

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: CAESARS ENTERTAINMENT OPERATING COMPANY, INC., <u>et al.</u> , ¹ Debtors.	Chapter 11 Case No. 15-01145 (ABG) (Jointly Administered)
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., <u>et al.</u> , Movant, -against- STATUTORY UNSECURED CLAIMHOLDERS' COMMITTEE, Respondent.	

**RESPONSE OF STATUTORY UNSECURED CLAIMHOLDERS'
COMMITTEE TO DEBTORS' MOTION TO EXTEND EXCLUSIVE
PERIODS TO FILE CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

To the Honorable A. Benjamin Goldgar, United States Bankruptcy Judge:

The statutory unsecured claimholders' committee (the "UCC") of Caesars Entertainment Operating Company, Inc., *et al.* (the "Debtors") respectfully submits this response (the "Response") to the *Debtors' Motion to Further Extend Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof*, dated October 7, 2015 [ECF No. 2404] (the "Exclusivity Motion"),² as follows:

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 used but not otherwise defined herein shall have the meanings ascribed to them in the Exclusivity Motion.

Response

1. The UCC Does Not Oppose Extending Exclusivity. The UCC does not oppose the Debtors' request for a four-month extension of the Exclusivity Periods. The UCC believes the Debtors should use such additional time to advance meaningful negotiations with unsecured claimholders and present this Court with a consensual plan supported by more than only those first lien noteholders that have stood with the Debtors since the inception of these cases and first lien bank debt holders that will receive payment in full as part of a deal releasing the Debtors' affiliates and insiders. While the Debtors have hardly made "substantial progress" with any other stakeholders in their capital structure over the last ten months, the Debtors have proposed an amended plan offering some additional consideration to all unsecured claimholders.

2. An extension of the Exclusivity Periods will afford the Debtors further opportunity to negotiate with all unsecured claimholders without the distraction of competing chapter 11 plans. The complicated nature of the Debtors' business due to the number of Debtors and non-debtors integrally involved in the same enterprise, with all the Debtors and non-debtors connected by the same management and Total Rewards program, makes the avoidance of competing plans particularly important at present.

3. The UCC's Lack of Opposition to Extending Exclusivity Is Not an Endorsement of the Debtors' and Their Non-Debtor Affiliates' Other Actions. Notwithstanding that the UCC does not oppose an extension of the Exclusivity Periods at this time, it has various complaints about the Debtors' and their non-debtor affiliates' other actions in these cases. For instance, the Examiner has been unable to meet his original timetable to deliver his report because of repeated delays by the Debtors and their non-debtor affiliates. *See, e.g., Examiner's Third Interim Report*, dated August 7, 2015 [ECF No. 2022] ¶ 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).”); *Examiner’s Fourth Interim Report*, dated September 21, 2015 [ECF No. 2236] ¶ 17 (“[T]here has been substantial delay in the production of documents to the Examiner from certain key parties.”); ¶ 19 (“Since August 7, the Examiner has received over 567,000 documents comprising almost 3 million pages.”); ¶ 24 (“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, meeting the current milestones will be, at best, very difficult.”).

4. Compounding this problem, entire document productions have been improperly wholesale designated “Examiner’s Eyes Only,” which prevents the UCC and other interested parties from reviewing the documents. This creates the specter of a tactic whereby the Debtors will ultimately race to confirmation before the UCC and other parties in interest can review the relevant documents, including those that relate to transactions not on the Examiner’s list.³ The UCC reserves all its rights to request sufficient time to evaluate whether any proposed plan fairly compensates the Debtors’ estates for having been denuded of valuable properties and other rights for many years prior to bankruptcy.

5. The UCC Does Not Endorse the Debtors’ Marketing Process. Despite repeated opposition from both statutory committees, the Debtors continue to profess their steadfast intention to pursue a process purportedly designed to “market test” the Debtors’ new value plan for the benefit of their estates. *See* Exclusivity Motion ¶¶ 22-24. As an initial matter,

³ For example, documents related to the Debtors’ tax returns have been produced in such a manner that the Examiner has been unable to reproduce them in the Examiner’s database. This has delayed for several months the ability of the UCC’s advisors to review these documents for the purpose of identifying whether the Internal Revenue Service has a claim that would serve as a basis for the avoidance of liens granted by the Debtors’ subsidiaries in connection with the 2008 leveraged buyout.

the Debtors' proposed market test fails to achieve its intended purpose; namely, to determine whether the alleged \$1.5 billion offered by Caesars Entertainment Corporation ("CEC") to settle all causes of action and retain equity ownership of the reorganized Debtors represents the best price obtainable by the Debtors' estates. Moreover, the value of the litigation is best determined by arms-length negotiations between the UCC and the non-debtors; not by the non-debtors having dictated the settlement through a special committee represented by the Debtors' attorneys.

6. Unlike a true "market test" that energizes competitive bidding and seeks to maximize value with the highest and best offer, the Debtors instead have created a process that renders the solicitation of a superior bid illusory because (a) it does not market the same assets as those with which the Debtors will emerge under their plan, and (b) no prospective purchaser can ever submit a bid that attributes value to any of the numerous benefits that CEC will retain under the plan as the result of its control position. These benefits include, among others, global releases of potential liability resulting from prepetition transfers, retention of a fully integrated Total Rewards Program and other shared services, and favorable consolidated tax group treatment. In order to create an even playing field, the Debtors must have prospective purchasers bid on only those features of the plan that do not include rights that inure solely to CEC. As currently formulated, the Debtors' proposed marketing process will never yield a fair indication of value.

7. In short, the UCC supports the Debtors' continued negotiations during exclusivity, but that support does not extend to the Debtors' various efforts to manufacture evidence through a "market test" process for a cramdown, new value hearing at confirmation.

Dated: October 14, 2015

By: /s/ Paul V. Possinger

Chicago, Illinois

One of its attorneys

Martin J. Bienenstock (*admitted pro hac vice*)
Judy G.Z. Liu (*admitted pro hac vice*)
Philip M. Abelson (*admitted pro hac vice*)
Vincent Indelicato (*admitted pro hac vice*)
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

-and-

Jeff J. Marwil (IL #6194054)
Mark K. Thomas (IL #6181453)
Paul V. Possinger (IL #6216704)
Brandon W. Levitan (IL #6303819)
PROSKAUER ROSE LLP
70 W. Madison St.
Chicago, Illinois 60602-4342
Tel: (312) 962-3550
Fax: (312) 962-3551

*Attorneys for the Statutory Unsecured
Claimholders' Committee of Caesars Entertainment
Operating Company, Inc., et al.*