

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

**RESPONSE OF STATUTORY UNSECURED CLAIMHOLDERS'  
COMMITTEE TO DEBTORS' MOTION FOR ENTRY OF ORDER APPROVING  
APPOINTMENT OF MEDIATOR TO MEDIATE CONSENSUAL CHAPTER 11 PLAN**

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 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"),<sup>2</sup> as follows:

<sup>1</sup> 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>.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Mediation Motion.

**RESPONSE**

1. From the outset of these chapter 11 cases, the UCC has negotiated with the Debtors towards the formulation of a consensual chapter 11 plan. In the absence of a consensual plan, the UCC fully supports mediation. The balance of this Response undertakes to identify the impediments to a consensual reorganization to date, and the available methods to eliminate those impediments from the mediation.

2. Impediments to Consensus. Since the very beginning, the Debtors and their owners attempted to dictate the transactions that should be investigated and the appropriate settlement payable to the Debtors. The incomplete list of controversial transactions and the hatching of the settlement in a special committee represented by attorneys beholden to the Debtors' owners eliminated the Debtors' credibility. The Examiner's investigation was further delayed and prolonged due to the Debtors' owners' last second document dumps. *See Examiner's Seventh Interim Report* ¶ 18, ECF No. 3203 ("To date, the Examiner has received more than 1.15 million documents, communications and other data . . . . Of the aforementioned total, 153,202 documents consisting of at least 1.1 million pages have been received by the Examiner since the issuance of the Sixth Interim Report . . . . Notably, of those documents recently produced, the Sponsors (Apollo and TPG) collectively provided 31,495 documents, consisting of 350,718 pages in the last two weeks of January.").

3. Next, the Debtors' owners' wholesale designations of documents as "privileged" and "confidential" threatened to deprive creditors of the very purpose of the Examiner—to provide sunlight. *See* Jan. 20, 2016 Hr'g Tr. 6:10–12 (Mr. McGuire: "The examiner's eyes-only designations, which are really the privilege designations, come largely from CEOC and CEC."); *Examiner's Motion for Order Temporarily Authorizing the Filings of the Examiner's Report and Certain Documents Under Seal and Related Procedures* ¶ 11, ECF No. 2834 ("As of December

21, 2015, close to 99% of the documents produced have been marked with varying levels of confidentiality and privilege designations, including Confidential, Attorney’s Eyes Only, and Examiner’s Eyes Only . . . .”). And now, the Debtors and their owners want to stay unsecured noteholders from establishing their claims against CEC, while they sprint to confirmation before creditors can procure derivative standing to sue and negotiate at arms’ length with CEC and its affiliates—all while the Debtors want to mediate in one room while creditors are stayed, and confirm in another room. The UCC’s support for mediation does not mean it supports mediation on this uneven playing field.

4. Steps to Eliminate Impediments to Consensus. To establish a mediation on a level playing field that creditors can trust, the UCC urges the Court to impose the following conditions to mediation (subject to subsequent revision by the Court as necessary or appropriate to further prospects for a successful mediation):

- Sunlight First. Mediation should not commence until (a) the process for resolving disputes related to assertions of confidentiality and privilege set forth in the Court’s *Amended Order Temporarily Authorizing The Filing of Redacted Versions of the Examiner’s Report and Certain Documents and Related Procedures*, dated February 1, 2016 [ECF No. 3187], has concluded and (b) the Examiner has filed the **final version** of his final report on the public docket.
- The Debtors Should Not Be Advantaged and Creditors Disadvantaged. The Debtors have already conceded that they want “parallel paths for mediation and confirmation” (Mediation Motion ¶ 5), meaning they want to mediate with the threat of cramdown hanging over creditors’ heads. Significantly, the Debtors’ proposed chapter 11 plan embeds a settlement of certain controversial transactions and releases all of their owners and affiliates from all liability. Accordingly, a confirmation hearing based on

that plan presupposes the creditors are not granted derivative standing to sue and negotiate at arms' length with the Debtors' owners. Therefore, the Court should not schedule a disclosure statement hearing prior to a fair opportunity for the UCC to move for derivative standing.<sup>3</sup>

- The Debtors' Owner Should Not Be Advantaged at the Expense of the Unsecured Noteholders. The Debtors' proposed "parallel path" sets the table for them to proceed to confirmation to, among other things, discharge unsecured noteholders' claims against CEC, while at the same time the unsecured noteholders are stayed from establishing their claims (or potentially establishing they have no claims). Just as the UCC should be able to negotiate at arms' length with CEC and its affiliates by being granted derivative standing, the unsecured noteholders should not be stayed from establishing their claims while the Debtors barrel ahead. Otherwise, unsecured noteholders will be disadvantaged in their negotiations with CEC. Additionally, the Ad Hoc Group of 5.75% and 6.50% Senior Unsecured Notes should be allowed to participate in the mediation.

5. The UCC believes these conditions will level the playing field before mediation begins and ensure the fairness and integrity of the process for all.

WHEREFORE the UCC respectfully requests that the Court (i) issue an order establishing mediation with the conditions set forth herein substantially in the form of **Exhibit B**

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<sup>3</sup> To the extent the Debtors move to schedule a disclosure statement hearing, the UCC requests the Court to assess such request again in light of the facts known to the Court and the Debtors' creditors at that time in the same manner the Court previously did at the omnibus hearing on November 18, 2015 (*see* Nov. 18, 2015 Hr'g Tr. 35–43, attached hereto as **Exhibit A**), taking into account that the confirmation hearing would, of necessity, include litigation over the settlement embedded in the Debtors' proposed plan as well as the governance that produced it, and would preclude the creditors' ability to negotiate a settlement at arms' length to procure a fair deal.

attached hereto, and (ii) grant the UCC such other and further relief as this Court deems just and proper.

Dated: February 10, 2016  
Chicago, Illinois

By: /s/ Paul V. Possinger  
One of its attorneys

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

**Exhibit A**

**November 18, 2015 Hearing Transcript Excerpt**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING )  
COMPANY, INC., et al., ) No. 15 B 01145  
 ) Chicago, Illinois  
 ) 1:30 p.m.  
Debtor. ) November 18, 2015

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
HONORABLE A. BENJAMIN GOLDFAR

APPEARANCES:

For the Debtors: Mr. David Seligman;  
Mr. Jeffrey Zeiger;  
Mr. David Zott;  
Mr. Joseph Graham;  
Ms. Nicole Greenblatt;  
Mr. Stephen Hackney;  
For the U.S. Trustee: Ms. Denise DeLaurent;  
For the Second Lien  
Noteholders Committee: Mr. Bruce Bennett;  
For NRF: Mr. Ronald Barliant;  
For Hilton Worldwide: Ms. Debra Dandeneau;  
For FERG/LLTQ: Mr. Nathan Rugg;  
For the Unsecured Creditors  
Committee: Mr. Paul Possinger;

1 APPEARANCES (Continued:)

2 For the 10.75 Notes: Mr. Eric Macey;  
3 For DLA Piper: Mr. David Arraham.  
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16 COURT REPORTER: Jerri Estelle, CSR, RPR  
17 U.S. Courthouse  
18 219 S. Dearborn  
Room 661  
Chicago, Illinois 60604

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1 what we have to decide, and then the concerns that  
2 Mr. Rugg raises will be resolved.

3 Okay. So we'll put this over to the  
4 January date.

5 MR. RUGG: Thank you, Your Honor.

6 MR. GRAHAM: Thank you, Your Honor.

7 MS. GREENBLATT: Good afternoon, Your  
8 Honor. Nicole Greenblatt from Kirkland on behalf of  
9 the debtors.

10 The next matter is our motion to seek  
11 approval of a disclosure statement scheduling order.

12 THE COURT: Right.

13 MS. GREENBLATT: Your Honor, we filed  
14 this motion to establish a schedule --

15 THE COURT: I know.

16 MS. GREENBLATT: -- to avoid  
17 preemptively reaching milestones in RSAs which are  
18 supported by two-thirds of our capital -- our \$18  
19 billion capital structure. The parties have  
20 consensually agreed to take a complex package of  
21 securities to facilitate our restructuring.

22 THE COURT: Right. I've read the  
23 motion.

24 MS. GREENBLATT: Okay.

25 THE COURT: The first lien parties,

1 broadly speaking, support the request you're making.  
2 Objecting, however, are the second lien noteholders  
3 and the unsecured claimholders, the 10.75 percent  
4 notes trustee and, significantly, the United States  
5 Trustee. And I have to say I agree with the  
6 objectors here. I think this motion is premature for  
7 some, though not quite all of the reasons that the  
8 objectors raise.

9 First of all, we don't have an  
10 examiner report yet. The examiner recently said that  
11 that report wouldn't be filed by December 15. He did  
12 not give any sort of expected date when the report  
13 would be issued. The task he has undertaken is,  
14 obviously, a monumental one.

15 As I recall from his last interim  
16 report, is it something like 6.8 million pages of  
17 documents, if memory serves, and 62 subpoenas he's  
18 issued, something like that. The kind of information  
19 that this report is going to supply is necessary to  
20 evaluate any disclosure statement.

21 There have been no final results of  
22 the special governance committee investigation. That  
23 information is needed as well.

24 In the most recent iteration of the  
25 disclosure statement on page 36, there are blanks

1 where the special governance committee's  
2 determination about the transfers of value would  
3 normally appear.

4 We really can't have people expected  
5 to find information they would need to vote on a plan  
6 and a disclosure statement that has blanks in it.

7 There are contingencies as well, as  
8 the unsecured claimholders point out. We've got the  
9 involuntary petition sitting out there. We've got  
10 the Section 105 appeal. The National Retirement Fund  
11 litigation is going on. There is this marketing  
12 process the debtors are engaged in. And then there  
13 are all of the lien challenges.

14 These are the contingencies that  
15 warranted the extension of the exclusivity periods  
16 that the debtors asked for, and those same  
17 contingencies also counsel against setting a  
18 disclosure statement hearing.

19 There are points the objectors make  
20 that I don't agree with. The second lien noteholders  
21 say discovery will be necessary in connection with  
22 any disclosure statement hearing. I am not inclined  
23 to allow that. It seems to me disclosure statements  
24 are judged on their face against the statutory  
25 standard.

1           The unsecured claimholders suggest  
2 that the debtors are really wanting to schedule a  
3 hearing and then adjourn it from time to time. That  
4 would be very interesting, if that was what they were  
5 asking for, but I don't think that's what they're  
6 asking for.

7           The RSAs require an order actually  
8 approving a disclosure statement by February 15th.  
9 And so the whole idea is to get that order, not just  
10 get a process started that they can continue until  
11 we're ready.

12           The debtors and their supporters here  
13 don't explain adequately why setting a disclosure  
14 statement hearing now makes sense with no examiner's  
15 report, and no date by which one is expected. The  
16 debtors acknowledge the importance -- their term --  
17 of the report to the process we're engaged in, but  
18 then they just let it go.

19           The debtors contend that setting a  
20 timetable "may encourage further discussions among  
21 the parties to potentially drive a consensual deal."  
22 So would setting a confirmation hearing the day after  
23 tomorrow, but I'm not going to be doing that either.

24           If we set that date, maybe people will  
25 rush on and talk to each other, but we're also going

1 to be doing a great deal of work that potentially  
2 will have been done for nothing. And I'm simply not  
3 a fan of hollow deadlines.

4 The only reason, it seems to me, and I  
5 think you just really confirmed this, the debtors are  
6 moving the set the disclosure statement hearing is  
7 that the RSAs require them to. Otherwise, I really  
8 find the motion kind of anemic. And, frankly, so is  
9 the first lien parties' supporting document.

10 As I have said since this case was  
11 filed, private deadlines in this case are all well  
12 and good, but they don't bind me. I have an  
13 obligation to run this case in a way that I think is  
14 sensible for everyone, and for the case itself, and I  
15 simply don't believe doing this now is sensible.

16 So I understand why the motion was  
17 brought, but I can't grant it. The motion is denied.

18 MS. GREENBLATT: Your Honor, if I may,  
19 if I could just follow up on that. Part of the  
20 relief we were seeking was a deviation from the case  
21 management procedures that would allow for  
22 preliminary objections, and then followed up by final  
23 objections. So just to be clear, we would never move  
24 forward with a disclosure statement without the  
25 examiner report. We have every intention of

1 including that as an exhibit.

2 We're simply trying to set a starting  
3 point. We agree with you, discovery is not  
4 appropriate for this. But we anticipate a lengthy  
5 discovery process leading up to confirmation, and we  
6 were hoping to establish a starting point.

7 THE COURT: Well, I don't think that's  
8 what you wanted to establish. The idea was to get  
9 this done by the middle of February. You know, the  
10 rules require what they require. Case management  
11 orders can be dispensed with. Rules really can't be,  
12 except to the extent they say they can.

13 I didn't take the motion as asking for  
14 what you're now saying, and I don't think any of the  
15 objectors did either. I think we took it as  
16 something very different.

17 But I am just not prepared to get us  
18 on the road to a disclosure statement hearing now. I  
19 don't think there's any point in doing it. There  
20 were deadlines suggested, as I recall. We're not  
21 going to be doing those deadlines. There's just no  
22 point.

23 MS. GREENBLATT: I think what we were  
24 seeking was a framework, so we could find a date  
25 before February 15th and work backwards in terms of

1 notice periods to keep the case on track.

2 THE COURT: Right, but the framework,  
3 as you just said, is tied to February 15. And I  
4 don't have any reason to think that's going to be  
5 practical at all. A great deal would have to be done  
6 right now, with none of the information I just  
7 mentioned. There is simply no reason to do that. We  
8 all have enough on our plates in this case. We're  
9 not going to be doing that.

10 MS. GREENBLATT: Just so we're clear,  
11 until the examiner report is filed, you're saying we  
12 can't even begin the process of filing a motion to  
13 seek further relief of the case management  
14 procedures?

15 THE COURT: Never say never, but if we  
16 knew, for example, that it was coming in a week or  
17 three weeks or even a month, and we really knew that  
18 the examiner was going to comply with that date, and,  
19 of course, there are other contingencies here, too,  
20 so, you know, then maybe we could get ramped up to  
21 something. But I don't even think we're in a  
22 position to talk about that yet. And I have this  
23 funny feeling that the U.S. Trustee is going to agree  
24 with me.

25 MS. GREENBLATT: Obviously.

1 MS. DeLAURENT: Yes, Your Honor.  
2 Denise DeLaurent on behalf of the United States  
3 Trustee. I mean, it's a central issue in this case.  
4 People are waiting for it. It's a very rush job.

5 THE COURT: Oh, yes.

6 MS. DeLAURENT: And a lot of things  
7 are being done to get it done.

8 THE COURT: I in no way meant to fault  
9 the examiner. I wouldn't be in his shoes for the  
10 world.

11 MS. DeLAURENT: Once we get a report,  
12 my hope is that people will read it, spend time, and  
13 negotiate.

14 THE COURT: That would be nice, too.

15 MS. DeLAURENT: Which is also going to  
16 take time.

17 THE COURT: Yes.

18 MS. DeLAURENT: I mean, that's the  
19 issue that I have with pushing all this forward. At  
20 some point, if people don't do that, and we have the  
21 report out there for a week or two, we'll be moving  
22 forward. And if they're still going to fight,  
23 they're still going to fight.

24 But, I mean, I think that's the point  
25 of the examiner report here. And, you know, I can't

1 see spending time and money and effort in this case  
2 before we really get there.

3 THE COURT: No, I agree completely.  
4 So the motion is denied.

5 MS. GREENBLATT: Thank you.

6 MR. HACKNEY: Good morning, Your  
7 Honor, or good afternoon, Your Honor, Stephen Hackney  
8 on behalf the debtors.

9 MR. BARLIANT: Ronald Barliant on  
10 behalf of NRF.

11 THE COURT: Good afternoon.

12 Last week, I denied the debtors' two  
13 motions to enforce the automatic stay against the  
14 National Retirement Fund and its board of trustees.  
15 I denied the motions because the undisputed facts  
16 showed the stay hadn't been violated.

17 There are two NRF matters remaining.  
18 Both arise out of an adversary proceeding the debtors  
19 filed against the NRF board and something the debtors  
20 call "the pension plan" of the NRF. The adversary  
21 complaint has three counts. Count I requests a  
22 declaratory judgment that the NRF's notice and demand  
23 for payment violated the automatic stay. Count II  
24 requests a declaratory judgment that the notice and  
25 payment demand doesn't apply to CEOC or its debtor

**Exhibit B**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , <sup>1</sup>	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

**ORDER APPROVING APPOINTMENT OF A MEDIATOR TO  
MEDIATE ISSUES RELATED TO A CHAPTER 11 PLAN OR REORGANIZATION**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order appointing a sitting bankruptcy judge to mediate issues related to a chapter 11 plan of reorganization in these chapter 11 cases, all as more fully set forth in the Motion, the responses to the Motion; a hearing having been held to consider the Motion (the “Hearing”); and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. \_\_\_\_\_ is appointed a mediator for all issues surrounding a chapter 11 plan of reorganization in these chapter 11 cases.
3. Mediation will not commence until the Examiner has filed the final version of his final report on the public docket.

<sup>1</sup> 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>.

<sup>2</sup> Each capitalized term used but not otherwise defined herein shall have the meaning ascribed thereto in the Motion.

4. This Order will not prejudice any party from seeking derivative standing on behalf of the Debtors' estates to prosecute any claims against CEC and its affiliates or any other party.

5. The "relevant key stakeholders" entitled to attend and participate in the mediation will include:

- a. The Debtors,
- b. The Ad Hoc Group of First Lien Bank Lenders,
- c. The Ad Hoc Group of First Lien Noteholders,
- d. The Official Committee of Second Priority Noteholders,
- e. The Statutory Committee of Unsecured Claimholders,
- f. Wilmington Trust, N.A., solely in its capacity as indenture trustee for the Debtors' subsidiary-guaranteed 10.75% unsecured notes,
- g. Law Debenture Trust Company of New York, solely in its capacity as indenture trustee for the Debtors' 5.75% and 6.50% senior unsecured notes,
- h. The Ad Hoc Group of 5.75% and 6.50% Senior Unsecured Notes, and
- i. CEC.

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HON. A. BENJAMIN GOLDGAR  
UNITED STATES BANKRUPTCY JUDGE

Dated: \_\_\_\_\_  
Chicago, Illinois