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Caesars Entertainment rolls dice on plan mediation – and loses

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Caesars Entertainment Operating Company Inc. and various related entities ("Caesars") filed Chapter 11 bankruptcy cases in Chicago in 2015. The jointly administered cases have been highly contentious, involving high dollar disputes among Caesars and several committees appointed in the Chapter 11 cases. An Examiner was appointed to investigate possible claims related to a series of transactions by Caesars prior to the bankruptcy. All of the key parties in the Caesars cases are represented by large national and/or international law firms.

In October 2015, Caesars filed a Chapter 11 Plan and a Disclosure Statement. Negotiations and discussions regarding the terms of the Plan followed. Apparently the key parties did not make substantial progress on settlement of their disputes, because in February 2016 Caesars filed a Motion for Appointment of a Mediator to Mediate Issues to a Chapter 11 Plan of Reorganization (the "Motion to Appoint Mediator"). Some creditors and committees apparently supported the appointment of a Mediator. Some parties filed Objections to the Motion to Appoint Mediator.

Mediation of disputes regarding a Chapter 11 Plan has occurred successfully in many cases prior to the Caesars cases, notably the City of Detroit Chapter 9 case. So the Motion to Appoint Mediator was supported by precedent.

However, a unique set of circumstances in the Northern District of Illinois led the Bankruptcy Judge in the Caesars cases to deny the Motion to Appoint Mediator. In the fall of 2015 the Bankruptcy Judges for the Northern District of Illinois voted to eliminate a Local Bankruptcy Rule on mediation. The Bankruptcy Judges ended the Local Bankruptcy Rule because they believed that it was not necessary as it established a mediation program that had not been used and that it would be better to allow each Bankruptcy Judge to handle mediation requests on a case-by-case basis. The Bankruptcy Judge in the Caesars cases decided that since this Local Bankruptcy Rule had been eliminated, the Court did not have the authority to compel mediation. In other words, all of the relevant parties must agree to mediation and the Bankruptcy Court cannot compel a party to mediate a matter over the objection of

that party.

The authority for a Bankruptcy Judge to order mediation for disputes in bankruptcy cases flows from the provisions of 28 U.S.C. § 651 which requires the District Courts to establish local rules on the use of alternative dispute resolution processes ("ADR") in civil actions, including adversary proceedings in bankruptcy cases. Local Bankruptcy Rules must be approved by the District Court. So it is interesting that 28 U.S.C. § 651 mandates the District Court to establish Local Rules on the use of ADR in bankruptcy cases (although perhaps limited to adversary proceedings and not necessarily extending to plan confirmation disputes) yet the District Court for the Northern District of Illinois apparently endorsed the elimination by the Bankruptcy Judges of the Local Bankruptcy Rule on mediation.

It will also be interesting to see if the curtailment of Local Bankruptcy Rules on mediation becomes a trend.