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)
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al., Movant, -against- STATUTORY UNSECURED CLAIMHOLDERS' COMMITTEE, Respondent.	

OBJECTION OF STATUTORY UNSECURED CLAIMHOLDERS' COMMITTEE TO DEBTORS' MOTION TO SCHEDULE DISCLOSURE STATEMENT HEARING

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 objection (the "Objection") to the *Debtors' Motion for Entry of a Scheduling Order to (A) Schedule a Hearing to Consider Approval of the Debtors' Disclosure Statement, (B) Establish the Deadline for Filing Objections to the Disclosure Statement and Replies Thereto, (C) Set Certain Initial Plan Confirmation Discovery Dates, and (D) Granting Related Relief* [ECF No. 3335] (the "Motion"), and avers 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.

Objection

1. The Debtors concede their Motion is "unusual" and certain contingencies must be determined before any chapter 11 plan can be considered. Motion ¶ 3. But they also note this Court's admonitions at the last omnibus hearing that these cases are nearing a critical juncture. That is undoubtedly true, as several pieces of the puzzle of these complex cases will fall into place shortly—the redacted Examiner report will be filed; a mediation process will begin; a revised plan and disclosure statement will be filed; decisions on the involuntary trial, the UCC's lien challenge standing motion, and the 1111(b) trial are expected; and the results of the Debtors' purported Special Governance Committee investigation will be released. To date, however, none of these things has occurred. Indeed, in denying the Debtors' first request to schedule a disclosure statement hearing, the Court noted the existence of many of these same contingencies.

2. And while some of these contingencies may be resolved in the near future, this Court and the parties are still largely working in a vacuum. By the time this Court considers the Motion, the Examiner's report (which the UCC understands may be nearly 1,000 pages long) will have just been filed with an uncertain degree of redactions, the plan and disclosure statement will not be on file,[2] the mediation will not have begun, the statutory committees will not have had the time to file motions for derivative standing to prosecute the Debtors' estates avoidance actions and actions for breach of fiduciary duties,[3] and the Debtors' Special Governance Committee investigation will remain undisclosed. Nonetheless, the Debtors seek to impose a compressed confirmation schedule on the parties, including the facially unworkable request that

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[2] As of now, the UCC understands that the plan the Debtors intend to file has no support from any of the major constituencies, including the first lien holders.

[3] The UCC reserves all rights to request that the Court modify any such plan schedule at a later date to ensure that its derivative standing motions receive a full and fair opportunity to be heard on the merits.

plan confirmation discovery be coordinated among two committees and served within seven days of the filing of an unknown plan and disclosure statement.

3. To justify their request, the Debtors point to the forthcoming expiration of the exclusivity periods and note that such periods were designed to provide a debtor with a "reasonable time" to confirm a plan. Motion ¶ 13. There are many obvious flaws with this argument. First, it was the Debtors who requested the examination that led to the inability of the statutory committees to request and direct discovery on the controversial transactions whose potential avoidance is pivotal to any chapter 11 plan. It was the Debtors' owners that dumped thousands of documents on the Examiner at the last minute, delayed depositions, and labeled virtually all discovery either confidential or privileged, which delayed the publication of the Examiner's investigation they requested. Now they are trying to capitalize on their tactics. Second, it was the Debtors and their owners who decided to settle only with first lienholders being paid virtually in full. In over a year, the Debtors have not procured settlements with the creditors taking losses who are the real parties in interest in these chapter 11 cases. Third, the expiration of exclusivity does not enable any party to propose a plan using property of the Debtors' non-debtor affiliates (which is what the Debtors proposed in their first two chapter 11 plans) to maintain the entire Caesars enterprise. Accordingly, the Debtors and their owners retain that potential advantage regardless of exclusivity. Fourth, the Debtors' businesses are not melting ice cubes—in fact, financial performance has improved. Thus, expiration of exclusivity is not a meritorious reason to leap into the chasm of plan confirmation (and litigation related thereto) before the full story is known to all impacted parties.

4. Only recently, the Debtors successfully implored the Court to enjoin bondholder litigation against their owner, Caesars Entertainment Corporation ("CEC"), so the Debtors could

work on a consensual reorganization.[4] The Motion exposes the Debtors' ploy. Having obtained their stay, but still without any deal with the enjoined bondholders, the Debtors want to race to a confirmation hearing before the Court can know whether the claims against CEC are meritorious. Put differently, the Debtors believe creditors should be enjoined from proving their claims against non-debtors, while the Debtors should be free to prove their entitlement to confirmation while the bondholders are restrained and delayed.

5. As the UCC warned early on,[5] the Debtors' playbook is to impose on creditors a settlement devised by the Debtors' owners, and to do it through a "settlement hearing" rather than negotiate or litigate at arms-length to settle all the avoidance actions and other actions against the Debtors' non-debtor affiliates. The Debtors never advised the Court that they intended their request for an examiner to secure a race to the confirmation of a plan embedding such settlement, all the while effectively barring the statutory committees from prosecuting at arms-length the estate actions against the Debtors' affiliates.

6. Accordingly, as further explained below, the Court should deny the Motion given that (a) the same contingencies that counseled against granting the Debtors' first request to set a disclosure statement hearing remain outstanding, (b) the unnecessarily rushed proposed schedule is highly prejudicial to the UCC and other constituencies, and (c) the Bankruptcy Code does not require a chapter 11 plan to be confirmed during the exclusive periods.

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[4] Order Granting in Part and Continuing in Part Debtors' Motion to Stay or in the Alternative for Injunctive Relief, *Caesars Entm't Operating Co., Inc. v. BOKF, N.A.* (*In re Caesars Entm't Operating Co., Inc.*), Adv. No. 15-00149 (Bankr. N.D. Ill. Feb. 26, 2016), ECF No. 214.

[5] Objection of Statutory Unsecured Claimholders' Committee of Caesars Entertainment Operating Company, Inc., Et Al. to Debtors' Motion for Final Order Authorizing Use of Cash Collateral, ECF No. 452.

7. Significant Contingencies Remain Outstanding. In denying the Debtors' first request to schedule a disclosure statement hearing, the Court stated that there "are [] contingencies that warranted the extension of the exclusivity periods that the debtors asked for, and those same contingencies also counsel against setting a disclosure statement hearing." Nov. 18, 2015 Hr'g Tr. 37:14–18. To name a few, material uncertainties remain pending in respect of: (i) the release of the Examiner report (and then the fully unredacted version); (ii) the filing of a new plan and disclosure statement; (iii) the completion of the Special Governance Committee's investigation; (iv) mediation among the key parties; (v) the pending challenges against liens encumbering substantial estate assets; (vi) decisions on the involuntary trial and the 1111(b) trial; (vii) the existence and treatment of deficiency claims at subsidiary Debtors; and (viii) the CEC guarantee litigation, which is currently set to resume on May 9, 2016. Indeed, some of these contingencies were cited by the Debtors in their last request to extend the exclusive periods.[6] The granting of such extension should, again, counsel against setting a disclosure statement hearing at this time, because nothing has really changed since the extension was granted a few weeks ago.

8. Notably, at the time the Court denied the Debtors' first request to schedule a disclosure statement hearing, a plan and disclosure statement had been on file for over a month, albeit with certain material information missing. The Court noted as much: "In the most recent iteration of the disclosure statement[,] there are blanks where the Special Governance Committee's determination about the transfers of value would normally appear. We really can't have people expected to find information they would need to vote on a plan and disclosure statement that has blanks in it." Nov. 18, 2015 Hr'g Tr. 36:24–37:06. Now, not only are the

[6] *See* Debtors' Motion to Further Extend Their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof ¶¶ 22–29, ECF No. 3197.

same significant contingencies outstanding, but the Debtors also want the Court to schedule the hearing on a disclosure statement the Court and the parties will not even see for weeks after the hearing on the Motion, without any guarantee it will not contain similar blanks, camouflage the blanks by simply omitting critical information, or contain other defects.[7] Moreover, the UCC and other parties in interest might not have seen the final, unredacted Examiner report or the results of the Special Governance Committee's investigation sufficiently in advance of the Debtors' proposed disclosure statement objection deadline, and as a result will not have complete information to evaluate the adequacy of disclosure on a timely basis. Accordingly, setting a disclosure statement hearing and discovery schedule now would be premature.

9. The Unnecessarily Rushed Proposed Disclosure Statement Schedule is Highly Prejudicial to the UCC and Other Constituencies.[8] The proposed schedule requires that the parties submit all consolidated document requests relating to plan confirmation in seven days from the filing of the plan and disclosure statement, before a disclosure statement is even approved. Motion ¶ 6.[9] In this unreasonably tight period, the two statutory committees would have the additional hurdle of having to "coordinate and ensure that the initial document requests are not redundant or duplicative and serve one set of consolidate requests on Debtors." Proposed

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[7] Even if the Debtors try to assure there will be no such blanks in the disclosure statement set to be filed on April 4, 2016, the parties cannot be certain of that until they have the ability to review the disclosure statement. If the Court grants the Motion, but it later turns out there are several blanks in the disclosure statement, the parties would be put in the impossible position of having to rush to Court to extend the discovery and other deadlines while at the same time scrambling to finalize discovery requests in the mere seven days after the filing of the disclosure statement and plan.

[8] The Debtors attached a schedule of additional solicitation, discovery and briefing dates as Exhibit B to the Motion, but noted that they are not seeking approval of such schedule at this time. Motion ¶ 2. Accordingly, the UCC does not address the schedule in Exhibit B in this Objection, but reserves all its rights to object to it at the appropriate time.

[9] The Debtors' initial request to schedule a disclosure statement hearing [ECF No. 2532] did not even include a discovery request deadline.

Scheduling Order ¶ 4, ECF No. 3342. If the Debtors wish to "avoid service of multiple, duplicative document requests and the attendant costs and other burdens," Motion ¶ 6, it is not clear why, for example, they would not require various constituencies holding first lien debt to coordinate their discovery requests, as well.[10]

10. It cannot be plausibly disputed that the compressed schedule is wholly insufficient and prejudicial to the UCC, considering the current stage and complexity of these chapter 11 cases. The Debtors propose to file a new plan and disclosure statement by April 4, 2016. The UCC will then have to (i) review the plan and disclosure statement, (ii) identify issues, (iii) formulate and research plan objections, (iv) confer with the UCC members and prepare a list of documents it requires for discovery related to its plan objections, (iv) send such list to the Noteholders' Committee and receive and review its list, (v) coordinate with the Noteholders' Committee and resolve any disputes regarding the consolidated initial document request, and (vi) finalize the initial document request and deliver it to the Debtors—all in *seven days*, and all while simultaneously reviewing and analyzing the hundreds (possibly thousands) of pages of the initial Examiner report[11] and Special Governance Committee's report, if already available, engaging in mediation, pursuing lien challenges, and preparing to file a standing motion related to the numerous controversial transactions, among other things. On top of that, parties would not even have the ability to modify or supplement their document requests since the Debtors propose

[10] To be clear, the UCC does not have an issue coordinating with the Noteholder Committee on discovery issues where there is overlap in objections; the UCC only requests sufficient time and information to do so properly.

[11] The Examiner now expects to file an initial version of his report with fewer redactions than initially contemplated. *See* Amended Examiner's Motion for Entry of Order Under Rule 502(d) of the Federal Rules of Evidence ¶ 1, ECF No. 3348. It will still take time, however, to resolve any remaining redactions. *See* Amended Order Temporarily Authorizing the Filing of Redacted Versions of the Examiner's Report and Certain Documents and Related Procedures ¶ 3, ECF No. 3187 (providing a seven-week process for the Examiner to settle confidentiality and privilege issues before such issues are brought before the Court).

to limit any additional requests to issues relating solely to material modifications in the proposed plan. Proposed Confirmation Schedule, ECF No. 3343-1. The UCC cannot meaningfully evaluate the Debtors' new plan and disclosure statement in such a compressed timeframe.[12] Accordingly, the Court should not set confirmation-related deadlines that would severely prejudice the parties—especially when no disclosure statement has been filed, let alone approved.

11. Additionally, the new proposed plan, like its two predecessors, will likely contain provisions—such as broad releases of non-debtors—that will presumably be heavily disputed at the disclosure statement stage as "patently unconfirmable." Courts routinely rule that these kinds of provisions are attackable at the disclosure statement hearing when they present a clear question of legality because there is no purpose having a contested confirmation process over a proposed plan that is not confirmable on its face.[13] Any disclosure statement schedule needs to provide sufficient time for the parties to brief such issues.

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[12] The Debtors seek Court permission to file a forty-page motion in support of their disclosure statement. To the extent such request is granted, the waiver of the applicable page limitations should apply to all parties to preserve their ability to properly respond to the Debtors' motion.

[13] *See In re American Capital Equipment, LLC*, 688 F.3d 145, 154 (3d Cir. 2012) ("Courts have recognized that 'if it appears there is a defect that makes a plan inherently or patently unconfirmable, the Court may consider and resolve that issue at the disclosure stage before requiring the parties to proceed with solicitation of acceptances and rejections and a contested confirmation hearing.' (quoting *In re Larsen*, No. 09-02630, 2011 Bankr. LEXIS 1621 (Bankr. D. Idaho May 3, 2011)); *In re K Lunde, LLC*, 513 B.R. 587, 590 (Bankr. D. Colo. 2014) (same); *In re Unichem Corp.*, 72 B.R. 95, 98 (Bankr. N.D. Ill. 1987) ("Although the issue of whether a plan meets the requirements of § 1129(a) is usually reserved for the hearing on confirmation, in certain circumstances it is appropriate for the court to consider the issue at the hearing on the disclosure statement. One such circumstance is where it is readily apparent that the plan accompanying the disclosure statement could never legally be confirmed. *In re Pecht*, 53 B.R. 768 (Bankr. E.D. Va. 1985); *In re McCall*, 44 B.R. 242 (Bankr. E.D. Pa. 1984).").

12. The underlying circumstances of the cases the Debtors cite in support of the Motion are inapposite. For instance, in *Energy Future Holdings*, the court required that all of the independent directors retain, on behalf of each of the two operating debtors and the parent holding company debtor, pursuant to Bankruptcy Code section 327(a), additional counsel to negotiate and/or litigate inter-debtor conflict issues and claims. That process resulted in many issues being resolved or avoided prior to confirmation. Here, the Debtors' attorneys have also been representing the Special Governance Committee, creating multiple additional issues that would have to be litigated in a contested confirmation involving the purported settlement of the controversial transactions embedded in the chapter 11 plan. In *LightSquared*, there were multiple hearings on multiple plans.[14] There, plan proponents believing they could push through unconfirmable plans on expedited schedules raised horrible imaginings about cash shortages and other deadlines.

13. A Plan of Reorganization Does Not Have to be Confirmed During a Debtor's Exclusive Periods. The Debtors urge that "[f]or the Exclusivity Periods to have meaning," the confirmation hearing must occur before the expiration of the exclusive periods. Yet, confirmation of a plan before the expiration of the Debtors' exclusive periods is merely a privilege and not an absolute right that can be enforced to cure the Debtors' own delay, all to the prejudice of other parties. It was the Debtors' choice not to settle with any parties other than those being paid virtually in full.

14. The Court observed the Examiner report is the centerpiece of these cases[15] and will serve as the basis for negotiations among the parties. Yet, the Debtors, their parent company

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[14] *See In re LightSquared Inc.*, No. 12-12080 (Bankr. S.D.N.Y.) (ECF Nos. 764, 817, 821, 823, 1133, 1166, 1308, 2265).

[15] Jan. 20, 2016 Hr'g Tr. 10:09–11.

CEC, and their sponsors have delayed the release of the Examiner report, first by delaying their responsive document production and witness interviews, and second by their use of confidentiality and privilege designations to hamper the Examiner's ability to publicly file its report. *See* Examiner's Fifth Interim Report ¶ 16, ECF No. 2535 ("As previously mentioned in the Prior Interim Reports, there was, and in some cases continues to be, substantial delay in the production of documents to the Examiner from certain key parties."); ¶ 22 ("[G]iven 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, the Final Report will not be filed on or before December 15, 2015."); Examiner's Motion for Order Temporarily Authorizing the Filing of the Examiner's Report and Certain Documents Under Seal and Related Procedures, ECF No. 2834. They now want to put the UCC and other parties in the position of having to object to their disclosure statement and conduct document discovery on their as yet unfiled plan before receipt of the final Examiner report and the report of the Special Governance Committee. There is no reason to suspend the case management procedures established by the Court to accommodate the Debtors' strategy to the detriment of other parties in these cases.

WHEREFORE the UCC respectfully requests the Court to (a) either deny the Motion, or defer consideration of the Motion until after (i) the issuance of the final unredacted Examiner report, (ii) the issuance of the results of the Special Governance Committee investigation, and (iii) the filing of the amended plan and disclosure statement; and (b) grant the UCC such other and further relief as it deems just and proper.

Dated: March 9, 2016
Chicago, Illinois

By: /s/ *Paul V. Possinger*
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.