

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., <i>et al.</i> , ¹)	Case No. 15-01145 (ABG)
Debtors.)	(Jointly Administered)
)	<i>DKT. No. 2683</i>

STIPULATION AND AGREED PROTECTIVE ORDER

This Stipulation and Agreed Protective Order (the "Stipulation and Order") has been agreed to, as of January 14, 2016, and subject to the Court's approval, by and between (i) Caesars Entertainment Corp. ("CEC") and (ii) the above-captioned debtors and debtors in possession (the "Debtors"; each of CEC and the Debtors is a "Party" and together they are the "Parties").

WHEREAS, on January 15, 2015, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the "Court");

WHEREAS, CEC is the majority owner of Debtor Caesars Entertainment Operating Company, Inc. ("CEOC") and, indirectly through CEOC, of the other Debtors;

WHEREAS, since the Summer of 2014, the Special Governance Committee ("SGC") of CEOC, with the assistance of CEOC's counsel Kirkland & Ellis LLP ("K&E") and other professionals, has conducted an investigation into pre-petition transactions involving the Debtors (the "SGC Investigation"), and has sought documents

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>.

and other information relating to those transactions in order to conduct a thorough investigation of the merits and value of any potential estate claims;

WHEREAS, in connection with the SGC Investigation, CEC has produced documents to the SGC, including documents subject to the attorney-client privilege, the work product doctrine, or other privileges, protections, or immunities from disclosure (collectively, "Privileges") where such Privilege belongs jointly to CEC and either CEOC and/or other Debtors ("Joint Privileged Material");

WHEREAS, in connection with the SGC Investigation, the SGC has requested, and CEC has declined to produce to the SGC, certain Privileged documents as to which CEC believes the Privilege is held solely by CEC, and CEC represents that it has provided the Debtors with a log of such documents;

WHEREAS, the Debtors contend that the documents CEC has withheld are subject to a joint Privilege that is held by both CEC and the Debtors, and that the Debtors are entitled to all such documents pre-dating July 3, 2014 (the date of K&E's retention by the Debtors) (the "Disputed Documents");

WHEREAS, pursuant to Orders dated March 12, 2015 [Dkt. No. 675] (the "Examiner Order") and March 25, 2015 [Dkt. No. 992], the Court has approved the appointment of Richard J. Davis as examiner (the "Examiner") and directed the Examiner to investigate, among other matters, certain pre-petition transactions involving the Debtors, including transactions that are also the subject of the SGC Investigation (the "Examiner Investigation");

WHEREAS, on May 18, 2015, the Court entered (i) an Order (I) Approving Protocol and Procedures Governing Examiner Discovery, (II) Approving

Establishment of a Document Depository, and (III) Granting Related Relief [Dkt. No. 1576] (the “Discovery Protocol Order”); and (ii) an Agreed Protective Order [Dkt. No. 1575] (the “Protective Order”) governing the production of documents and information that have been or will be produced in discovery in this case or any related adversary proceedings, including the production of documents and information to the Examiner in connection with the Examiner Investigation;

WHEREAS, the Protective Order provides that (i) a Designating Party (as defined in the Protective Order) may produce to the Examiner material that the Designating Party reasonably believes in good faith to be covered by the attorney-client privilege, the work product doctrine, or any other applicable privilege, protection or immunity from disclosure (“Privileged Discovery Material”), and may designate such documents as “Privileged—Examiner’s Eyes Only”; and (ii) “[d]isclosure of Privileged Discovery Material to the Examiner, his Advisors, or any of the individuals set forth in paragraph 11 [of the Protective Order] ... will not waive any applicable privilege, protection or immunity from disclosure in the [bankruptcy] Proceedings or any other action or proceeding” (Protective Order ¶ 13; footnote omitted);

WHEREAS, in connection with the Examiner Investigation, the Examiner has served Rule 2004 subpoenas requesting that CEC produce documents and other information, including Privileged documents and information, and make available CEC employees, directors, and agents for transcribed interviews;

WHEREAS, in response to the Examiner’s subpoenas, CEC has produced documents and information to the Examiner, including Joint Privileged Material;

WHEREAS, also in response to the Examiner's subpoenas, and pursuant to and in reliance on the Protective Order and a letter agreement between CEC and the Examiner dated August 13, 2015 (the "Letter Agreement"), CEC has also produced to the Examiner certain documents that CEC believes are subject to Privilege that is held solely by CEC, including the Disputed Documents, and has authorized its employees, directors, and agents to provide information to the Examiner, including through transcribed interviews, that CEC believes is subject to Privilege that is held solely by CEC, in all cases without intending to waive any Privilege;

WHEREAS, on July 14, 2015, the Debtors served a Rule 2004 subpoena on CEC, seeking (i) all documents withheld by CEC as Privileged in the course of the SGC Investigation, and (ii) all documents responsive to the Examiner's Rule 2004 subpoenas as to which CEC has asserted privilege and withheld documents from Debtors on that basis;

WHEREAS, CEC objected to the Debtors' subpoena on the ground that it seeks Privileged material to which the Debtors are not entitled;

WHEREAS, CEC represents that it has produced, or will produce, to the Debtors all Joint Privileged Material that it has produced to the Examiner, including transcripts of interviews of CEC employees, directors, and agents in its possession disclosing Joint Privileged Material, but has declined to produce the Disputed Documents;

WHEREAS, the Debtors contend that any Privilege to which the Disputed Documents are subject is held jointly by CEC and the Debtors;

WHEREAS, on December 2, 2015, the Debtors filed a motion to compel CEC to produce to the Debtors the Disputed Documents (the "Motion");

WHEREAS, CEC and Debtors wish to resolve this dispute, including the matters raised by the Motion, without need for further intervention by this Court, in order to expedite the completion of the SGC Investigation without waiver of any Privilege, on the terms set forth in this Stipulation and Order;

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IT IS HEREBY AGREED AND ORDERED as follows: ^{1, pursuant to Fed R. Evid. 502(d) and (e),}

1. Production of Documents and Transcripts.

a. Within three days of the entry of this Stipulation and Order,

CEC ^{must} ~~shall~~ produce to the Debtors, on the terms set forth herein, REC

(a) the Disputed Documents; (b) final transcripts of the Examiner's interviews of CEC employees, directors, or agents in CEC's possession, with no redactions other than to the extent that such transcripts disclose Privileged communications of CEC that occurred on or after July 3, 2014.

b. CEC ^{must} ~~shall~~ produce to the Debtors any documents subsequently produced to the Examiner, and final transcripts of interviews by the Examiner of CEC employees, directors, or agents in CEC's possession, with no redactions other than to the extent that such transcripts disclose Privileged communications of CEC that occurred on or after July 3, 2014, promptly after such documents are produced to the Examiner or such final transcripts come into CEC's possession and CEC has REC

designated any of the testimony therein as "Privileged—
Examiner's Eyes Only" pursuant to the Protective Order.

2. Designation of CEC Privileged Material. CEC may designate as "CEC Privileged" any documents or transcripts, or portions thereof, that it produces to the Debtors and that it reasonably believes are subject to a Privilege held solely by CEC (together with any documents or other materials derived therefrom, "Designated Material"). Such designation ^{will} ~~shall~~ be made by applying the legend "CEC PRIVILEGED" to the Designated Material. In the case of data stored in electronic form, the legend will be printed on the cover or container of the disk, tape, or other medium in which the electronic data is produced and/or by including the term "CEC_PRIVILEGED" or similar term in the file name. When producing a multi-page document, all of which CEC contends is CEC Privileged, CEC may designate the entire document by printing the legend "CEC PRIVILEGED" on the cover page. Transcripts of interviews or portions thereof may be designated CEC Privileged by written designation to Debtors' counsel. re

3. No Waiver of Privilege. The production of the Designated Material to Debtors or their advisors will not waive any applicable privilege, protection, or immunity from disclosure in these cases or in any other action or proceeding.

4. Limitations on Use and Disclosure. The Debtors ^{may} ~~shall~~ use Designated Material or information derived therefrom solely in connection with the SGC Investigation, and ^{may} ~~will~~ not use ^{Designated material or information} ~~them~~ in any other proceeding or for any other purposes without written consent from CEC or a subsequent order from the Court determining that the Designated Material is not subject to a Privilege held solely by CEC. Nothing herein re

^S shall restrict^S the Debtors' ability to use or disclose in any way otherwise appropriate information derived by them from any source other than Designated Material. Without limiting the foregoing, Designated Material ^{may} will not be shared with any party other than:

- (a) the SGC and its counsel and other professionals (including clerical or support staff), as well as their professional vendors, such as discovery vendors, to whom disclosure is necessary for the SGC Investigation;
- (b) any person indicated on the face of the document to be the author or prior recipient of the Designated Material, if that person is currently employed by the Debtors;
- (g) the Court and its personnel, subject to paragraph 6 below;
- (h) court reporters, their staffs, and professional vendors of litigation services to whom disclosure is reasonably necessary for purposes of the Proceeding; and
- (i) any other person with the express written authorization of ^J the CEC.

5. Challenges to Privilege Designations. Nothing herein will ^S preclude^S any Party from challenging at any time the designation of any documents or information as CEC Privileged or from asserting that any Privilege applicable to Designated Material has been waived in any manner or for any reason other than by virtue of its production to Debtors. Any such challenges and any disputes relating thereto ^{must} shall[^] be resolved in the manner set forth in paragraph 16 of the Protective Order.

6. Filings. If the Debtors seek to file any papers with the Court that include or disclose the contents of any Designated Materials, they must follow the

procedures for filing confidential information set forth in paragraph 18 of the May 18, 2015 Agreed Protective Order entered in these chapter 11 cases [Dkt. No. 1575].

7. Responses to Discovery Requests. In the event that Debtors are required, by interrogatories, subpoena, civil investigative demand, demand from a regulatory body, or similar legal process or applicable law or regulation, to disclose any Designated Materials, it is agreed that the Debtors, if so entitled given the nature of the legal process, demand, or request at issue, will provide CEC with prompt notice of such event so that CEC may seek a protective order or other appropriate remedy or, after consideration, CEC may choose to waive compliance with the applicable provisions of this Order. In the event that CEC determines to seek such protective order or other remedy, Debtors ^{may} ~~shall~~ not disclose the Designated Material at issue in response to the relevant legal process, demand, or request, if so entitled under applicable law, during the pendency of the request for such protective order or other remedy. In the event such protective order or other remedy is not obtained and disclosure of Designated Material is required under law, or CEC grants a waiver hereunder, the Debtors (i) may, without liability hereunder, furnish that portion (and only that portion) of the Designated Material that Debtors are legally required to disclose, and (ii) will exercise their reasonable efforts to have confidential treatment accorded to the Designated Material so furnished. Nothing herein ~~shall be construed as requiring~~ ^{as} Debtors or anyone else covered by this Order to challenge or appeal any order directing production of Designated Material covered by this Protective Order, or to subject himself or itself to any penalties for non-compliance with any legal process or order, or to seek any relief from this Court.

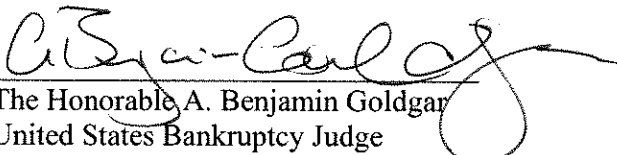
8. No Waiver. The failure by CEC to designate any production or any part of a production by CEC to Debtors as CEC Privileged does not constitute a waiver of such claim. If at any time CEC determines that certain materials that were previously produced should be designated as CEC Privileged, CEC may notify the Debtors in writing, and such materials will thereafter be treated as Designated Material under the terms of this Stipulation and Order, provided that CEC ^{must} ~~shall~~, at its cost, provide the Debtors with substitute copies, bearing the appropriate legend, of any such Designated Materials. ACE

9. No Amendment of Prior Agreements or Orders. This Stipulation and Order does not affect, amend, or modify any existing confidentiality agreements or orders, including but not limited to the Discovery Protocol Order, the Protective Order, or the Letter Agreement, or the Parties' respective obligations concerning the disclosure or nondisclosure of Joint Privileged Materials.

10. Resolution and Withdrawal of Motion. Upon entry of this Stipulation and Order, the Motion ^{will} ~~shall~~ be deemed resolved and withdrawn. ACE

~~11. Continuing Jurisdiction; Amendment. The Court retains exclusive jurisdiction to enforce, modify, or vacate all or any portion of this Protective Order upon motion. Nothing herein will preclude any Party from seeking to amend or modify the terms of this Stipulation and Order upon motion. [Deleted as unnecessary.]~~ ACE

Dated: Jan. 14, 2016


The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

Accepted and Agreed:

THE DEBTORS

By: /s/Jeffrey J. Zeiger, P.C.
Name: Jeffrey J. Zeiger, P.C.
KIRKLAND & ELLIS LLP

Date: January 14, 2016

CAESARS ENTERTAINMENT CORPORATION

By: /s/Jeffrey D. Saferstein
Name: Jeffrey D. Saferstein
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Date: January 14, 2016