

Analysis: Caesars Wins Latest Round in Battle with Bondholders

By **Bill Rochelle**, ABI Editor at Large

A year ago, District Judge Shira Scheindlin of Manhattan seemed on the cusp of single-handedly blowing up the reorganization of casino giant Caesars Entertainment Operating Co. Inc. before it even got started. It is less clear now whether she will come down on the side of bondholders who are attempting to reinstate guarantees granted by its nonbankrupt parent, Caesars Entertainment Corp. Caesars believes that the parent's guarantees of several billion in bonds terminated because the operating company was no longer a wholly owned subsidiary of the parent as the result of transactions in August 2014. Bondholders sued in Judge Scheindlin's court in September 2014, contending that the federal Trust Indenture Act prevented the termination of the guarantees without consent from each and every bondholder.

Coincident with the casino operating company's voluntary chapter 11 petition in Chicago in January 2015, Judge Scheindlin denied Caesars' motion to dismiss. Her opinion seemed to indicate where she was ultimately headed when she said that removing the guarantees was "an impermissible out-of-court restructuring" that is "exactly what TIA Section 316(b) is designed to prevent."

Her two new opinions, on Dec. 29, 2015, and Jan. 5, 2016, show the danger of reading too much into a decision on a Rule 12 motion to dismiss, where allegations in a complaint must be taken as true.

The new opinions both denied the bondholders' motions for summary judgment to reinstate the guarantees. Judge Scheindlin found disputed issues of fact as to whether the Caesars operating company remained a wholly owned subsidiary. That question is significant because the indentures provide that the guarantees terminate when the operating company is no longer wholly owned.

The bondholders argued that the parent's remaining 89% stock holding in the subsidiaries is sufficient to keep the operating company in the wholly owned category. The casinos disagreed, and Judge Scheindlin found disputed facts requiring trial.

The Caesars reorganization has become a race to see whether Judge Scheindlin can hold a trial and issue a ruling before the lawsuits in her court are enjoined by the bankruptcy judge in Chicago, where the chapter 11s are pending. The threat of an injunction looms because the Seventh Circuit handed down an opinion on Dec. 23 reversing the lower courts and establishing an easily satisfied test allowing the bankruptcy court to enjoin the bondholders' lawsuits. To read the ABI analysis of the circuit court decision, [click here](#).

Caesars needs the bankruptcy court to issue an injunction quickly, because the first trial in Judge Scheindlin's suits is set to begin March 14. Consequently, Caesars filed papers with the bankruptcy judge on Dec. 28 seeking an injunction hearing during the first week of January.

Bankruptcy Judge A. Benjamin Goldgar declined to act so quickly. In a ruling the very same day, Judge Goldgar said he lacked jurisdiction because the Seventh Circuit had not issued a mandate. As he calculated the process, Jan. 19 would be the first time a mandate could issue in the ordinary course.

Even if Judge Goldgar holds an injunction hearing before trial in March, the bondholders can argue that Judge Scheindlin could further the reorganization by deciding whether the guarantees remain in force. To avoid an injunction, the bondholders might need to agree they will exercise no remedies against the parent if they win. The casino operating company has been saying that success by the bondholders will precipitate a chapter 11 filing by the Caesars parent.

Caesars wants the lawsuits stopped because it says the parent cannot contribute to a settlement fund in a chapter 11 plan if the bondholders' guarantees are reinstated.

Stay tuned!