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 3335

OBJECTION OF OFFICIAL COMMITTEE OF SECOND PRIORITY NOTEHOLDERS TO DEBTORS' MOTION FOR ENTRY OF A SCHEDULING ORDER REGARDING THE DISCLOSURE STATEMENT HEARING

The Official Committee of Second Priority Noteholders (the "Noteholder Committee") objects to the *Debtors' Motion For Entry Of A Scheduling Order* [ECF 3335] (the "Motion"), as modified by the subsequently-filed proposed order [ECF 3342] (the "Order") and revised "Confirmation Schedule" [ECF 3343] (the "Confirmation Schedule").

1. By the Motion, the Debtors request that the Court establish a schedule for consideration of their Disclosure Statement and fix "initial dates and deadlines in connection with discovery related to the confirmation of their proposed Plan." Mot. at 1. The Debtors, however, have filed neither the Plan they will seek to confirm nor a Disclosure Statement relating to that Plan, and they apparently do not intend to do so until April 4 (two-and-a-half weeks *after* the hearing on the Motion). Order ¶ 3.

2. Thus, before any party has even had the chance to review the relevant Plan and related Disclosure Statement, the Debtors ask the Court to impose a severely-constrained (and

[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.

admittedly "somewhat unusual") timetable that, among other things, would provide parties with the bare minimum of twenty-eight days to assess and object to a massive disclosure document that will include brand new information regarding the Examiner's report (which has not been issued), the recommendation of the Governance Committee concerning the appropriateness of the agreements previously negotiated with CEC, the Governance Committee's report on its investigation (the results of which have not been disclosed), and the "marketing" process orchestrated to enable the Debtors to proceed with an adversarial "new value" plan, not to mention revisions to the Plan resulting from those critical new developments. Order ¶ 2; Mot. ¶¶ 2, 3, 9 and nn.2, 3. Even worse, the Debtors would provide the Court with just seven days to consider disclosure statement objections and a mere two business days for the Court and parties to read and digest the Debtors' replies to those objections. Order ¶ 2; Mot. ¶ 9.

3. Since neither the relevant Plan nor a Disclosure Statement describing the relevant Plan is available for anyone to review, it is impossible to assess what deadlines might be reasonable. The procedure proposed in the Motion is not just "somewhat unusual"; it clearly puts the cart before the horse. A case of this size and complexity calls out for a more rational and deliberate process, particularly given that the Debtors apparently are planning for a litigation battle royale (50 depositions, 60 hours of trial, etc.) over the attempted cramdown of one of the largest new value plans in the history of the Bankruptcy Code. Confirmation Schedule at 1-5.

4. There Is No Basis For A Truncated Schedule. To start, the Debtors purport to address a problem that does not exist. They say that their proposed schedule "will serve as a critical backdrop to focus parties on negotiating what the Debtors hope will be a consensual resolution of these cases" and is "critically important to maximizing use of the 60-day stay of

guaranty litigation ordered by the Court as well as the remaining time under the Debtors' statutory exclusivity periods." Mot. ¶ 1. This makes no sense.

5. The first part of the argument is a *non sequitur*. Scheduling a disclosure statement hearing before the Disclosure Statement and Plan have even been filed will do nothing to facilitate negotiations, enhance mediation, or otherwise "focus" the parties. Indeed, now that the Court has imposed a temporary stay to postpone trials scheduled to commence next week, it is neither logical nor fair to accelerate litigation on plan matters at a time when guarantee creditors are enjoined from pursuing their claims against non-debtor CEC.

6. In any event, the Debtors have plenty of time remaining in their statutory exclusivity periods to conduct the orderly process contemplated by the Bankruptcy Code and Rules, which envision the filing of a proposed plan and disclosure statement, *then* the scheduling of a hearing to consider adequacy of the disclosure statement and related solicitation matters, and *then* the establishment of dates, deadlines and procedures regarding confirmation.

7. The Debtors repeatedly claim that their "proposed timeline is necessary to enable the Debtors to proceed to confirmation on a less than fully consensual basis within the Exclusivity Periods." *Id.* ¶ 2; *id.* ¶ 3 ("the Debtors must act now to establish a schedule that will position these cases for resolution – whether on a fully consensual basis or not – within the Exclusivity Periods"); *id.* ¶ 13 ("For the Exclusivity Periods to have meaning, the Debtors must be permitted to prosecute confirmation of the Debtors' proposed Plan before the expiration of the Exclusivity Periods on September 15."). The schedule they desire (most of which is not now before the Court) would culminate in a confirmation hearing that begins on August 29, half a month before the exclusivity period ends. Confirmation Schedule at 5.

8. But there is nothing prejudicial about termination of plan exclusivity during (or even before) the confirmation hearing. As a practical matter, any competing plan filed after exclusivity ends would be on a schedule many months behind that applicable to the Debtors' Plan, and a competing plan therefore could not possibly interfere with the Debtors' efforts to confirm their Plan. Even if a competing plan and accompanying disclosure statement were filed on September 16, immediately after expiration of the exclusivity period, it would be impossible for the proponent to obtain approval of the disclosure statement, solicit votes, and advance to confirmation until after the new year. The Debtors thus could have a confirmation hearing anytime in 2016 without threat from a competing plan.

9. <u>The Proposed Objection Deadline Is Not Reasonable</u>. The Debtors propose to file a Disclosure Statement on April 4. Order ¶ 3. They anticipate that the Disclosure Statement will summarize the Examiner's findings and conclusions. *Id.* ¶¶ 2, 3 and nn.2, 3. The Examiner's initial report, however, will be redacted in potentially material ways, and creditors will have no way of knowing whether the Disclosure Statement fully and accurately summarizes the report until the final, unredacted version is made public. Consequently, the period for objections to the Disclosure Statement should not commence until the Examiner's report is unmasked and filed on the docket.

10. The objection period also should not commence until the Debtors file a complete Disclosure Statement without material gaps and omissions. In this regard, it is worth recalling that each of the Debtors' prior Disclosure Statements lacked basic information, including –

- Creditor recoveries under the proposed plan. [ECF 2403 at 8, 53-58]
- The marketing process that purportedly justifies CEC's retention of ownership of the Debtors via a "new value" plan. *Id.* at 9, 40-42.

- The results of the Governance Committee's investigation. *Id.* at 4, 36-37.
- The results of the Examiner's investigation. *Id.* at 37-38.
- A valuation of the Debtors. *Id.* at 84 (and missing Exhibit H).
- Financial projections for the reorganized debtors. *Id.* at 84 (and missing Exhibit E).
- A liquidation analysis. *Id.* at 84 (and missing Exhibit F).

Creditors should not have to shoot at a moving target. The period for objecting to the Disclosure Statement should begin only when the Debtors' disclosures are in the form that they actually propose to disseminate to parties in interest with solicitation materials.

11. Thus, the Court should defer scheduling the hearing on the Disclosure Statement, and fixing the period of time to object, until the Debtors have filed a complete Disclosure Statement and Plan (with no material blanks). It may well be that creditors will need more than twenty-eight days to review and object to the Disclosure Statement, the prior version of which ran for 146 single-spaced pages and contemplated nine voluminous exhibits. [ECF 2403] A twenty-eight day objection period is the absolute minimum required by Bankruptcy Rule 2002(b). It is appropriate in many cases. However, as the Debtors frequently have reminded the Court, this is not a typical case. In recently seeking the maximum period of plan exclusivity provided by the Bankruptcy Code, the Debtors asserted yet again that their case is one of "immense size, complexity, and contentiousness." [ECF 3197 ¶ 11] Having now been provided that maximum exclusivity extension, the Debtors should provide creditors a reasonable and sufficient period to review and object to the voluminous disclosure materials.

12. Accordingly, a more sensible way to proceed would be to continue the hearing on the Motion until the April 13, 2016, omnibus hearing. Rather than waiting until April 4 to file

their Disclosure Statement and Plan, the Debtors should file those documents on March 30, two weeks in advance of that hearing. The Debtors should have no problem meeting that deadline, which is one week *later* than the March 23 filing date initially proposed in the Motion. Mot. ¶ 2, n.2. Parties could then file supplemental objections to the Motion on or before April 6, at which time they will be in a better position to assess the reasonable amount of time needed to prepare objections to the Disclosure Statement and to advise the Court whether the proposed Disclosure Statement is sufficiently complete to allow the objection clock to begin to run.

13. The Proposed Deadline For Preliminary Document Requests Is Not Appropriate. The Debtors also ask the Court to require that initial document requests regarding confirmation of the Plan be served by April 11, just one week after they file their Plan and a full month before the Debtors propose that the Court even consider adequacy of the Disclosure Statement. Order ¶ 4. This is unprecedented and inappropriate for several reasons.

14. First, creditors cannot make informed document requests until they read and assess the Plan, the Disclosure Statement, the Examiner's report, and the report of the Governance Committee.

15. Second, a deadline for "preliminary" document requests – particularly a deadline established before a Disclosure Statement is filed and approved – must not be preclusive. Creditors forced to seek documents in the face of incomplete information should have the right to revise and supplement their requests as needed and necessary. The Debtors, however, desire to set a trap and have the Court order that additional discovery requests be limited "solely to material modifications in the solicitation versions of the Plan." Confirmation Schedule at 1. Nothing in the Bankruptcy Rules or the Federal Rules of Civil Procedure limits discovery in this manner, which would, among other problems, deprive objecting parties of any opportunity to

pursue follow up document discovery based on information learned through initial document requests, depositions, or otherwise.

16. Third, the Debtors request that the Court order the two official committees of creditors (but no other objecting or supporting parties) to "serve one set of coordinated document requests." Order ¶ 4. While the Noteholder Committee certainly will endeavor to minimize duplication, this is not appropriate. For one thing, coordination under the Debtors' proposed schedule (which calls for document requests to be made within seven days of the filing of the Plan) would be impossible. It will take seven days (and then some) to read and digest the Plan and Disclosure Statement and exhibits thereto, much less incorporate that information into document requests and coordinate with another committee. For another thing, the Noteholder Committee and the Unsecured Claimholders' Committee (the "UCC") may have different objections to the Plan, and thus different discovery objectives. Indeed, the interests of the Noteholder Committee and the UCC are not fully aligned, as evidenced by the fact that the UCC has sued members of the Noteholder Committee seeking to deprive them of the benefits of the treatment afforded to secured creditors under section 1111(b) of the Bankruptcy Code.

17. Any Enlargement Of Page Limitations Should Be Reciprocal. The Debtors request that the Court authorize a forty-page motion in support of their Disclosure Statement. Order ¶ 7. Any such waiver of applicable page limitations should be accompanied by a reciprocal waiver of page limitations applicable to Disclosure Statement objections. Indeed, the Debtors ask the Court to require that each such objection specify "a proposed modification to the Disclosure Statement or materials comprising the Solicitation Package that would resolve such objection." Mot., Ex. A at 2. This might require an even greater enlargement of the page

limitations for objections; it certainly warrants an enlargement commensurate with that granted to the Debtors.

18. Reservation Of Rights As To "Confirmation Schedule." The Confirmation Schedule sets forth a laundry list of proposed dates, deadlines, rules and procedures regarding confirmation of the Plan. Many elements of that schedule are unwieldy, unrealistic, prejudicial and objectionable. To give just two examples, the Debtors propose an unreasonably-short 32-day period between completion of document production responsive to initial requests (May 30) and the end of fact discovery (July 1) and a deadline for motions to compel just one week after completion of production and prior to the production of privilege logs (June 10). Confirmation Schedule at 1-2.

19. The Debtors, however, have stated that they do not seek approval of that schedule at this time, but will do so at the hearing on approval of the Disclosure Statement. *Id.* ¶¶ 2, 13, 14. Accordingly, the Noteholder Committee will address its many concerns regarding the schedule with the Debtors, and reserves all rights to object to the Debtors' proposals when the matter is properly before the Court.

20. Conclusion. For all of these reasons, the Court should deny the Motion and order that (a) the period for objections to the Disclosure Statement shall not commence until the final, unredacted version of the Examiner's report is made public and the Debtors have filed a Disclosure Statement without material gaps and omissions; (b) subject to the filing of the Debtors' Plan and Disclosure Statement no later than March 30, 2016, a further hearing on the Motion shall be scheduled on April 13, 2016, at which time the Court will determine whether and when to schedule the Disclosure Statement hearing and fix the period of time to object to the Disclosure Statement; (c) no limitation on discovery shall be imposed at this time; and

(d) objections to the Disclosure Statement may be of the same length as that authorized for the Debtors' motion to approve the Disclosure Statement.

Dated: March 9, 2016
Chicago, Illinois

Respectfully submitted,

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