

Caesars Entertainment: Today's Involuntary Bankruptcy Petition Limits CEOC Flexibility in Ongoing Restructuring Talks

Takeaways from Today's Involuntary Bankruptcy Petition

Today Appaloosa Investment Limited Partnership I, and other holders of CEOC's second lien notes filed an involuntary chapter 11 [petition](#) against CEOC in the United States Bankruptcy Court for the District of Delaware, as well as a motion seeking the appointment of an [examiner](#) to review CEOC and CEC's prepetition dealings. The Capitol Forum spoke with Steven T. Gubner and Corey R. Weber of Ezra Brutzkus Gubner LLP, bankruptcy attorneys in Los Angeles, California with extensive experience regarding involuntary bankruptcy cases, about what may have motivated the filing, and its potential consequences:

- **One of the primary purposes of the filing was likely to cut off CEOC's ability to make payments to creditors in connection with their out-of-court restructuring efforts.** On [January 6, 2015](#), CEC and CEOC agreed to amend the restructuring term sheet negotiated with CEOC first lien creditors to provide that CEC would pay all holders of first lien notes that sign the RSA on or prior to January 12, 2015 an amount equal to 1.625% of the first lien bond claims held by those creditors once CEOC either (a) obtained support for the RSA from holders of 2/3 of CEOC's first lien notes and obligations of CEOC under its credit agreement or (b) obtained court approval of a disclosure statement. While the involuntary petition does not affect CEC's ability to make any such payment, it does make it likely that CEOC cash will not be used to make that payment (or any similar payment) without bankruptcy court approval because, Mr. Gubner noted, such a payment would probably not be considered an "ordinary course" use of CEOC assets. Accordingly, the involuntary filing may have been motivated by a desire to impose tighter controls on the use of CEOC's cash and other assets.
- **The involuntary petition keeps Caesars' October transfers within the 90-day preference lookback period.** As we previously [reported](#), certain of CEOC's junior creditors raised allegations that actions taken to perfect a lien on CEOC's cash in favor of first lien noteholders constituted an avoidable preferential transfer. Under the Bankruptcy Code, the look-back period during which transfers to non-insiders are potentially avoidable as preferences is 90 days. With respect to the October transfers, that period would expire on January 14 - one day before the RSA requires CEOC to file for bankruptcy. Therefore, by filing the involuntary petition today, CEOC's junior noteholders will keep the October transfer within the 90-day look-back period (so long as an order for relief is entered on the involuntary petition).
- **The involuntary petition does not necessarily preclude a venue fight.** Other sources have speculated that Caesars prefers to have CEOC file for bankruptcy relief in Chicago. The filing of the involuntary petition in Delaware could, therefore, result in a venue fight between CEOC and the restructuring support parties, on the one hand, and the second lien noteholders and other creditors opposing the RSA, on the other. However, Mr. Gubner noted that CEOC is unlikely to seek dismissal of the involuntary petition based on venue grounds; rather, the likely course of action would be for CEOC to consent to relief in Delaware and then file a motion seeking to transfer the case to Chicago.

Next Steps

The next step in CEOC's involuntary bankruptcy will be CEOC either consenting to entry of an order for relief, or contesting the involuntary petition. If CEOC contests the involuntary petition, the burden will be on the petitioning creditors to establish that the involuntary case was filed by three or more entities holding claims that are not contingent as to liability or the subject of a bona fide dispute as to liability or amount of at least \$15,325 more than the value of any lien on the property of the debtor securing such claims held by the holders of such claims. The petitioning creditors must also prove that the debtor is not generally paying its debts as they come due. The evidence would be presented at an evidentiary hearing or trial. Once the parties or the Bankruptcy Court sorts out the issues regarding the involuntary petition, and if an order for relief is entered, the next issues likely to be fought over include venue and whether an examiner or chapter 11 trustee should be appointed for CEOC.