to the Examiner and his Advisors.

13. If the Debtors or any other witness or party withholds any Discovery Material based upon an assertion of any Privilege, such witness or party must, no later than ten (10) days

following the date of service of a subpoena or document request, provide the Examiner with a notice describing any category of documents it intends to withhold, and must, no later than twenty (20) days following the date of service of such subpoena or document request, provide a Privilege log containing the information that would be required pursuant to Fed R. Civ. P. 26(b)(5) (except as set forth in Paragraph 14 below), if such Rule were applicable. Any dispute with respect to (i) Discovery Material withheld based upon an assertion of any Privilege, or (ii) the information provided in any Privilege log, will be resolved using the procedures for resolving disputes set forth in Paragraphs 17-19 herein.

14. Notwithstanding the time limitations for the production of a Privilege log set forth in Paragraph 13 above, if the Debtors or any other witness or party withholds any documents from its production of electronic documents based upon an assertion of Privilege, the party or witness asserting such Privilege will, no later than ten (10) days following the date of production of the electronic Discovery Material, provide the Examiner with a notice describing any category of electronic documents it intends to withhold based upon an assertion of Privilege, and must, no later than twenty (20) days following the date of production of the electronic Discovery Material, provide a Privilege log containing the information that would be required under Fed R. Civ. P. 26(b)(5), if such Rule were applicable. Any dispute with respect to (i) Discovery Material withheld based upon an assertion of any Privilege, or (ii) the information provided in any Privilege log, will be resolved using the procedures for resolving disputes set forth in Paragraphs 17-19 herein.

15. To the extent the Debtors or any other witness or party produces Privileged Discovery Material to the Examiner but not to other Initial Depository Access Parties or Depository Designees based on an assertion of Privilege, such party will, no later than ten (10)

days following the date of production, provide the Examiner with a notice describing any category of documents it intends to withhold from the other Initial Depository Access Parties or Depository Designees, and must, no later than twenty (20) days following the date of production, provide a Privilege log containing the information required under Fed R. Civ. P. 26(b)(5) for inclusion in the Document Depository. Any dispute with respect to (i) Discovery Material withheld based upon an assertion of any Privilege, or (ii) the information provided in any Privilege log, will be resolved using the procedures for resolving disputes set forth in Paragraphs 17-19 herein.

16. Privilege logs produced by the Debtors or any other party or witness will be placed in the Document Depository within two business days of their receipt by the Examiner.

Procedures for Resolving Discovery Disputes

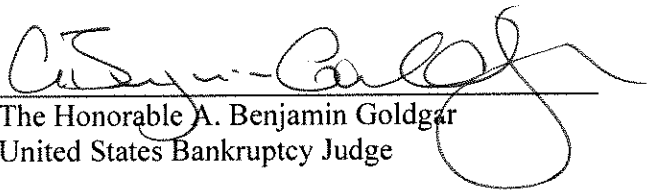
17. In the event of any discovery dispute, parties are to meet and confer in an attempt to resolve the dispute no later than five (5) business days after the dispute arises.

18. In the event the discovery dispute is not resolved by the meet and confer, the party seeking resolution of the dispute by the Court will file with the Court a motion not to exceed five (5) pages in length describing the dispute and seeking resolution of the matter. Any response filed ^{must} ~~with~~ not exceed five (5) pages in length. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements of this procedure.

[Order continues on following page]

19. Notice of such motion shall not be governed by the Case Management Procedures Order entered in these Chapter 11 Cases; instead, the notice requirements for motions pursuant to Local Bankruptcy Rule 9013-1 shall apply. Such motions may be noticed for hearing on any day the Court ordinarily hears motions in chapter 11 cases.

Dated: May 18, 2015


The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge