

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)

Re: ECF No. 3195

**NOTEHOLDER COMMITTEE'S RESPONSE TO DEBTORS' MOTION FOR THE
ENTRY OF AN ORDER APPROVING APPOINTMENT OF A MEDIATOR TO
MEDIATE ISSUES RELATED TO A CHAPTER 11 PLAN OF REORGANIZATION**

The Official Committee of Second Priority Noteholders (the "Noteholder Committee") responds to *Debtors' Motion for the Entry of an Order Approving Appointment of a Mediator to Mediate Issues Related to a Chapter 11 Plan of Reorganization* [ECF No. 3195] (the "Mediation Motion").

1. The Noteholder Committee will support any steps that will facilitate the negotiation of a settlement of the claims of CEOC against CEC, CAC, and their respective affiliates and directors, that maximizes the value of the Debtors' estates, and that is fair and reasonable to all parties. For this reason, the Noteholder Committee supports the appointment of a sitting or retired bankruptcy judge agreed to by all of the parties, or in the absence of such agreement, a sitting bankruptcy judge selected by this Court, to serve as a mediator in these bankruptcy cases. So that the mediation can be informed by the facts and circumstances surrounding the claims of CEOC, any mediation should begin only after Examiner's report is

¹ The last four digits of the tax identification number for debtor Caesars Entertainment Operating Company, Inc. ("CEOC"), are 1623. A complete list of the Debtors may be obtained at <https://cases.primeclerk.com/CEOC>.

made available in an unredacted form to all participants in the mediation and the mediator.² In addition, it would seem essential that the mediator be authorized to consult with the Examiner should the mediator have any questions about the Examiner's report.

2. That said, it is premature for the Debtors to insist, as they do in the Mediation Motion, that the appointment of a mediator be conditioned upon the plan process moving full steam ahead. Whether or not a plan confirmation process should proceed while a mediator is working with the parties depends on many matters, none of which are resolved. For example, as this Court has previously ruled, the existing disclosure statement is woefully deficient as it contains blanks where essential information should be found. (Transcript of Nov. 18, 2015 hearing, at 36-37). In addition, CEOC's Special Governance Committee still has not determined if the agreements it previously negotiated with CEC in fact include fair consideration for the broad releases that are required by such agreements. The Special Governance Committee must make that determination before any confirmation process for a plan of reorganization that purports to implement these agreements can be commenced.

3. Apart from the forgoing, CEOC claims that it can justify its new value plan based upon a marketing process that its financial advisor has been conducting for months. The Noteholder Committee has informed CEOC that the process it designed does not actually market the property CEC would acquire in the Debtors new value plan, and that the process is so flawed, it will not yield any meaningful information. Absent compliance with the requirements of *Bank of America National Trust & Savings Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 454 (1999) and *In re Castleton Plaza, L.P.*, 707 F.3d 821, 823-24 (7th Cir. 2013), it would not be appropriate to commence a confirmation process for any new value plan.

² The Noteholder Committee and each of its members (some of which are plaintiffs in separate guarantee litigation) should be participants in any mediation.

4. Finally, the Debtors' position that litigation over plan matters should continue uninterrupted during mediation is inconsistent with the Debtors' insistence that litigation over the purported release of CEC's guarantees of CEOC indebtedness should be stayed for a period of 60 days following the release of the Examiner's report. *See* Adv. Case No. 15-00149, ECF No. 189, at ¶ 15 (according to the Debtors, "The injunction [of the CEC guarantee cases] would provide a brief – yet critical – 60-day window following the issuance of the Examiner report for the Debtors and other parties in interest to try to reach a consensual, value-maximizing plan"). If this Court believes that some form of suspension of the guarantee litigation is warranted because a break in the litigation will facilitate consensual agreement, it would seem that this Court, for the same reasons, should also suspend plan confirmation litigation for a comparable length of time.

5. In sum, the Noteholder Committee supports the appointment of a mediator, but without the precondition proposed by the Debtors that the plan confirmation process continue unabated.

Dated: February 10, 2016
Chicago, Illinois

Respectfully submitted,

/s/Timothy W. Hoffmann

Timothy W. Hoffmann (No. 6289756)

JONES DAY

77 West Wacker

Chicago, IL 60601-1692

Telephone: (312) 782-3939

Facsimile: (312) 782-8585

thoffmann@jonesday.com

-and-

Bruce Bennett

James O. Johnston

Sidney P. Levinson

Joshua M. Mester

JONES DAY

555 South Flower Street

Fiftieth Floor

Los Angeles, California 90071

Telephone: (213) 489-3939

Facsimile: (213) 243-2539

*Counsel for Official Committee of
Second Priority Noteholders*