

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

In re:

CAESARS ENTERTAINMENT  
OPERATING COMPANY, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

**OFFICIAL COMMITTEE OF SECOND PRIORITY  
NOTEHOLDERS' LIMITED OBJECTION TO THE DEBTORS'  
MOTIONS REGARDING CASH MANAGEMENT AND INSURANCE**

The Official Committee of Second Priority Noteholders (the "Noteholder Committee") objects on a limited basis to (i) *Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage, (B) Satisfy Payment of Prepetition Obligations Related to that Insurance Coverage in the Ordinary Course of Business, and (C) Renew, Supplement, or Enter into New Insurance Coverage in the Ordinary Course of Business, and (II) Granting Related Relief* (ECF 14) (the "Insurance Motion"); and (ii) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using Their Cash Management System, (B) Maintain Their Existing Bank Accounts and Business Forms, and (C) Continue Intercompany Transactions, and (II) Granting Related Relief* (ECF 8) (the "Cash Management Motion"). In support of this Objection, the Noteholder Committee respectfully states as follows:

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<sup>1</sup> The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. Due to the large number of debtors-in-possession (collectively, the "Debtors") in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

## OBJECTION

1. The Cash Management Motion and the Insurance Motion seek more than just maintaining cash systems and insurance coverage. These motions also seek authority for the Debtors to engage in a broad spectrum of transactions with Debtor and non-Debtor affiliates. For instance, among the many intercompany transactions described in the Cash Management Motion, are transactions with Caesars Enterprise Services, LLC (“CES”), which provides enterprise services for the Debtors. CES was formed pursuant to agreements among Caesars Entertainment Operating Company, Inc. (“CEOC”), Caesars Entertainment Resort Properties, LLC (“CERP”), and Caesars Growth Partners Holdings, LLC (“CGP”). As a result of the agreements, CES now performs many of the functions that CEOC previously performed for the Debtors and their non-Debtor affiliates.

2. As described in the pending motions to appoint an examiner and prepetition lawsuits, CEOC transferred substantial value to CES, including rights in Total Rewards, along with control over intellectual property and enterprise services upon which CEOC depends. The Noteholder Committee maintains that those transactions should be investigated, challenged and avoided. Given that history, it is imperative that any orders entered by the Court with respect to any intercompany or affiliate transactions be carefully crafted so as to preserve and not prejudice all estate rights, causes of action, and remedies.

3. As set forth below, the Court should require modifications to the proposed final orders with respect to the Cash Management Motion and the Insurance Motion.

### **Objection to the Cash Management Motion**

4. In the Cash Management Motion, the Debtors request that they receive authority to continue all intercompany transactions in the ordinary course of business, including transactions that may provide for the satisfaction of prepetition claims held by non-Debtor

affiliates. Based upon the Debtors' request, CES will continue to (i) allocate operating expenses and corporate overhead among CEOC, CERP and CGPH and (ii) act as "governor on all enterprise-wide capital expenditures and approves all projects and relative allocations borne by the respective [joint venture members]." CES also would continue to manage the Debtors' payroll and process the Debtors' accounts payable.

5. The Cash Management Motion also describes certain "Affiliate Management Agreements" whereby CEOC, manages properties owned by non-Debtor Affiliates, CERP and Caesars Growth Properties, LLC and other non-Debtor affiliates. Under these agreements, CEOC receives a management fee. The payment of this management fee occurs after a monthly reconciliation of all intercompany claims, including the netting of CEOC's management fees against amounts CEOC collects for fees or other revenue generated at casino resorts owned by non-Debtor affiliates.

6. The Noteholder Committee does not object to the use of the Debtors' existing cash management system. However, because the Cash Management Motion also seeks authority to engage in a variety of intercompany transactions, including transactions with non-Debtor affiliates, it is critical that the relief requested in the Cash Management Motion does not prejudice or impact valuable estate causes of action.

7. Accordingly, the Noteholder Committee requests that the Court modify the proposed Final Cash Management Order as follows:

a. Scope of Intercompany Transactions: Paragraph 2(d) should be revised to limit the authorization to conduct Intercompany Transactions to those Intercompany Transactions described in the Cash Management Motion. Accordingly, the phrase "including without limitation the Intercompany Transactions," which suggests that the

order authorizes transactions that are not described in the Cash Management Motion, should be omitted from the proposed Final Cash Management Order.

b. Payments on Prepetition Intercompany Transactions: Paragraph 15 of the Final Cash Management Order should make clear that the Debtors are not authorized to make any payments on account of prepetition Intercompany Transactions. The Debtors conceded they were not seeking authority to make payments on account of prepetition Intercompany Transactions, even though they later sought authority to continue certain “netting” transactions. *See* Exhibit A, Transcript at 36 (“We are actually not seeking to make any prepetition payments on account of this.”)

c. No Prejudice Provision: The Final Cash Management Order also should include a provision that makes clear that the relief granted under the Final Order will not prejudice the avoidance or unwinding of any Intercompany Transaction or payment. Below is proposed language to be included in the proposed Final Cash Management Order.

Notwithstanding anything to the contrary herein, nothing in this Final Order will impact or prejudice the ability of any party to challenge, avoid, unwind, recharacterize, or assert any other claim or cause of action with respect to any Intercompany Transaction.

8. It is important to note that even with the proposed revisions to the Final Cash Management Order, the Noteholder Committee is relying on the requirement in Paragraph 15 of the Final Cash Management Order that “the Debtors shall continue to maintain current records with respect to all transfers of cash so that all Intercompany Transactions may be readily ascertained, traced, and property recorded.” This requirement, combined with the requested additional language set forth above, are critical elements to ensuring all parties’ rights to challenge all intercompany transactions and related conduct are left unaltered.

### **Objection to the Insurance Motion**

9. Similar to the Cash Management Motion, the Debtors' Insurance Motion seeks authority to make payments to CES with respect to a "master insurance program" that CES administers for the benefit of the Debtors and non-Debtor affiliates. In addition, CES allocates the cost of such program among the Debtors and their non-Debtor affiliates. Because the validity of the transactions with CES will be the subject of investigations, any order authorizing the Debtors to maintain insurance and make any payment to non-Debtor affiliates, such as CES, must include an express reservation of rights so that any transactions authorized pursuant to the Court's order do not impair or otherwise prejudice valuable estate causes of action.

10. Accordingly, the Noteholder Committee requests that the proposed final order on the Debtors' Insurance Motion include the following provision:

Notwithstanding anything to the contrary herein, nothing in this Final Order will impact or prejudice the ability of any party to challenge, avoid, unwind, recharacterize, or assert any other claim or cause of action with respect to any transaction or payment to any Debtor or non-debtor affiliate.

### **CONCLUSION**

11. The Noteholder Committee respectfully requests that this Court include the language set forth in the above to any orders granting the Cash Management Motion and the Insurance Motion.

Dated: February 25, 2015  
Chicago, Illinois

Respectfully submitted,

/s/Timothy W. Hoffmann

Brad B. Erens (No. 06206864)  
Timothy W. Hoffmann (No. 6289756)  
JONES DAY  
77 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 782-3939  
Facsimile: (312) 782-8585  
bberens@jonesday.com  
thoffman@jonesday.com

-and-

Bruce Bennett  
James O. Johnston  
Sidney P. Levinson  
Joshua Mester  
JONES DAY  
555 South Flower Street, 50th Floor  
Los Angeles, California 90071  
Telephone: (213) 489-3939  
Facsimile: (213) 243-2539

Proposed Counsel for Official Committee of  
Second Priority Noteholders

**EXHIBIT A**

1 MS. GREENBLATT: Yes. That's perfect.  
2 Is that what you're objecting to?

3 THE COURT: Was there an objection to  
4 the entry of this order on an interim basis?

5 MR. JOHNSTON: Yes, there is. She's  
6 still going to make a little argument on that, I  
7 believe.

8 THE COURT: Okay. Go ahead.

9 MS. GREENBLATT: The next piece of  
10 this motion, Your Honor, has to do with intercompany  
11 transactions. I suspect that's where the objection  
12 might come in.

13 With respect to intercompany  
14 transactions, we've described in the motion the  
15 various forms of intercompany transactions that these  
16 debtors participate in. I know we weren't able to  
17 provide you kind of an overview of these enterprises  
18 and how they work. But hopefully what came across  
19 clear in our papers, in our first day brief, is that  
20 the debtors are party to a joint venture services  
21 arrangement with the entity called CES, Caesars  
22 Entertainment Services, which is a joint venture  
23 between the CEOC debtors and CERP and Growth, two  
24 other non-debtor affiliates of the business that are  
25 also under the parent, CEC, or CAC, an independent

1 public company.

2 This joint venture service basically  
3 operates as a shared services venture and manages,  
4 operates and funds all enterprise-wide costs to  
5 pay --

6 (Telephonic interruption.)

7 -- and it is also manages the Total  
8 Rewards program and certain other intellectual  
9 property of the debtors.

10 THE COURT: What portion of the  
11 proposed order is the controversial portion?

12 MS. GREENBLATT: We are actually not  
13 seeking to make any prepetition payments on account  
14 of this. We simply wanted to describe and disclose  
15 the types of intercompany transactions that would  
16 occur, both between us and CES, and between us and  
17 other non-debtor affiliates and other third parties.

18 With respect to CES, just to give you  
19 a brief overview, there's really four buckets of  
20 subcategories that relate to intercompany claims with  
21 the debtors. There are these general overhead  
22 corporate expenses. CES now, for example, employs a  
23 vast majority of the mid-management employees of the  
24 companies that provide services across the Caesars  
25 enterprise, all the branded properties, and those

1 overhead costs are shared and allocated back to the  
2 respective entities based primarily on their  
3 consumption rates of whatever the relevant service  
4 is.

5 Those overhead costs are basically  
6 trued up on a weekly basis and a monthly basis. So  
7 at any given time, there could be due tos and due  
8 froms each, you know, of the respective entities.

9 Payroll as well, which came up in the  
10 wages motion, we prefund, but CES acts as a  
11 third-party administrator in administering payroll.  
12 And then there are certain vendor payables that may  
13 run through CES that, you know, we would -- that get  
14 paid through CES that we reimburse them for after the  
15 fact.

16 THE COURT: Is paragraph 16 the  
17 paragraph of the order that's causing controversy? I  
18 gather there's a controversy. Is that the origin?

19 MS. GREENBLATT: I don't know what the  
20 nature of the controversy is, Your Honor. This has  
21 no impact on the estate. We can manage our CES  
22 relationship.

23 THE COURT: Let's hear it.

24 MR. JOHNSTON: I'll be brief.

25 THE COURT: I mean, it must be

1 paragraph 16 because that's the only one I can find  
2 that talks about intercompany transactions.

3 MR. JOHNSTON: Paragraph 16 and  
4 paragraph 3D, Your Honor, a little earlier in the  
5 motion, same subject.

6 THE COURT: Well, the first sentence  
7 of paragraph 16 -- well, before the proviso, at  
8 least, and paragraph 3D simply authorizes the debtor,  
9 or debtors, plural, to continue conducting  
10 intercompany transactions in the ordinary course.

11 Do they even need authority from the  
12 Court to do that if it's ordinary course?

13 MR. JOHNSTON: Well, there was one  
14 clarification made this morning that's helpful, which  
15 is that the debtors are not seeking to make payments  
16 on prepetition intercompany obligations. That was  
17 not clear from the motion. So that's helpful.

18 If I could step back and tell you what  
19 our other concern with even postpetition transactions  
20 in the ordinary course is, and I think we can resolve  
21 this through a reservation of rights. But best as we  
22 can tell, this is payments by one or more debtors to  
23 one or more nondebtor affiliates. So this isn't  
24 between debtor and debtor.

25 Particularly given the history of

1 these debtors and their nondebtor affiliates and the  
2 history of the insider transactions that have  
3 occurred among them over the last 15 months, which  
4 included payment of affiliate debt, the structure is  
5 concerning to us. And, in fact, there is now an  
6 examiner motion that has been filed in Delaware that  
7 seeks to investigate the transactions I mentioned,  
8 including the structuring of the system that the  
9 debtors are now seeking to maintain in what they call  
10 the ordinary course of business.

11 We don't want anything that occurs  
12 today, on an interim basis in particular, that would  
13 prejudice that investigation and/or any claims that  
14 might arise from -- valid claims that might arise  
15 from the investigation or the structuring of the  
16 system. And we don't want Your Honor's imprimatur on  
17 that to somehow be held up as an endorsement of the  
18 system which we find objectionable.

19 THE COURT: So is it your contention  
20 that these debtors engaged in some sort of untoward  
21 intercompany transactions on an ordinary course  
22 basis, and then if I allow them to do that, I'm  
23 sanctioning something that's wrong?

24 MR. JOHNSTON: The contention is that  
25 these debtors -- the very system that they now say is

1 ordinary course was set up in something far from the  
2 ordinary course. They may now be operating it on a  
3 day-to-day basis as part of their cash management  
4 function, but the very system itself and the way the  
5 assets have moved around the debtors and what is  
6 being paid for, which used to belong to these  
7 debtors, was very much outside the ordinary course.

8 THE COURT: Well, I'm not sure I'm  
9 quite buying this. But it doesn't matter, I think,  
10 for present purposes, if there's some way, as you  
11 suggested at the outset, of postponing my decision to  
12 buy it or not.

13 So you're obviously troubled by the  
14 language of the proposed order that would allow them  
15 to continue conducting ordinary course intercompany  
16 transactions as defined.

17 MR. JOHNSTON: And then it says,  
18 including without limitation the intercompany  
19 transactions as defined. So that's an even broader  
20 grant of authority than just the transactions that  
21 are described in the motion.

22 MS. GREENBLATT: Your Honor, I think  
23 the intercompany transactions are defined narrowly in  
24 the motions to be the things we've described and  
25 disclosed. We have no objection to all parties

1 reserving their rights. We understand that the  
2 formation of CES is the subject of dispute. There's  
3 pending litigation around it. This is about  
4 maintaining and preserving the integrity of the  
5 payment system. It is just a fact that it exists,  
6 and so we need to move forward today, and everyone  
7 can reserve rights.

8 THE COURT: Okay. Do you have  
9 proposed language that we could insert into paragraph  
10 three and maybe paragraph 16 as well?

11 MR. JOHNSTON: I'm sure that we can  
12 craft some on a break and then propose it to Your  
13 Honor.

14 MS. GREENBLATT: I would suggest we  
15 just add a reservation of rights paragraph, if that  
16 would work for you, and keep the language as is.

17 THE COURT: The idea, I think was --  
18 well, there are two ways to do this. We can take a  
19 break at some point if we need to, and you can work  
20 on it during the break, or we could treat, as we say  
21 in this district sometimes, as draft order to follow,  
22 in which case you would work it out, submit to  
23 chambers. That's another way to do it. That, of  
24 course, usually involves circulating the order. And  
25 circulation in a case of this size would be a large

1 enterprise, so it might almost be better to take a  
2 break at some point.

3 So I think maybe what we should do is  
4 put this one aside and go to the next one. And then  
5 you'll remind me, I'm sure, that we need to take a  
6 break so that we can worry about this and perhaps  
7 other similar things.

8 MS. GREENBLATT: That makes sense,  
9 Your Honor. Thank you.

10 MR. JOHNSTON: That makes sense. And,  
11 Your Honor, the only other thing I'd like to see  
12 memorialized in the order is simply the commitment  
13 that prepetition obligations won't be paid by  
14 authority of this sort, intercompany claims.

15 THE COURT: Well, that would be --

16 MR. SHORE: And, Your Honor, this is  
17 Chris Shore from White & Case. I sincerely apologize  
18 appearing by phone.

19 It would be our understanding that it  
20 would also prevent any setoffs of intercompanies,  
21 because they're going to be netting their  
22 intercompanies, and they shouldn't be crossing the  
23 petition date when they're doing that.

24 THE COURT: The question I was about  
25 to ask was, we have other motions to deal with

1 prepetition claims. So if we do something like that  
2 in the order on this motion, is that going to end up  
3 in any sort of conflict?

4 MR. JOHNSTON: Well, no. Our concern  
5 is the prepetition intercompany claims, which are  
6 affiliates and nondebtors and insiders.

7 THE COURT: And not people who sold  
8 shampoo to casinos, right?

9 MR. JOHNSTON: Correct.

10 THE COURT: Well, there are such  
11 people. All right. Understood. We have some things  
12 then for you all to talk about. Let's put this  
13 motion aside. Was there another comment? I'm sorry.

14 MR. ECKSTEIN: Yes, Your Honor.  
15 Kenneth Eckstein of Kramer Levin on behalf of the  
16 first lien bonds.

17 As a general matter, Your Honor, we  
18 would actually recommend that it makes sense -- I  
19 believe that it makes sense to enter this order, and  
20 probably the other orders that make clear on the  
21 record, that they are being done on an interim basis  
22 in order to allow the business to continue in the  
23 ordinary course.

24 There are clearly going to be many  
25 transactions that people are going to want to look at

1 very carefully. I expect there will be a creditors  
2 committee appointed in the near term. There may be  
3 an examiner. There are going to be parties looking  
4 at a lot of things, and there's a lot of education  
5 that people need about, for example, CES.

6 I think the balance that I would  
7 advocate makes sense in this case is, let's make sure  
8 that the business continues to operate day to day in  
9 the ordinary course, and it does operate right now in  
10 the ordinary course, and nothing that the Court  
11 approves today should in any way compromise or  
12 prejudice any party's views as to the propriety of  
13 the way the company does business or any transactions  
14 that the company has entered into.

15 THE COURT: You know, that's a good  
16 point. Isn't it enough that we're doing this on an  
17 interim basis? The whole point of doing it that way  
18 was to ensure that people would be able to raise  
19 objections. There will be an objection time.  
20 Wouldn't that be enough without doing things to the  
21 order? It's sort of belt and suspenders to put a  
22 reservation of rights into an interim order anyway,  
23 isn't it?

24 MR. JOHNSTON: With your  
25 clarifications on the record, Your Honor, I think

1 that is enough.

2 THE COURT: Okay. Maybe we can go  
3 ahead and enter this now.

4 MR. ECKSTEIN: I think that would be  
5 constructive, Your Honor. I think it gives a  
6 confidence to the business that the business is  
7 running business as usual from a day-to-day  
8 standpoint.

9 THE COURT: Very good.

10 MR. JOHNSTON: And we do have the  
11 payment of the prepetition aspect of the claims,  
12 which I understand the debtors say they're not going  
13 to do. If we can put that in the order --

14 MS. GREENBLATT: Your Honor, I think  
15 the problem with that is there are netting  
16 transactions. I agree. I think that for today, we  
17 should continue in the ordinary course. This is a  
18 major global enterprise. There are things netted on  
19 a daily basis. I just -- I think what's appropriate  
20 is everybody reserves rights. If there needs to be  
21 subsequent reporting or review of discretions that  
22 were made, everybody can take a look and decide  
23 whether or not they think that was harmful to the  
24 business.

25 MR. JOHNSTON: Well, if there's

1 netting, meaning payment of prepetition intercompany  
2 claims, this order then can't be held up as a later  
3 basis to justify that netting. Whether it's on an  
4 interim basis or not, if you're giving an order that  
5 authorizes satisfaction of a prepetition intercompany  
6 claim, what grounds then would we have to investigate  
7 and overturn them?

8 THE COURT: Well, that would not be my  
9 intention in entering this order. Is that what --

10 MS. GREENBLATT: That is not the  
11 debtors' intention either, Your Honor.

12 THE COURT: There you go. Is that  
13 good enough?

14 MR. JOHNSTON: All rights are  
15 reserved, I understand.

16 THE COURT: That's the nature of the  
17 interim order, yes. And that's the nature of all the  
18 interim orders today. All rights are reserved on  
19 each of these motions.

20 Let's take the first sentence --

21 MR. JOHNSTON: Thank you.

22 THE COURT: Oh, you're welcome.

23 First sentence of paragraph two out.  
24 We'll make the objection date February 9. I'll take  
25 out the retention of jurisdiction in paragraph 26,