



Unhappy Caesars Bondholders Find Ally In EDMC Judge

By Andrew Scurria

Law360, New York (January 06, 2015, 8:44 PM ET) -- Creditors furious with Caesars Entertainment Corp.'s financial maneuvering ahead of an \$18 billion debt restructuring find themselves in a stronger position now that an Education Management Corp. noteholder has successfully alleged a similar breach of payment rights.

As Caesars races to hammer out a deal to restructure its Caesars Entertainment Operating Co. unit through bankruptcy, a group of investors are claiming in New York federal court that the company's recent moves have all but ensured they will be wiped out.

On Monday, the plaintiffs filed a letter reiterating that Caesars' elimination of a guarantee on their debts violated the Trust Indenture Act, which broadly prohibits companies from forcibly paring down bonds outside of bankruptcy court.

If that argument sounds familiar, it should. Last week, an EDMC creditor obtained a ruling that found its rights under the TIA were violated when a group of fellow creditors teamed up with the for-profit education company and hatched a plan to restructure its debts.

The ruling, by U.S. District Judge Katherine Polk Failla, found that EDMC could not reshuffle its corporate structure to erase a guarantee on a subsidiary's debt without consent from the plaintiff, Marblegate Asset Management LLC. If Marblegate ultimately prevails, it could see full repayment.

While the two situations are in many ways distinguishable — Caesars' restructuring is sure to spill into bankruptcy court, while EDMC cannot use Chapter 11 at all — the allegations line up so neatly that it's no wonder the Caesars camp pounced, according to Seth Lieberman of Pryor Cashman LLP.

Judge Failla's ruling is ammunition as investors confront the looming bankruptcy of CEOC, and Lieberman said the noteholders will be much more reluctant to cut a deal that would bring them on board with the company's preferred course.

"I definitely think this could be a potential game changer in the Caesars restructuring, to the extent that these holders are able to somehow monetize their claims," he said.

Caesars is taking flak on multiple fronts amid the closed-door negotiations on a way forward for CEOC, which took on most of the debt from the company's ill-advised private equity

megabuyout in 2008. Creditors have sued both in New York and in Delaware Chancery Court, alleging that Caesars has schemed to drain the subsidiary of assets in the name of protecting the parent company and its private equity sponsors.

The New York plaintiffs — funds run by investment managers MeehanCombs LP, Chicago Fundamental Investment Partners LLC and Trilogy Capital Management LLC, plus a proposed class of investors — are challenging a private refinancing from August that they say hurt the value of their unsecured bonds.

Under the "backroom" deal, Caesars allegedly bought back some \$155 million worth of debt from some junior CEOC creditors. Those that didn't participate say the deal left them with no shot at being repaid in bankruptcy since it allowed Caesars to erase a guarantee on CEOC's debts.

Caesars has disputed that the deal was unlawful, saying that the TIA forbids only "formal, explicit modification of the legal right to receive payment" instead of offering broader protections of a creditor's "ability" to be repaid.

The plaintiffs seized on the EDMC decision, which found otherwise, for leverage, according to Joe Smolinsky of Weil Gotshal & Manges LLP. While U.S. District Judge Shira Scheindlin is unlikely to rule before CEOC files for Chapter 11, the plaintiffs' case could conceivably continue against the nonbankrupt Caesars parent, or they could win damages that could yield a bankruptcy claim against CEOC and throw a wrench in its plans.

However the tactical maneuvering plays out, Judge Failla's ruling makes clear that a broad reading of the TIA "is still good law," according to Lieberman.

CEOC skipped a \$225 million coupon payment on Dec. 15, triggering a 30-day countdown before creditors can effectively force a bankruptcy. Before the window closes, the unit is all but certain to enter Chapter 11, where it wants to shed some \$10 billion in debt and split into two entities: a real estate investment trust to own its hotel and casino properties and a separate operating company to manage them.

"With the fast track that Caesars is working on, a disruption of this magnitude is maybe not enough to derail the restructuring process, but enough to at least affect the negotiations," Lieberman said.

Once CEOC enters Chapter 11, expect the fireworks to continue. Many of CEOC's senior bondholders have already reached a prenegotiated deal to support its restructuring proposal, which would yield that creditor class an estimated \$207 million cash recovery plus more than 90 percent ownership of the reorganized entity.

But no judge has yet ruled on whether Caesars unlawfully drained CEOC of its worth, and groups of noteholders are alleging a broader asset-stripping scheme before the Chancery Court.

Parent companies have run into trouble before for trying to protect themselves from a weakened operating unit. In 2012, an examiner appointed in the bankruptcy of Dynegy Holdings LLC found that nonbankrupt parent Dynegy Inc. had defrauded creditors by seizing valuable power facilities from the unit before putting it in Chapter 11.

Dynegy later followed Dynegy Holdings into bankruptcy under a court-approved settlement.

Caesars is represented by Lewis R. Clayton and Jonathan Hurwitz of Paul Weiss Rifkind Wharton & Garrison LLP and Eric Seiler, Philippe Adler, Emily A. Stubbs and Jason C. Rubinstein of Friedman Kaplan Seiler & Adelman LLP.

The plaintiffs are represented by James H. Millar, Kristin K. Going, Clay J. Pierce and Tracy S. Combs of Drinker Biddle & Reath LLP, Mark C. Gardy, James S. Notis and Meagan Farmer of Gardy & Notis LLP and Jay W. Eisenhofer, Gordon Z. Novod and Elizabeth Shofner of Grant Eisenhofer PA.

The case is MeehanCombs Global Credit Opportunities Master Fund LP et al. v. Caesars Entertainment Corp. et al., case number 1:14-cv-07091, in the U.S. District Court for the Southern District of New York.

--Editing by Kat Laskowski and Katherine Rautenberg.