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

In re:	)	Chapter 11
	)	
	)	Case No. 15-01145 (ABG)
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	
	)	Hon. A. Benjamin Goldgar
Debtors.	)	
	)	**Hearing Date: September 28, 2015**
	)	**Hearing Time: 1:30 p.m. CDT**

NOTICE OF HEARING ON CLAIM OBJECTION

PLEASE TAKE NOTICE that on **September 28, 2015, at 1:30 p.m. (prevailing Central Time)**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable A. Benjamin Goldgar, Bankruptcy Judge, in the Ceremonial Courtroom (Room 2525) of the U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, or in his absence, before such other Judge who may be sitting in his place and stead and hearing bankruptcy motions, and shall then and there present the **10.75% Notes Trustee Objection to Proof of Claim No. 2797 Filed by the Agent for the First Lien Credit Parties Against Each Subsidiary Guarantor** (the "Claim Objection").

PLEASE TAKE FURTHER NOTICE that any objection to the Claim Objection must be filed with the Court by **September 21, 2015, at 4:00 p.m. (prevailing Central Time)** and served in accordance with the applicable Case Management Procedures, as amended [Docket Nos. 1165 & 1911].

Respectfully submitted,

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Attorneys for Wilmington Trust, National Association, as successor Indenture Trustee

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In re:	)	Chapter 11
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Debtors.	)	

10.75% NOTES TRUSTEE OBJECTION TO PROOF OF CLAIM NO. 2797 FILED BY THE AGENT FOR THE FIRST LIEN CREDIT PARTIES AGAINST EACH SUBSIDIARY GUARANTOR

Wilmington Trust, National Association, as Successor Indenture Trustee (the "10.75% Notes Trustee") for the 10.75% Senior Unsecured Notes (the "10.75% Notes") issued by Caesars Entertainment Operating Company, Inc. ("CEOC," and, together with its affiliated debtors, the "Debtors"), and guaranteed by 137 wholly-owned domestic Debtor subsidiaries of CEOC (the "Subsidiary Guarantors") under that certain indenture dated February 1, 2008, by and through its undersigned counsel, files this objection (the "Objection")[2] to Proof of Claim No. 2797 (the "First Lien Bank Claims")[3] (Denman Decl. Ex. 13)[4] filed against each Subsidiary Guarantor.

[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.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Final Order (I) Authorizing Use Of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying The Automatic Stay To Permit Implementation, And (IV) Granting Related Relief* [Dkt. No. 988] (the "Final CCO").

[3] The First Lien Bank Claims constitute a proof of claim against each of the Debtors. Pursuant to the *Stipulation by and among Caesars Entertainment Operating Company and Credit Suisse AG, Cayman Islands Branch, as Administrative Agent, on Behalf of First Lien Lenders, to File Consolidated Claims under a Single Case Number, dated May 1, 2015*, which was approved and authorized by the Bankruptcy Court pursuant to an *Agreed Order* on May 6, 2015 (the "Agreed Order") [Dkt. No. 1479], the First Lien Credit Agent (as defined below) "may file a single proof

The 10.75% Notes Trustee objects to the allowance of the First Lien Bank Claims against any Subsidiary Guarantor in an amount in excess of the value of its Collateral (as defined below). The First Lien Credit Parties clearly waived all recovery from the Subsidiary Guarantors "under any law" with respect to assets "other than the Collateral," pursuant to the unambiguous terms of the First Lien Security Agreement. Whether that language is viewed as a waiver of section 1111(b)(1) rights or as a voluntary cap on deficiency claims under state law (or both) the effect is the same: The First Lien Credit Parties committed to asserting no claims against any of the Subsidiary Guarantors in excess of the value of the Collateral.

In support of the Objection, the 10.75% Notes Trustee respectfully represents as follows:

JURISDICTION & VENUE

1. This Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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of claim with respect to claims under the First Lien Credit Agreement and the other Loan Documents . . . and such proof of claim will be deemed to have been filed by the Agent, for itself and on behalf of the First Lien Lenders, against each Debtor." Agreed Order, at 3. The 10.75% Notes Trustee takes no position with respect to the allowance of the First Lien Bank Claims asserted against CEOC in this contested matter. Rather, this Objection only pertains to the quantum and nature of First Lien Bank Claims asserted against each Subsidiary Guarantor. Moreover, the 10.75% Notes Trustee reserves all rights with respect to any proofs of claim timely filed by individual First Lien Credit Parties against any Subsidiary Guarantor, which proofs of claim would, in any event, be duplicative of the First Lien Bank Claims.

[4] Contemporaneously with the filing of this Objection, the 10.75% Notes Trustee has filed its *Motion For Entry of An Order Granting Standing and Authority to Commence, Prosecute, and Settle Certain Causes of Action* (the "Standing Motion") and *Declaration of Harrison Denman in Support of the Motion* (the "Denman Decl."). Citations are made herein to the Denman Decl., which is incorporated by reference.

To the extent the Court grants the Standing Motion, which would permit the 10.75% Notes Trustee to prosecute objections on behalf of the Subsidiary Guarantors, then such relief would render this Objection unnecessary, and the issues presented herein would be subject to resolution in accordance with the adversary proceeding to be commenced as a result of such relief.

3. The 10.75% Notes Trustee seeks the relief requested herein pursuant to section 502(b) of the Bankruptcy Code, rules 3001, 3003, and 3007 of the Bankruptcy Rules and rule 3007-1 of the Local Rules.

THE PARTIES

4. Wilmington Trust, National Association serves as the successor Indenture Trustee pursuant to that certain Indenture, dated as of February 1, 2008.

5. Credit Suisse AG, Cayman Islands Branch (the "First Lien Credit Agent"), serves as the successor Agent pursuant to that certain Third Amended and Restated Credit Agreement, dated as of July 25, 2014 (as amended, modified, and/or supplemented from time to time, the "First Lien Credit Agreement") (Denman Decl. Ex. 20).

BACKGROUND

6. CEOC borrowed approximately $5.35 billion of first lien secured debt governed by the First Lien Credit Agreement (the "First Lien Credit Obligations"). CEOC also has issued approximately $6.35 billion in outstanding first lien notes and approximately $5.24 billion in outstanding second lien notes (the "Second Lien Notes").[5]

7. The schedules filed by the Subsidiary Guarantors disclose only minimal prepetition general unsecured claims. Specifically, such schedules have identified approximately $52 million of general unsecured trade claims and approximately $502 million in prepetition principal and accrued interest owing on the 10.75% Notes.

[5] The indenture trustees for the Second Lien Notes are beneficial parties to that certain Collateral Agreement, dated December 24, 2008 which includes a waiver of section 1111(b) claims identical to the Waiver in the First Lien Security Agreement. Any proof of claim filed by a trustee for the Second Lien Notes against a Subsidiary Guarantor for an amount in excess of the value of its Collateral would therefore be subject to disallowance for the same reasons addressed herein. The 10.75% Notes Trustee is not objecting to any second lien proofs of claim at this time as such claims are not subject to any of the Subject Stipulations in the Final CCO. All rights of the 10.75% Notes Trustee to object to such proofs of claim at a later date are expressly reserved.

8. CEOC and the Subsidiary Guarantors granted liens on certain assets in support of the First Lien Credit Obligations, including all assets constituting Article 9 Collateral (the "Collateral"). See Amended and Restated Collateral Agreement, dated as of January 28, 2008 (the "First Lien Security Agreement") § 4.01 (Denman Decl. Ex. 10).

9. Prior to the Debtors' 2008 leveraged buyout ("LBO"), CEOC issued several tranches of unsecured notes with covenants that effectively prevented the Subsidiary Guarantors from incurring debt senior to the 10.75% Notes.[6] For this reason, at all times since the LBO, the Subsidiary Guarantors never issued or guaranteed any of the First Lien Credit Obligations or otherwise agreed to incur any debt obligation with respect to such notes. Instead, each Subsidiary Guarantor pledged certain of its assets to secure the First Lien Credit Obligations pursuant to the First Lien Security Agreement. That agreement specifies that each Subsidiary Guarantor's asset pledge is non-recourse and affirmatively waives any right under any law to seek to recover of the First Lien Credit Obligations directly from the Subsidiary Guarantors or from their assets other than Collateral:

> [n]otwithstanding anything to the contrary in this Agreement, no recourse shall be had, whether by levy or execution, or *under any law* . . . for the payment of any of the Obligations, against any Pledgor or any of the assets of any Pledgor, other than the Collateral, it being expressly understood that the sole remedies available to the Agent and the Secured Parties pursuant to this Agreement with respect to the Obligations shall be against the Collateral.

First Lien Security Agreement § 7.18 (emphasis added) (the "Waiver"). The Waiver is, and was, custom to the Caesars capital structure and is not found in a traditional non-recourse pledge agreement. Indeed, in the absence of that specific waiver of claims under any law, CEOC would

[6] See, e.g., Indenture, dated as of September 28, 2005 (the "5.75% Notes Indenture") § 4.7 ("Limitation on Liens. Neither the Company nor any of its Subsidiaries may issue, assume or guarantee any Indebtedness secured by a Lien . . . without effectively providing that the Notes shall be secured equally and ratably with (or prior to) such Indebtedness so long as such Indebtedness shall be so secured") (Denman Decl. Ex. 11); Indenture, dated as of June 9, 2006 (the "6.50% Notes Indenture"), at Ex. 4.2 (same) (Denman Decl. Ex. 12).

have violated its credit agreement and defaulted on its existing funded debt. Thus, up to the filing of these Chapter 11 Cases, no First Lien Credit Party or First Lien Noteholder Party (together, the "First Lien Parties") ever had any debt claim against any Subsidiary Guarantor.

10. On January 15, 2015 (the "Voluntary Petition Date"), the Debtors filed voluntary petitions for reorganization under chapter 11 of the Bankruptcy Code. Each Subsidiary Guarantor identified the First Lien Credit Obligations in the full amount outstanding on its respective schedule. See, e.g., *Schedules of Assets and Liabilities for Caesars Palace Corp.* [Dkt. No. 761].

11. On May 20, 2015, the First Lien Credit Agent, on behalf of each of the First Lien Credit Parties, filed a proof of claim against each Subsidiary Guarantor asserting the full $5.35 billion in outstanding First Lien Credit Obligations. See First Lien Bank Claims, at 3.

12. As of the Voluntary Petition Date, significant assets owned by the Subsidiary Guarantors were unencumbered, pursuant to certain carveouts for "Excluded Assets" in the First Lien Security Agreement. See First Lien Security Agreement § 4.01. These assets included, among other things, cage cash (i.e., cash held at each casino for the repayment of wagers), certain gaming licenses, and proceeds thereof. Id. In addition, unencumbered assets of the Subsidiary Guarantors include cash owned as of the Petition Date in unpledged deposit accounts, against which the First Lien Credit Parties to date have not even asserted a lien. Such unencumbered assets should be sufficient to pay each Subsidiary Guarantor's prepetition general unsecured creditors in full. Allowing First Lien Bank Claims against the Subsidiary Guarantors in excess of the value of their Collateral, however, would "create" massive unsecured liability for each Subsidiary Guarantor and materially dilute the pro rata recovery of its prepetition creditors.

RELIEF REQUESTED

13. By this Objection and pursuant to Bankruptcy Rule 3007, the 10.75% Notes Trustee respectfully requests entry of an order under section 502 of the Bankruptcy Code, (i) allowing on a non-final basis the First Lien Bank Claims against each Subsidiary Guarantor as a secured claim in an amount equal to the value of its Collateral on the Voluntary Petition Date and (ii) disallowing any portion of the First Lien Bank Claims asserted against a Subsidiary Guarantor in excess of the value of its Collateral, whether asserted as a secured or unsecured claim.

OBJECTION

14. In its schedule of assets and liabilities, each Subsidiary Guarantor identified a secured claim asserted by the First Lien Credit Agent in the full amount of the First Lien Credit Obligations. Thereafter, in the First Lien Bank Claims, the First Lien Credit Agent likewise asserted secured claims against each Subsidiary Guarantor in the full amount of the First Lien Credit Obligations. The First Lien Bank Claims should only be allowed against each Subsidiary Guarantor in an amount equal to the value of its Collateral as of the Voluntary Petition Date. Section 506(a) of the Bankruptcy Code provides that the amount of an allowed secured claim against a debtor cannot exceed the value of its collateral. See 11 U.S.C. § 506(a); U.S. v. Ron Pair Enters., Inc., 489 U.S. 235, 239 (1989). That fundamental precept applies here, where the Court must fix the amount of a nonrecourse lender's allowed secured claim. See, e.g., In re Rosa, 521 B.R. 337 (Bankr. N.D. Ca. 2014) (valuing a nonrecourse lender's allowed secured claim under section 506(a) before disallowing the resulting deficiency claim under section 502(b)(1), when section 1111(b)(1) did not apply); Cavaliere v. Sapir, 208 B.R. 784 (D. Conn. 1997) (same). As the secured party, the First Lien Credit Agent has the burden of proving the precise amount of its secured claims against each Subsidiary Guarantor. See In re Heritage

Highgate, Inc., 679 F.3d 132 (3d Cir. 2012).

15. The Court should also disallow the First Lien Bank Claim—secured or otherwise—to the extent asserted in an amount in excess of the value of each Subsidiary Guarantor's Collateral, and should make any allowance temporary, pending further restructuring developments in these Chapter 11 Cases, for the following reasons.

A. The First Lien Credit Parties waived any right "under any law" to assert general unsecured claims against a Subsidiary Guarantor

16. As a general matter, a non-recourse lender lacks a contractual right to recover directly from its borrower outside of bankruptcy. Once a borrower files for bankruptcy, however, section 1111(b)(1) of the Bankruptcy Code may, in certain circumstances, effectively override a non-recourse contractual arrangement to "create" a secured claim in the amount of collateral and a general unsecured deficiency claim in favor of the non-recourse lender in the amount of funds advanced. 11 U.S.C. § 1111(b)(1) ("A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse . . . .").

17. Even if section 1111(b)(1) were applicable to these Chapter 11 Cases (although, as discussed herein, it is not), it would not impose liability on the Subsidiary Guarantors for the full amount of the First Lien Credit Obligations. Rather, that provision simply requires a bankruptcy court to allow under section 502 a "claim" grounded in contract without regard to its non-recourse nature, but at all times otherwise in accordance with that contract. See id. Ordinarily, in the situation in which a debtor directly borrowed funds on a non-recourse basis, the application of section 1111(b) takes the form of a bankruptcy court allowing the lender's claim against the debtor in the full amount of the funds previously borrowed. That situation does

not apply here, as the First Lien Credit Agent only extended funds to CEOC, not the Subsidiary Guarantors. Nothing in the text of section 1111(b)(1) entitles a non-recourse secured lender to an allowed "claim" against a non-recourse pledgor for the full face amount of a debt that was never its obligation in the first instance. In fact, the 10.75% Notes Trustee is aware of only one bankruptcy court decision—In re JRV Indus., Inc., 342 B.R. 635 (Bankr. M.D. Fla. 2006)—holding that section 1111(b) entitles a non-recourse lender to assert a general unsecured deficiency claim against a debtor that was not an obligor on, or subject to, the underlying debt, and that case did so with no substantive analysis. This lack of authority is not surprising, as it is beyond dispute that the rights between a debtor and its creditor are grounded in the first instance in applicable state contract law. See 11 U.S.C. § 502(b)(1) (a claim is disallowed to the extent unenforceable under applicable contract). Plainly, outside of Chapter 11, the First Lien Credit Agent could never have demanded payment from any Subsidiary Guarantor, much less payment for the full amount of First Lien Credit Obligations.

18. In any event, even if section 1111(b) could theoretically create a claim in the amount of the primary obligor's entire debt in the bankruptcy case of a non-recourse, non-borrower, that right is unavailable to the First Lien Credit Parties here. Pursuant to the Waiver in the First Lien Security Agreement, the First Lien Credit Parties waived any right arising "under any law" to recover against a Subsidiary Guarantor beyond the value of the Collateral. See First Lien Security Agreement § 7.18. As a federal statute, the Bankruptcy Code suffices as "any law" for purposes of the Waiver, and thus the Waiver encompasses section 1111 of the Bankruptcy Code. Walsh v. Dively (In re Dively), 522 B.R. 780, 783 (Bankr. W.D. Pa. 2014) ("A plain reading of the phrase 'any law of the United States' . . . includes . . . the Bankruptcy Code."); Anderson v. Dalkon Shield Claimants Trust (In re A.H. Robins Co., Inc.), 996 F.2d 716, 716-19 (4th Cir. 1993) (holding that the phrase "any law" in a federal statute encompasses

the Bankruptcy Code).

19. Given the Waiver, any purported deficiency claim asserted by the First Lien Credit Parties against the Subsidiary Guarantors must be disallowed in accordance with section 502(b)(1) of the Bankruptcy Code. See In re Allen-Main Assocs. Ltd. P'ship, 223 B.R. 59, 63 (B.A.P. 2d Cir. 1998) (noting that section 502(b)(1) required the disallowance of purported general unsecured deficiency claims of a non-recourse secured lender, given that section 1111 did not apply); 4 *Collier on Bankruptcy* ¶ 502.03[2][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.2013) ("The import of section 502(b)(1) is that, inasmuch as a nonrecourse deficiency is unenforceable against the debtor absent bankruptcy, it is not an allowable claim in the bankruptcy case."); 124 Cong. Rec. H 11093, H 11095, H 11110 (Sept. 28, 1978) (legislative history for section 502(b)(1) clarifies it "is intended to result in the disallowance of any claim for deficiency by an undersecured creditor on a nonrecourse loan or under a State antideficiency law, special provision for which is made in section 1111").

20. There is no basis here to absolve any First Lien Credit Party of the Waiver. Prepetition, arm's-length agreements between sophisticated creditors that waive rights arising in bankruptcy are routinely enforced by bankruptcy courts. See, e.g., 11 U.S.C. § 510(a); In re 4848, LLC, 490 B.R. 343, 348 (Bankr. E.D. Wis. 2013) (enforcing a prepetition forbearance agreement that waived bankruptcy stay provisions and noting that "[t]here appears to be an emerging trend to enforce such stay waiver agreements"); In re Bryan Road, LLC, 382 B.R. 844, 848-49 (Bankr. S.D. Fla. 2008) (same). This well-established rule applies equally to a prepetition waiver of recourse rights arising under section 1111(b)(1), as *Collier Real Estate Transactions and the Bankruptcy Code* points out:

> Nothing in section 1111(b) provides for a waiver of the right to recourse treatment under section 1111(b)(1) . . . Nevertheless, such waiver or election appears to violate no policy underlying the Bankruptcy Code. Clearly, debtors may not waive most rights under the

> Bankruptcy Code, including, of course, the right to file a petition. Nevertheless, a fully informed creditor should be able to waive rights as part of consensual transactions involving arrangements with other creditors and there seems to be no Bankruptcy Code policy that would favor disregarding those intercreditor agreements. . . . Indeed, section 510(a) expressly recognizes the enforceability in Bankruptcy Code cases of subordination agreements among creditors to the same extent that such agreements are enforceable under applicable state law. A waiver of recourse treatment . . . bears a substantial resemblance to a contractual subordination agreement among creditors. Therefore, there are sound reasons for believing that the suggested section 1111(b) waiver or election provision would be upheld.

1-2 COLLIER REAL ESTATE TRANSACTIONS AND THE BANKRUPTCY CODE ¶ 2.01[9] (Nov. 2014).[7]

21. Enforcing the Waiver here comports with the public policy concerns that led Congress to enact section 1111(b)(1). Outside of bankruptcy, nonrecourse arrangements assure a secured lender of one of two outcomes—receiving payment in full on its loan from its obligor or foreclosing on the obligor's collateral. Congress added section 1111 to preserve the latter protection for secured lenders, by ensuring that a debtor could not circumvent its nonrecourse lender's contractual right to foreclose on its assets by pursuing a cram-down plan that extinguished any interest in the collateral and, given the absence of deficiency claims, entitled the existing equityholders to retain the property. See In re B.R. Brookfield Commons No. 1 LLC, 735 F. 3d 596, 599-600 (7th Cir. 2013). Nothing about that policy would justify giving the First Lien Credit Parties a multi-billion dollar windfall against non-obligor subsidiaries.

[7] *Collier Real Estate Transactions and the Bankruptcy Code* also points out that a waiver of section 1111(b)(1) recourse rights is a commonly recommended protection for recourse lenders:

> The operation of section 1111(b)(1) in converting nonrecourse undersecured debt to recourse debt may adversely affect other lenders considering unsecured or recourse secured loans to a borrower in a nonbankruptcy transaction context . . . . In such circumstances, consideration should be given to including in mortgage documents or in intercreditor agreements a provision for the waiver and relinquishment by a nonrecourse secured creditor (such as a real property mortgagee) of its right to recourse treatment under section 1111(b)(1).

1-2 COLLIER REAL ESTATE TRANSACTIONS AND THE BANKRUPTCY CODE ¶ 2.01[9] (Nov. 2014). See also BROOK BOYD, REAL ESTATE FINANCING § 11.02[4], 11-32 (1997) (advising recourse lenders to "consider requiring any subordinate nonrecourse lender to waive its right to be treated as a 'recourse' creditor in any case under Chapter 11 of the Bankruptcy Code").

22. Enforcing the Waiver also preserves the prepetition commercial expectations of the specific parties here. As the offering memorandum for the 10.75% Notes made clear, guarantee claims against the Subsidiary Guarantors were only intended to be subordinate to the claims of First Lien Credit Parties to the extent of the value of their Collateral. See Offering Memorandum for 10.75% Senior Notes Due 2016, at 14 ("[T]he guarantees will be the senior unsecured obligations of the guarantors and will: . . . be effectively subordinated to all of the applicable guarantor's existing and future secured debt (including indebtedness secured by such guarantor's assets, such as our new senior secured credit facilities), ***to the extent of the value of the assets securing such debt*** . . . .") (Denman Decl. Ex. 15) (emphasis added).

23. The First Lien Credit Parties could not have reasonably expected to recover from unencumbered property of the Subsidiary Guarantors upon those entities' bankruptcy filings.[8] As noted, due to the restrictive covenants in certain of CEOC's existing unsecured notes indentures, the Subsidiary Guarantors could not guarantee the First Lien Credit Obligations without also guaranteeing these unsecured notes. See 5.75% Notes Indenture § 4.7; 6.50% Notes Indenture, at Ex. 4.2. For this reason, various prospectuses for exchanges of certain secured notes consistently disclaimed the possibility of recovering on deficiency claims against the Subsidiary Guarantors:

- "Further, holders of the exchange notes will have recourse to the collateral pledged by the Subsidiary Pledgors, but they will have no direct recourse to the Subsidiary Pledgors themselves";[9]

[8] The commercial expectations of the parties are corroborated by the concession of certain holders of Second Lien Notes, who are subject to an identical waiver, that they lack deficiency claims against any Subsidiary Guarantor. See, e.g., Proof of Claim No. 3269 (WSFS asserting a secured claim "to the extent of the value of the Collateral" and declining to assert a deficiency claim against any Subsidiary Guarantor) (Denman Decl. Ex. 16).

[9] Prospectus for exchange of 8.50% First Lien Notes, at 11 ("8.50% Prospectus") (Denman Decl. Ex. 17); Prospectus for exchange of 9.00% First Lien Notes and 2013 9.00% First Lien Notes, at 13 ("9.00% Prospectus") (same) (Denman Decl. Ex. 18); Prospectus for exchange of 11.25%

- "Our subsidiaries do not have any obligation to pay amounts due on the notes or to make funds available for that purpose";[10]

- "To the extent that the claims of the holders of the [CEOC] notes exceed the value of the [CEOC] assets securing the notes and other liabilities, those claims will rank equally with the claims of the holders of our outstanding . . . unsecured notes (except to the extent holders of the [10.75% Notes] hold senior claims against such subsidiaries pursuant to certain subsidiary guarantees executed in favor of such notes)."[11]

In short, any non-enforcement of the Waiver would confer an inequitable and impermissible windfall on the First Lien Credit Parties.

B. The First Lien Credit Parties agreed to cap their "claim" against each Subsidiary Guarantor in an amount equal to the value of its Collateral

24. Even absent a waiver by the First Lien Credit Parties of any rights arising under section 1111(b), any such section 1111(b) claims could not be asserted by the First Lien Credit Parties against the Subsidiary Guarantors in the full amount of CEOC's debts. The extent of liability of any Subsidiary Guarantor to the First Lien Credit Parties necessarily arises from the First Lien Security Agreement, to be construed in accordance with New York state law. See First Lien Security Agreement § 7.08. Pursuant to that agreement, the First Lien Credit Parties affirmatively restricted their right to seek payment of the First Lien Credit Obligations from any Subsidiary Guarantor or its assets "other than Collateral." Id. § 7.18. By definition, any "claim" in excess of the value of the Collateral—i.e., a deficiency claim—is a claim on something beyond the Collateral. Thus, any section 1111(b) claim must be capped at the value of Collateral owned by each Subsidiary Guarantor. Again, the Court should not allow CEOC and its secured creditors to ignore the plain language of the Waiver. Greenfield v. Philles Records, Inc., 98

First Lien Notes ("11.25% Prospectus") (same) (Denman Decl. Ex. 19).

[10] 8.50% Prospectus, at 37; 9.00% Prospectus, at 40 (same); 11.25% Prospectus (same).

[11] 8.50% Prospectus, at 28; 9.00% Prospectus, at 29 (same); 11.25% Prospectus (same) (emphasis added).

N.Y.2d 562, 569 (N.Y. 2002). Any relief from the Waiver would provide the First Lien Credit Parties with a recovery in bankruptcy far superior to their prepetition contractual bargain—thereby undermining a fundamental objective of the Bankruptcy Code to preserve prepetition commercial expectations. Resolution Trust Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.), 16 F.3d 552, 564 (3d. Cir. 1994). And any such holding would raise significant questions as to the inadequate consideration received by the Subsidiary Guarantors in connection with incurring billions of dollars of such "debt."

C. Non-Final Allowance of Claim

25. Finally, any First Lien Bank Claims which might be allowed against a Subsidiary Guarantor should not be done on a final basis at this time, and must instead be subject to potential disallowance at a later date in these Chapter 11 Cases. See Final CCO ¶ E(iv). Any First Lien Party unsecured claims at the Subsidiary Guarantors would arise solely pursuant to section 1111(b) of the Bankruptcy Code. There are, however, multiple circumstances in which section 1111(b) would not apply so as to create a "claim" at all, such as a conversion of any case to chapter 7, confirmation of a plan with a section 363 sale of Collateral, or the abandonment of Collateral to the First Lien Parties. See, e.g., Tampa Bay Assocs., Ltd. v. DRW Worthington, Ltd. (In re Tampa Bay Assocs., Ltd.), 864 F.2d 47, 49 (5th Cir. 1989) ("The bankruptcy court disallowed [creditors]'s deficiency claim in its entirety . . . on the grounds that a nonrecourse, undersecured creditor waives its right to recourse status under section 1111(b)(1)(A) by obtaining possession of its collateral pursuant to a motion for relief from stay or motion for abandonment."); In re Nat'l Pub. Serv. Corp., 88 F.2d 19, 22 (2d Cir. 1937) ("The right to surrender pledged property to a lienholder in extinguishment pro tanto of his claim has generally been recognized in bankruptcy . . . .").

26. The possibility of using the plan process to avoid the unnecessary imposition of

section 1111(b) deficiency claims is of critical importance to the unsecured creditors of every Subsidiary Guarantor. For example, according to its filed schedules, the Subsidiary Guarantor Desert Palace, Inc. ("Desert Palace") owns substantial unencumbered assets, including approximately $21,964,415 in cage and other cash as of the Petition Date. See, e.g., *Schedules of Assets and Liabilities for Desert Palace, Inc.* [Dkt. No. 726]. At the same time, Desert Palace has scheduled $513,937,726 in petition date general unsecured liabilities, $12,061,412 of which consists of various trade debts and $501,876,314 of which is on account of the 10.75% Notes. Id. Given these figures, absent the application of section 1111(b) in Desert Palace's case, the 10.75% Notes Trustee could recover more than $20 million from that Debtor, without even looking to any other unpledged assets that might exist at that estate. As for pledged assets at Desert Palace, the Collateral available to the First Lien Parties under the First Lien Security Agreement totals approximately $744,697,500 per the schedules—meaning that, even absent the application of section 1111(b), the First Lien Parties would have hundreds of millions of dollars of tangible assets available at Desert Palace, Inc. to satisfy the pledge obligations. Under that scenario, both secureds and unsecureds win. The problem arises if and when section 1111(b) is made applicable and the First Lien Bank Claims are permitted to assert deficiency claims in the face amount of CEOC's obligations on a final basis. Assuming *arguendo* that the asset values in the schedules are correct, the First Lien Bank Claims under section 1111(b) would include a potential general unsecured deficiency claim in the amount of $4,605,302,500. Allowance of the First Lien Bank Claims on a final basis against Desert Palace would therefore increase the unsecured pool at that estate by a factor of ten and divert almost all of the recoveries of prepetition general unsecured creditors (including the holders of 10.75% Notes) to the First Lien Parties who indisputably agreed that they would never have a right to repayment, under any law, from unencumbered assets owned by Desert Palace. The magnitude of these consequences is

only amplified when the same analysis is applied to the other 136 Subsidiary Guarantors.

27. Even were this Court to rule that the First Lien Parties did not waive their section 1111(b) rights and a full deficiency can be asserted at each estate (and it should not do so), a Debtor such as Desert Palace can nevertheless protect the parties' prepetition bargain and the recoveries of its actual prepetition creditors. Absent *final* allowance of claims, Desert Palace could, in an exercise of its fiduciary duties, propose a plan providing for the turnover of all Collateral to the First Lien Parties, or a sale of all Collateral at an arms-length auction. Under either structure, section 1111(b) would simply not apply, the First Lien parties would have no deficiency, and all unencumbered value would be distributed to prepetition unsecured creditors. Given that possibility, this Court should not permit the Subsidiary Guarantors to forestall those plan alternatives by agreeing to deficiency claims on a final basis and creating billions of dollars of additional liabilities that simply are not required by the law. Granting claims allowance on a final basis—and thereby preventing the fiduciaries for Desert Palace or any other Subsidiary Guarantor from even exploring such a path during its exclusive periods—would be entirely unfair to existing prepetition general unsecured creditors and contrary to law.

CONCLUSION

WHEREFORE, the 10.75% Notes Trustee respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (i) allowing on a non-final basis the First Lien Bank Claims against each Subsidiary Guarantor in an amount equal to the value of its Collateral, (ii) disallowing any First Lien Bank Claims against each Subsidiary Guarantor to the extent in excess of the value of the Collateral owned by that Subsidiary Guarantor, and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: August 7, 2015
Chicago, Illinois

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EXHIBIT A

(PROPOSED ORDER)

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

In re:	)	Chapter 11
	)	
	)	Case No. 15-01145 (ABG)
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1]	)	
	)	Hon. A. Benjamin Goldgar
Debtors.	)	

[PROPOSED] ORDER SUSTAINING OBJECTION TO PROOF OF CLAIM NO. 2797 FILED BY THE AGENT FOR THE FIRST LIEN CREDIT PARTIES AGAINST EACH SUBSIDIARY GUARANTOR

Upon the *10.75% Notes Trustee's Objection To Proof Of Claim No. 2797 Filed By The Agent For The First Lien Credit Parties* (the "Objection")[2]; and it appearing that the Court has jurisdiction over this matter; and it appearing that notice of the Objection is sufficient, and that no other or further notice need be provided; and upon all the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED that the Objection is **SUSTAINED**; and it is further

ORDERED that each First Lien Bank Claim asserted against a Subsidiary Guarantor is allowed on a non-final basis as a secured claim to the extent of the value of the Collateral at that Subsidiary Guarantor; and it is further

ORDERED that the First Lien Bank Claims asserted against each Subsidiary Guarantor are disallowed to the extent asserted in an amount in excess of the value of the Collateral at that

[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.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Objection.

Subsidiary Guarantor; and it is further

ORDERED that the 10.75% Notes Trustee's right to (i) file subsequent objections to the First Lien Bank Claims on any ground and (ii) amend, modify, or supplement the Objection, including, without limitation, the filing of objections to further amended or newly filed claims are preserved. Additionally, should one or more grounds of objection stated in the Objection be denied, the 10.75% Notes Trustee's rights to object on any other grounds are hereby preserved.

Dated: ____ __, 2015
Chicago, Illinois

_____
THE HONORABLE A. BENJAMIN GOLDGAR
UNITED STATES BANKRUPTCY JUDGE