

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

CAESARS ENTERTAINMENT OPERATING
COMPANY, INC., et al.,¹

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

**RESPONSE OF THE AD HOC GROUP OF 5.75% AND 6.50% NOTES TO
EXAMINER'S MOTION FOR ORDER TEMPORARILY AUTHORIZING
FILING OF EXAMINER'S REPORT AND CERTAIN DOCUMENTS
UNDER SEAL AND RELATED PROCEDURES**

Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust (“Relative”), Trilogy Capital Management, LLC (as investment advisor for certain funds, including Trilogy Portfolio Company, LLC) (“Trilogy”), BBT Capital Management, LLC (as investment manager for each of BBT Fund, L.P. and BBT Master Fund, L.P.) (“BBT”), and Douglas Kidd (“Kidd”) (collectively, the “Ad Hoc Group of 5.75% and 6.50% Notes”), each a noteholder of Caesars Entertainment Operating Company, Inc., *et al.* (the “Debtors”), respectfully submit this response to the *Examiner’s Motion for Order Temporarily Authorizing the Filing of the Examiner’s Report and Certain Documents Under Seal and Related Procedures*, filed on December 23, 2015 [ECF No. 2834] (the “Motion”), and state as follows:²

Response

1. Given the number of confidentiality designations that have been asserted, Richard J. Davis, the Court-appointed examiner (the “Examiner”) of Caesars Entertainment Operating Company, Inc., *et al.* (collectively, the “Debtors”) is caught between a rock and a hard place and

¹ 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>.

² Capitalized terms not defined herein will have the meanings ascribed to them in the Motion.

has therefore filed the Motion to obtain the Court's guidance on how he should file the Final Report. In fact, nearly 99% of the 960,000 documents produced to the Examiner have been marked as "confidential" or "privileged." Yet the Examiner, who has conducted an extensive review of such documents, notes he "does not believe many of the confidentiality and/or privilege designations are well-founded." Motion ¶ 16.

2. Furthermore, the Debtors themselves advocated for a transparent process when they requested the examiner in the first instance:

An appropriately tailored independent examination likewise will provide creditors and other parties in interest with important information relevant to confirmation of any plan of reorganization based on the RSA, all in a timely, cost-effective manner. Moreover, an examiner, acting within a properly tailored scope centered around the finite number of transactions at issue and allegations that have already been plead, will maximize value by having the estate pay once for an examination by a party other than the Debtors, rather than for multiple, duplicative examinations by committees, creditors, and other parties in interest.

Debtors' Motion for an Order (A) Appointing An Examiner and (B) Granting Related Relief, filed February 13, 2015 [ECF No. 363], ¶3.

3. The reality is that the process the Examiner has proposed is time consuming and will result in further delay of information being conveyed to creditors and parties in interest. In fact, under the Examiner's proposed procedures, it is likely that a fully un-redacted Examiner Report would not be available prior to the Debtors seeking approval of a disclosure statement, or worse, confirmation of a plan. Where, as here, the proposed plan contains broad third-party releases, it is inappropriate to deny creditors access to the Examiner's conclusions regarding the potential liability of such third parties. Clearly, investors need such information to determine the value of the release and, without such information, lack sufficient knowledge to make an informed decision.

4. The burden should be on the party asserting the privilege to seek a ruling from this Court that its “Confidential” designations should be upheld prior to the issuance of the Examiner’s Report. Parties seeking to preserve their improper blanket designations should be obligated to come forward and seek affirmative relief from this Court before the Final Report is issued. Absent a finding that the designations in question are valid, the Examiner should be required to file an un-redacted Final Report.

Dated: January 13, 2016
Chicago, IL

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