AMERICAN BANKRUPTCY INSTITUTE

2023 Complex Financial Restructuring Program

Case Study

2023

American Bankruptcy Institute Corporate Restructuring Case Study

National Entertainment & Resorts Operations, Inc.

Introduction

Today is November 15, 2022. You are a Managing Director with BM Partners, a financial and operational turnaround firm – one of the best in the business! *Northern Entertainment and Resorts Operations, Inc.* ('**NERO**' or the '**Company**') hired you earlier in the year – at the strong urging of their corporate counsel, Ohman & Notgood ('**OhNo**') – to assess the Company's current financial position and to better understand the assumptions underlying the Company's (i) 2023 operating plan and (ii) five-year financial projections. Over the last six weeks, however, the landscape has become clouded by the filing of a colorful legal complaint against NERO, and the scope of your original assignment appears poised to expand. The allegations of fraudulent transfers set forth in the complaint have worried creditors at all levels of Company's complex capital structure – including each of its three largest tranches of debt – prompting them to form committees to represent their interests. You've also learned that the Board of Directors recently directed the Company to begin involving OhNo's restructuring attorneys more regularly in their discussions.

Despite these realities, James Crockett - the Chairperson and CEO of NERO's parent company, Ides Entertainment, Inc. ('**Ides Entertainment**') - has optimism for the future. At a meeting this morning, she spent most of her time patiently explaining that NERO's 2023 operating plan is achievable, that the long-range outlook can be stabilized, and that NERO can deliver consistent, reliable cash flows if constituents are willing to be patient and consider resetting the capital structure to more manageable levels. However, he is concerned that the overhang of this newly filed litigation – initiated by the indenture trustee for NERO's second lien creditors – could serve as a major distraction inside the Company and risks diverting their management team's attention away from the large and aggressive suite of operational improvements that NERO urgently needs to implement.

Ricardo Tubbs, the Company's CFO, is determined to take command of the Company's financial situation. His first action is a good one: he expands the scope of your work to advise on all aspects of the Company's operational and financial restructuring. From what you know already, this is going to be a major engagement. In addition to the legal overhangs and impending formation of ad hoc creditor groups, large interest payments loom which will constrain the Company's cash flow. Furthermore, the Company's 2023 operating plan contemplates material year-over-year improvements to EBITDA following a difficult 2022, and the previews offered to NERO's creditors have been met with outright skepticism. Your charge is to help the Company understand its current predicament, and guide the management team through this challenging situation.

Business Overview

NERO – together with its affiliate companies Idea of March Las Vegas Casino Company, Inc. ('**IMLVC**') and Resorts Operations and Modern Entertainment, Inc. ('**ROME**') – is a large and geographically diverse U.S. casino-entertainment company. NERO owns and operates a portfolio of subsidiaries consisting of 20 casinos in 9 states, primarily under the Brutus, Cassius, and Longinus brand names.

Corporate History and Organization

The properties comprising the current NERO, IMLVC, and ROME casino portfolio came about by way of multiple acquisitions and mergers spanning multiple decades. Since its founding in Nevada more than 80 years ago, the Company has grown through new development, expansions, and acquisitions, and now oversees nearly 1.4 million square feet of gaming space, 31,000 slot machines and table games, 14,000 hotel rooms, and more than 10,000 employees.

Property	Location	Type of Casino	Casino Space (sq. ft.)	Slot Machines	Table Games	Hotel Rooms and Suites
Brutus Atlantic City	Atlantic City, NJ	Land-based	100,000	1,500	135	1,000
Brutus Council Bluffs	Council Bluffs, IA	Land-based	20,000	500	20	200
Brutus Gulf Coast	Biloxi, MS	Dockside	25,000	550	25	400
Brutus Joliet	Joliet, IL	Dockside	30,000	900	40	175
Brutus Lake Tahoe	Lake Tahoe, NV	Land-based	75,000	1,250	130	1,000
Brutus Louisiana Downs	Bossier City, LA	Land-based	12,500	750	-	-
Brutus Kansas City	Kansas City, MO	Dockside	50,000	1,250	45	350
Brutus Philadelphia	Bensalem, PA	Land-based	90,000	2,250	100	-
Brutus Reno	Reno, NV	Land-based	35,000	600	50	800
Brutus Tunica	Tunica, MS	Dockside	125,000	1,200	60	1,250
Caligula’s Palace	Las Vegas, NV	Land-based	175,000	3,500	275	4,750
Cassius Atlantic City	Atlantic City, NJ	Land-based	110,000	1,600	150	1,050
Cassius Bossier City	Bossier City, LA	Dockside	27,500	1,300	60	550
Cassius Council Bluffs	Council Bluffs, IA	Land-based	70,000	1,450	75	-
Cassius East Chicago	East Chicago, IN	Dockside	105,000	2,900	140	-
Cassius Kansas City	Kansas City, MO	Dockside	25,000	1,100	25	225
Cassius Southern Indiana	Florence, IN	Dockside	85,000	1,600	90	475
Cassius Tunica	Tunica, MS	Dockside	60,000	1,150	95	450
Longinus Atlantic City	Atlantic City, NJ	Land-based	120,000	3,100	125	1,300
Longinus Tunica	Tunica, MS	Dockside	27,500	475	20	125

In January 2020, NERO was the subject of a leveraged buyout by Poseidon Capital (‘**Poseidon**’) – one of the largest in history – which transaction closed shortly prior to the onset of the COVID-19 pandemic (the ‘**Poseidon Acquisition**’). While the debt incurred in connection with NERO’s acquisition largely remains, shut-downs during the pandemic have significantly impacted foot traffic, and while the Company is beginning to recover, it has not reached pre-pandemic levels. Additionally, the corporate structure surrounding NERO has evolved since the Poseidon Acquisition and has been the subject of recent controversy.

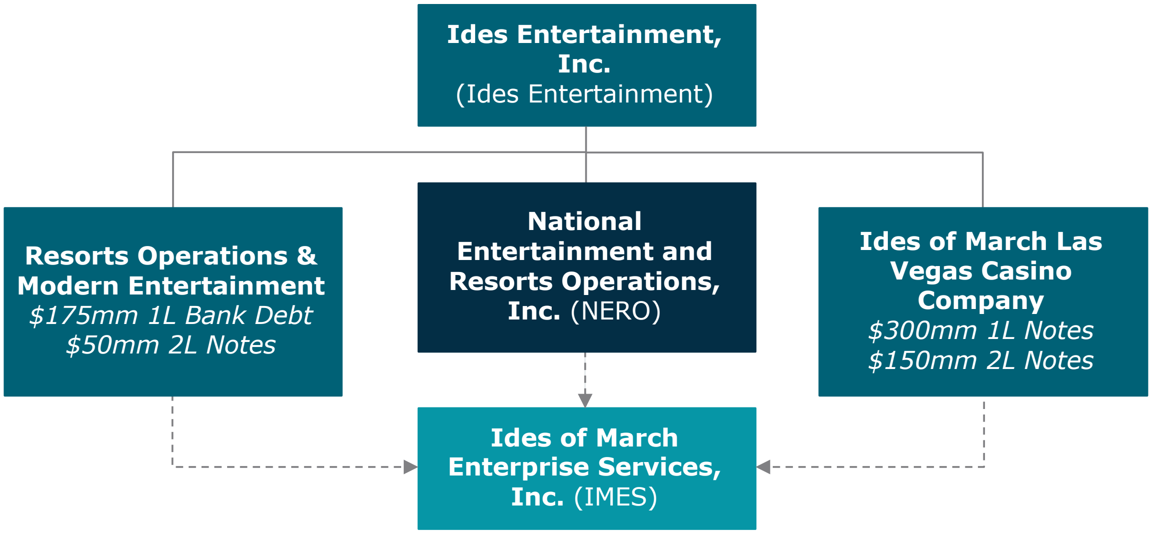
Between the time of the Poseidon Acquisition until January 2021, NERO (through its various subsidiary companies) was the direct and sole owner of substantially all of the casino properties which currently comprise the Ides Entertainment portfolio (as described in further detail below). Prior to January 2021, NERO was solely and directly owned by a subsidiary of Poseidon.

However, in January 2021 – a time at which casino property valuations had fallen materially versus recent highs – Poseidon pushed forward with a series of corporate structure changes. Specifically, each of IMLVC, ROME, and the ultimate parent company – Ides Entertainment – were formed as part of a series of concurrent and interrelated transactions, each as described below:

1. Ides Entertainment – a solely-owned subsidiary of Poseidon capital – is formed
2. 100% of the equity of NERO is contributed to Ides Entertainment, who becomes NERO's parent and sole owner
3. IMLVC and ROME are formed as new subsidiaries of Ides Entertainment
4. IMLVC acquires 2 Las Vegas-based properties from NERO for a purchase price of $500 million
5. ROME acquires 3 newly-renovated properties – located in regions which management colloquially refers to as 'destination locations' – from NERO for a purchase price of $250 million
6. An entity called Ides of March Enterprise Services, Inc. ('**IMES**') – ownership of which is shared between equally between NERO, IMLVC, and ROME – is also formed

Each of NERO, ROME, and IMLVC have their own separate capital structures and – as required by each entity's loan documents and discussed in further detail herein – maintain separate and discrete cash management systems.

The Company's corporate structure chart following the transactions noted above (collectively, the '**January 2021 Realignment**') is illustrated below:



Critically, in connection with the January 2021 Realignment, an arms-length shared services agreement between and amongst NERO, IMLVC, ROME and IMES is entered into (the '**Shared Services Agreement**'), defining the intercompany relationships, governance, and operations of the businesses. Shared services provided include finance, accounting, human resources, regulatory matters, other overlapping corporate functions.

Management estimates that, in the year 2022, the Shared Services Agreement will generate total cost synergy benefits for NERO in the amount of approximately $50m. The Shared Services Agreement is a core and critical component of the Ides Enterprise corporate structure, and is described in further detail herein.

1. The January 2021 Realignment initially garnered the attention of the Company's largest lenders and bondholders. Eyebrows were further raised when public disclosures revealed that Poseidon and certain of its operating partners had opted to make new-money equity investments in each of IMLVC and ROME *without* making similar commitments to NERO. While some participants in the capital structure raised questions as to whether the newly-formed IMLVC and ROME paid market value for the assets that were acquired from NERO, and that the shared services agreement could conceivably be used to transfer value from NERO to other Ides Entertainment entities, no immediate actions of substance were taken. This was due primarily to the terms of definitive legal documents underlying both the Poseidon Acquisition and the January 2021 Realignment, which provided that, as the new parent and de facto successor of NERO, Ides Entertainment was now a guarantor of NERO's existing debt obligations (the '**Parent Guarantee**').

While some creditors expressed concern over new debt issued by each of IMLVC and ROME in connection with the January 2021 Realignment, the collective view seemed to be that (i) while the new IMLVC and ROME debt issuances were aggressive, the incurrence of new debt by these newly created subsidiaries was not specifically prohibited by NERO's indentures or credit agreements, and (ii) that the presence of the Parent Guarantee continued to provide existing lenders and bondholders with reasonable protection against potential risks.

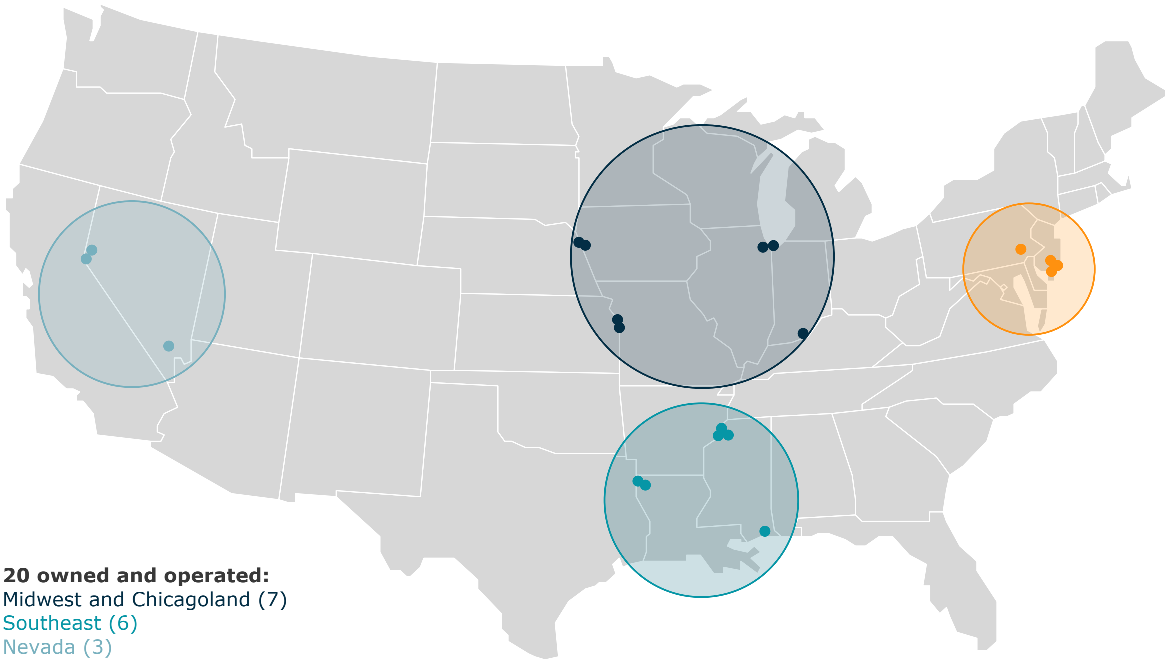
However, in December 2021, Ides Entertainment issued a press release stating that (i) it had recently sold 10% of the equity of NERO to institutional investors in a private transaction, and (ii) this sale had the effect of releasing Ides Entertainment of its obligations under the parent guarantee (the '**December 2021 Transaction**'). In substance, the

December 2021 Transaction functionally separated the value of IMLCV and ROME's assets from NERO.

The subsequently filed lawsuit – and other relevant creditor matters – are discussed in further detail in the Creditor Issues portion of this primer.

NERO Business Operations and Locations

NERO' traces its roots and founding back to 1940, when Mike Mara opened a small poker room in Western Nevada. Since then, NERO has grown its businesses across the country. Today, the Company's core casino offerings are spread across the United States, with strong concentrations in Chicago, Nevada, and Atlantic City.



In Nevada, the Company owns and operates three properties, including their flagship property Caligula's Palace located on the famous Las Vegas Strip. The Company's other Nevada gaming properties are Brutus Reno, and Brutus Lake Tahoe. In total, NERO operates approximately 285,000 square feet of gaming space and 6,550 hotel rooms in Nevada, including over 5,300 slot machines and 450 table games.

The Company also has significant operations in the Atlantic City & Mid-Atlantic region, where they own and operate Brutus Atlantic City, Brutus Philadelphia, Cassius Atlantic City, and Longinus Atlantic City. The Company currently has approximately 420,000 square feet of gaming space and 3,350 hotel rooms in this region, including more than 8,400 slot machines and 500 table games.

Finally, the Company owns and operates 13 gaming properties in other U.S. locations, including both land-based and dockside casinos. The majority of these properties are located throughout the Midwest and South. In total, these locations comprise approximately 660,000 square feet of gaming space, 4,200 hotel rooms, 15,000 slot machines, and 700 table games.

Gaming Sector Highlights

In the wake of the COVID-19 pandemic, substantially all brick-and-mortar gaming companies were forced to sustain heavy losses. Business and consumer travel was effectively halted, and consumer sentiment dropped to levels not seen since the Great Recession. Even after travel restrictions were lifted, many consumers remained reluctant to fly on airplanes or visit casinos, due to general fears regarding health and safety. These issues were further exacerbated by the ongoing overhang of economic uncertainty, which further disincentivized discretionary spending on casino gaming and trips to casino-resorts. While the 2021 calendar year was marked by a rebound in gross gaming revenue, much work remains as casino operators look to recover from the economic challenges that defined 2020.

Recent challenges faced by gaming companies were not limited to the COVID-19 pandemic. Even though the economy has improved, NERO and other operations face changing consumer preferences. For example, the 'Millennial' and 'Gen Z' generations have shown appreciably less interest in traditional casino gaming than previous generations. Thus, although Las Vegas's tourist numbers have rebounded to 85% of pre-COVID levels, visitors, on average are younger and less willing to gamble, with nearly half of Las Vegas visitors flagging vacation or pleasure – not gambling – as the primary reason for their visit. To address this changing dynamic and capture this younger crowd, many of the newest gaming properties provide significant non-gaming entertainment options. The Company is also pursuing younger consumers, including by renovating Caligula's Palace's nightclubs to drive additional traffic to that property. However, nightlife, restaurants, and other entertainment options typically do not produce the same margins as gaming operations.

Furthermore, whilst early testing and surveying suggest that 'Millennial' and 'Gen Z' generations *are* willing to engage and wager on sports betting and mobile casino apps, the competition in this space is intense. To attract users, NERO and other platforms have invested millions in development, marketing, and promotional offerings and allowances. While the expectation is that this level of intensity will steady by 2025 as the market matures, NERO will need to commit ongoing and material investment in the interim to avoid losing a foothold in this critical space.

Brick-and-mortar casino operators also face increased competition for gaming dollars. In 2001, gambling was legal in only nine (9) U.S. States. By 2022, all but six (6) had passed legislation permitting commercial and/or tribal gaming, resulting in a significant build-out of markets across the entire country. These additional gaming options have added pressure to existing casinos as the total customer population has remained relatively stable. Even in Las Vegas, new developments have increased competition for existing casinos. Since 2008, four major developments have opened on the Las Vegas Strip, including the $2.3 billion Encore Las Vegas, MGM's $9.2 billion gaming and residential resort CityCenter, the Cosmopolitan of Las Vegas, a $3.9 billion gaming resort, and Resorts World Las Vegas, a $4.3 billion gaming resort. These developments, as well as newly renovated properties by many of Las Vegas's traditional operators, have increased the supply of gaming, hotel, restaurant, and shopping opportunities available to Las Vegas visitors, leading to top-line revenue pressures for all operators in the space.

NERO also faces significant challenges in the Atlantic City market, where they own and operate Brutus Atlantic City, Cassius Atlantic City, and Longinus Atlantic City. These challenges are the result of, among other things, an oversaturated local market and increased competition from casinos elsewhere on the East Coast. Over the years, Atlantic City's gaming industry has gone from enjoying a monopoly in the eastern half of the United States to a fiercely competitive situation today, with slot machines or full-blown casinos in every neighboring state. Similarly, development of casino hotels in Macau and Singapore, as well as the new properties in Las Vegas, has made it harder for Atlantic City to attract bona fide high-end players. As a result, Atlantic City has seen several high-profile casino bankruptcies in recent years.

Furthermore, the gaming industry by its nature is highly regulated. As owners and operators of casino entertainment facilities, NERO is subject to pervasive regulations in each of the jurisdictions in which they operate. In the United States, NERO and its affiliates are required to comply with the laws and regulations of federal and state authorities, tribal gaming authorities, and local authorities to obtain and maintain licenses to own and/or operate casino properties. Certain gaming laws require companies engaged in gaming operations and certain of their directors, officers, and employees to obtain licenses or findings of suitability from gaming authorities, unless some type of exemption applies or a waiver is obtained. Qualification and suitability determinations require submission of detailed entity and personal and financial information followed by a thorough investigation. In general, gaming authorities have wide discretion to deny an application for licensing.

SIC Codes and Competitive Set

NERO's business most closely aligns with SIC codes 7011 and 9200. NERO views each of (i) Caesars Entertainment, (ii) MGM Resorts International, (iii) Las Vegas Sands, (iv) Wynn Resorts, and (v) Penn National Gaming as being members of its competitive set.

IMES and the Shared Services Agreement

IMES is a joint venture among the three companies which own and/or operate Ides Entertainment locations: NERO, IMLVC, and ROME. Historically, NERO and its employees managed and funded centralized corporate functions for shared services among all Ides of March locations, such as legal, accounting, payroll, information technology and other enterprise-wide services. In connection with the formation of IMLVC and ROME, there was a need to form a centralized 'Services Company' to (i) manage centralized assets, such as certain intellectual property including its proprietary customer loyalty program ('**Empire's End**'), (ii) employ personnel who provide services to Ides Entertainment properties, and (iii) ensure proper governance and equitable allocation of costs around centralized services, including capital expenditures for shared services and the prioritization of projects.

Each of Ides Entertainment, NERO, IMLVC, and ROME have equal 25 percent voting control over IMES. IMES's management and operations are governed by a steering committee, which consists of one member from each of Ides Entertainment, NERO, IMLVC, and ROME. The steering committee can take action by a majority vote (subject to unanimity requirements for certain material actions) or written consent of the steering committee members. Due to the even number of members, changes can be blocked without resolution.

IMES provides the Company with substantially all of their corporate, regional, and shared (with IMLVC, ROME, or both) employees, as well as substantially all of their casino-level employees at the director level or above. The majority of the approximately 2,000 management-level personnel responsible for running NERO's businesses are employed by IMES, and IMES is responsible for all employment-related obligations associated with these employees, including employment agreements, collective bargaining agreements, and any obligation to bargain and negotiate with a union.

Pursuant to an Omnibus License and Enterprise Services Agreement (the 'Omnibus Agreement'), NERO granted to IMES a non-exclusive license to use—but otherwise retained ownership of—certain intellectual property, including the Empire's End loyalty program. In turn, IMES generally grants to each entity that owns a property license in and to the intellectual property relevant to such entity's property.

IMES is a for profit entity; all services provided for NERO, IMLVC, and ROME are provided are marked up 2% over cost. The corporate overhead expenses incurred by IMES in performing centralized services, employing personnel, and managing intellectual property are allocated among NERO, IMLVC, and ROME, and generally reimbursed on a weekly basis, with a monthly true-up. Allocation percentages are based on a complex allocation methodology that takes into account each entity's consumption of the specified service or cost.

Prior to the formation of IMES, NERO managed payroll and accounts payable functions for NERO and its predecessor entities. The formation of IMES shifted these duties from NERO to IMES. IMES provides the same services for IMLVC and ROME, and each entity prefunds the required amounts to IMES in advance. As such, there are generally no intercompany payables or claims created in connection with NERO's direct payroll expenses. At the end of each month, the 2% fee for management services in reimbursed to IMES.

With respect to accounts payable, IMES generally manages and funds all accounts payable on behalf of NERO, IMLVC, and ROME. If and when IMES makes a payment for any direct expense on behalf of NERO, IMLVC, or ROME, IMES is reimbursed on a regular basis (usually within 24-48 hours) for those payments.

Finally, IMES functions as the governor on all enterprise-wide investments, including capital expenditures. The IMES steering committee must approve all capital expenditures and cost allocations relating thereto.

As NERO's performance declined in the wake of the Poseidon Acquisition, the Company's creditors – especially those with lower priority in the capital stack – have become concerned about a lack of transparency with respect to how the agreement is managed and enforced, going so far as to raise questions as to the fairness of the agreement and whether value may be migrating to IMLVC or ROME at the expense of NERO.

NERO's Board has vehemently denied this, but allegations nonetheless persist, bolstered in part by the December 2021 Transaction, the subsequent second lien lawsuit, and related allegations contained therein.

Management Team

James Crockett – President, Chief Executive Officer & Chairperson

- Initially joined NERO in 2015
- Was appointed CEO of Ides Entertainment in connection with the January 2021 Realignment, with fiduciary responsibilities to the entire Ides Entertainment organization (including ROME and IMLVC)
- Notable prior roles include:
    - President and CEO of Las Vegas Sands (3 years)
    - COO of Wynn Resorts (8 years)

Ricardo Tubbs – Executive Vice President & Chief Financial Officer

- Initially joined NERO in 2017
- Was appointed CFO of Ides Entertainment in connection with the January 2021 Realignment, with fiduciary responsibilities to the entire Ides Entertainment organization (including ROME and IMLVC)
- Notable prior roles include:
    - CFO of Penn National Gaming (10 years)

Jen Levinson – Executive Vice President & General Counsel

- Initially joined NERO in 2012
- Previous roles include:
  - GC of Caesars Entertainment (3 years)
  - Associate at a prominent white shoe New York law firm (8 years)
- Was appointed GC of Ides Entertainment in connection with the January 2021 Realignment, with fiduciary responsibilities to the entire Ides Entertainment organization (including ROME and IMLVC)

Dwight Schrute – Director of FP&A

- Initially joined NERO in 2013; employment contract was transferred to IMES in connection with the January 2021 Realignment

Creed Bratton – Director of Shared Services

- Initially joined NERO in 2019 as a Director of Financial Accounting; employment contract transfer to IMES and role change took place concurrent with January 2021 Realignment

Pam Beasley – Senior Vice President & CEO of NERO

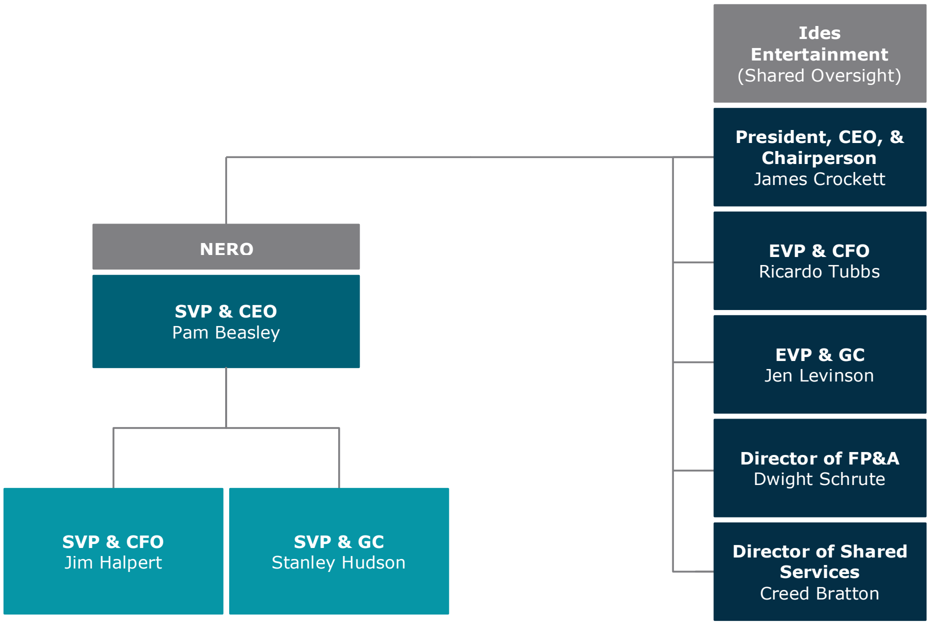
- Joined NERO in 2001, initially as the Property Manager of Cassius East Chicago
- Beasley is one of NERO's longest-tenured employees, and has earned the respect of the management team for her deep knowledge of both NERO's business operations and the gaming business broadly
- Unlike Johnson, Scott, and Levinson, Beasley acts in an executive role only for NERO, and was promoted to her current role in June 2022 the wake of the 2L litigation

Jim Halpert – Senior Vice President & CFO of NERO

- Joined NERO in June 2022
- Previous roles include:
  - 12 years at Avis Car Rental
- Like Beasley, Halpert acts in an executive role only for NERO, and was onboarded in the wake of the 2L litigation

Stanley Hudson – Senior Vice President & GC of NERO

- Joined NERO in 2010, initially as a staff attorney in the regulatory and compliance group
  - Rose to the level of Associate GC of Ides Entertainment, and served in that role through May 2022
- Like Beasley and Halpert, Hudson acts in an executive role only for NERO, and was appointed to his current role in June 2022 in the wake of the 2L litigation



Employees

The Company employs approximately 10,000 people through their various operations, including 5,000 full-time and 5,000 part-time employees. Approximately 35 percent of NERO's workforce is covered by collective bargaining agreements.

The Company make certain required contributions on a quarterly basis to their U.S. defined benefit pension plans. The Company expects to make contributions of $22.5 million in 2023 relating to these defined benefit pension plans.

The Company also maintains various other benefit plans and bonus programs for its employees. Counsel has advised that – in the event that a restructuring was implemented by way of an in-court proceeding – NERO would likely need to seek specific relief from the court to facilitate payment of year-end bonuses to its workforce.

Customers and Marketing

NERO – together with IMLVC and ROME – operate one of the largest and most comprehensive portfolio of casino properties in North America. This unique combination of gaming products has allowed them to offer patrons both local and destination options for gaming or entertainment. Unlike competitors that offer only regional gaming properties, NERO has been able to obtain higher than average spending at their regional properties because their industry-leading customer loyalty program, Empire's End, provides customers with entertainment and gaming rewards that can be used in Las Vegas and other destination locations. And unlike competitors that offer only destination properties, the Debtors' more frequent interactions with their customers at the local level allows them to fashion personally-tailored reward packages that enhance their customers' experiences and encourage more elaborate trips. This business model has resulted in higher customer traffic and spending at both regional and Las Vegas casinos.

Despite these foundational competitive advantages, the Company faces significant challenges due to a number of factors. The Poseidon Acquisition closed just as the COVID-19 pandemic was beginning. Business and consumer travel came to a halt, with consumer sentiment plummeting to levels not seen since the Great Recession. Even after travel restrictions were lifted, many consumers remained reluctant to do so out of fear for their health and safety, whilst the overhang of economic uncertainty further disincentivized discretionary spending on gambling and trips to casino-resorts. Although the economy has since rebounded, the Debtors now confronting changed consumer habits, increased competition from online outlets, and pressures foisted on consumers due to rapidly rising inflation and materially increases in costs for non-discretionary consumer staples.

Financial Performance

Financial performance has declined for the past several years, driven by a combination of factors including COVID-19 impacts (travel restrictions, overhang of health and safety concerns, disincentivized discretionary spending), gradual but substantive changes in consumer preferences (with younger customers showing appreciably less interest in traditional casino gaming as compared to older clientele), an intensely competitive marketplace (in both the brick-and-mortar and digital spaces), and continued struggles achieving sufficient profitability in the Atlantic City market (a critical destination location for NERO).

	Actual							"10+2"
Net Revenue	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
Brutus Atlantic City	$457	$428	$437	$390	$383	$174	$328	$312
Brutus Council Bluffs	101	100	93	85	76	74	75	77
Brutus Gulf Coast	135	122	97	86	87	81	81	81
Brutus Joliet	256	280	257	232	212	101	193	184
Brutus Lake Tahoe	256	240	239	224	228	113	218	224
Brutus Louisiana Downs	114	110	94	91	86	83	76	69
Cassius Kansas City	156	118	109	104	91	91	78	73
Brutus Kansas City	206	201	195	196	191	180	175	172
Brutus Philadelphia	303	349	338	346	371	181	331	307
Brutus Reno	131	112	91	83	78	67	71	67
Brutus Tunica	253	231	202	182	146	155	130	47
Caligula's Palace	732	727	764	866	1,007	460	975	917
Cassius Atlantic City	430	456	465	417	371	152	257	233
Cassius Bossier City	274	270	224	219	206	207	192	187
Cassius Council Bluffs	191	197	186	193	200	206	201	190
Cassius East Chicago	426	470	517	547	501	243	471	430
Cassius Southern Indiana	348	317	290	277	256	271	261	255
Cassius Tunica	273	250	221	214	194	191	183	190
Longinus Atlantic City	284	242	288	265	245	114	199	115
Longinus Tunica	78	68	54	48	39	37	33	35
NERO Online / Managed / Other	-	-	-	94	148	189	704	633
NERO Net Revenue	**$5,404**	**$5,288**	**$5,161**	**$5,159**	**$5,116**	**$3,370**	**$5,232**	**$4,798**
YoY Growth / Contraction		-2.1%	-2.4%	-0.0%	-0.8%	-34.1%	55.3%	-8.3%

	Actual							"10+2"
EBITDA	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
Brutus Atlantic City	$163	$134	$87	$51	$59	$27	$45	$30
Brutus Council Bluffs	20	22	23	20	17	16	19	20
Brutus Gulf Coast	21	17	16	8	12	12	13	12
Brutus Joliet	78	61	58	50	51	26	55	46
Brutus Lake Tahoe	70	61	53	43	48	25	38	41
Brutus Louisiana Downs	14	12	16	10	11	6	6	2
Cassius Kansas City	23	16	18	18	22	20	13	11
Brutus Kansas City	46	51	56	58	59	55	54	49
Brutus Philadelphia	56	68	64	60	77	32	63	40
Brutus Reno	20	8	7	3	5	2	6	-1
Brutus Tunica	41	28	34	10	2	17	-7	-4
Caligula's Palace	234	212	197	238	340	130	296	197
Cassius Atlantic City	136	105	79	47	24	17	10	-4
Cassius Bossier City	63	60	53	45	44	52	40	33
Cassius Council Bluffs	62	66	66	71	76	83	81	74
Cassius East Chicago	81	83	102	138	102	53	106	90
Cassius Southern Indiana	77	61	60	55	51	57	55	56
Cassius Tunica	84	75	82	76	71	63	53	51
Longinus Atlantic City	101	64	48	30	31	12	17	-1
Longinus Tunica	23	18	16	10	7	8	3	6
NERO Online / Managed / Other	-	-	-	-38	-31	-7	63	78
NERO EBITDA	**$1,413**	**$1,222**	**$1,135**	**$1,003**	**$1,078**	**$706**	**$1,029**	**$826**
YoY Growth / Contraction		13.5%	-7.1%	-11.6%	7.5%	-34.5%	45.8%	-19.7%

Historical CapEx

While recent capital expenditures levels are – *in aggregate* – generally reflective of NERO's recurring annual need, a higher-than-normal quantum of investment has been deployed at the corporate level to modernize IT, finance, marketing, and other non-property functions. As such, recent property-level spending has trailed that of NERO's major casino-hotel competitors, and NERO casino-hotels will require significant investment in the coming years to prevent asset quality from falling below brand standards and behind that of Caesars, MGM, Sands, Wynn, and Penn.

CapEx	2015	2016	2017	2018	2019	2020	2021	"10+2" 2022
Corporate	$55	$96	$33	$111	$100	$103	$106	$109
Total Corporate Capex	**$55**	**$96**	**$33**	**$111**	**$100**	**$103**	**$106**	**$109**
Brutus Atlantic City	$4	$9	$8	$16	$9	$8	$8	$9
Brutus Council Bluffs	2	10	1	3	3	3	3	3
Brutus Gulf Coast	2	4	1	4	3	3	3	3
Brutus Joliet	5	4	4	6	7	7	7	8
Brutus Lake Tahoe	4	9	2	11	9	9	9	9
Brutus Louisiana Downs	1	2	1	1	3	3	3	3
Cassius Kansas City	2	3	1	6	3	3	3	3
Brutus Kansas City	5	3	2	7	6	6	7	7
Brutus Philadelphia	7	7	3	9	12	11	11	12
Brutus Reno	1	3	1	4	3	3	3	3
Brutus Tunica	4	3	1	1	-	-	-	-
Caligula's Palace	42	27	13	42	36	37	39	41
Cassius Atlantic City	15	12	5	18	11	11	11	11
Cassius Bossier City	8	11	3	4	7	7	7	7
Cassius Council Bluffs	6	3	2	6	7	7	8	8
Cassius East Chicago	5	7	3	7	16	16	17	18
Cassius Southern Indiana	3	5	2	6	9	9	10	10
Cassius Tunica	7	5	3	8	7	7	7	7
Longinus Tunica	2	1	-	1	1	1	1	1
Longinus Atlantic City	4	3	-	1	2	2	2	2
NERO Online	-	-	-	45	47	51	53	58
Total Property + Online CapEx	**$129**	**$131**	**$56**	**$206**	**$201**	**$204**	**$212**	**$223**
Corp + Property + Online CapEx	**$184**	**$227**	**$89**	**$317**	**$301**	**$307**	**$318**	**$332**

Capital Structure and the Intercreditor Agreement

NERO's Capital Structure

Projection as of December 31, 2022			
NERO Funded Debt ($ in millions)	**Maturity**	**Interest rate**	**Face Value**
Term Loan B4	2024	10.50%	$377
Term Loan B5	2025	5.95%	938
Term Loan B6	2025	6.95%	2,299
Term Loan B7	2025	9.75%	1,741
Subtotal First Lien Bank Debt			**5,355**
11.25% First Lien Notes	2025	11.25%	2,095
8.50% First Lien Notes	2028	8.50%	1,250
9.00 First Lien Notes	2028	9.00%	3,000
Subtotal First Lien Notes			**6,345**
12.75% Second Lien Notes	2023	12.75%	750
10.00% Second Lien Notes due 2025	2025	10.00%	4,485
10.00% Second Lien Notes due 2023	2023	10.00%	4
Subtotal Second Lien Notes			**5,239**
6.50% Senior Unsecured Notes	2024	6.50%	297
5.75% Senior Unsecured Notes	2025	5.75%	233
Subtotal Senior Unsecured Notes			**530**
Other borrowings	Various	Various	426
Total NERO Funded Debt			**$17,895**

Current LIBOR Rate and the Forward Curve

- The current LIBOR rate is 2.0% (200 basis points). Banking contacts whom you consider to be reliable have advised that they expect the curve to remain relatively flat over the next 5 years.

First Lien Bank Debt

- NERO owes approximately $5.35 billion under four term loans issued pursuant to that certain Third Amended and Restated Credit Agreement, dated as of July 25, 2020.
- The First Lien Bank Debt obligations are secured by first priority liens in the 'Collateral,' as defined in that certain Amended and Restated Collateral Agreement dated as June 10, 2020.

First Lien Notes

- NERO owes approximately $6.35 billion in principal amount outstanding to holders issued pursuant to various indentures.
- The obligations under the First Lien Notes are secured by first priority liens in the 'Collateral,' as defined in that certain Amended and Restated Collateral Agreement dated as June 10, 2020.

Second Lien Notes

- NERO owes approximately $5.24 billion in principal amount outstanding to holders of three series of second lien notes issued pursuant to three indentures.
- The Second Lien Notes are secured by second priority liens in the Collateral, as set forth in and subject to the terms of the Collateral Agreement, dated as of December 24, 2020.

Senior Unsecured Note Obligations

- As of the Petition Date the Debtors owe approximately $530 million in principal amount outstanding to holders of senior unsecured notes (the 'Senior Unsecured Notes') issued pursuant to two indentures.

Equity Ownership

- Poseidon Capital owns 90% of the equity interests in NERO, with the remaining 10% owned by various institutional investors.

Creditor Issues

- The lenders of NERO's First Lien Bank Debt (the "**First Lien Bank Lenders**") and holders of NERO's First Lien Notes (the "**First Lien Noteholders**" and, collectively with the First Lien Bank Lenders, the "**1L Creditors**") sit atop the capital stack and are secured by perfected first-priority liens on different underlying packages of NERO's collateral (which consists primarily of the owned real property, buildings and land improvements, and furniture / fixtures / equipment comprising NERO's casino portfolio). While broadly skeptical of the January 2021 Realignment and December 2021 Transaction, the tone of recent engagement with these groups have been generally civil and constructive. This is believed to be driven by the quality of the collateral packages pledged to the First Lien Bank Lenders and First Lien Noteholders, which are estimated to provide approximately 95% and 90% coverage, respectively - on an enterprise value basis - on each group's loan exposure (even after the alleged voiding of the Parent Guarantee).

  Early and informal indications suggest that the 1L Creditors will be reasonably supportive of a restructuring process, so long as said restructuring does not provide for the placement of bridge, rescue, or debtor-in-possession financing option which primes their existing first lien positions. When asked about their willingness to provide additional capital in the form of senior debt or equity, neither the First Lien Bank Lenders or First Lien Noteholders appeared willing or enthusiastic.
- Conversely, recent interactions with the holders of NERO's Second Lien Notes (the "**Second Lien Noteholders**") have been acrimonious. In March of 2022, an ad hoc group of Second Lien Noteholders filed suit (the "**2L Litigation**") against each of Poseidon, Ides Entertainment, NERO, IMLVC, and ROME, alleging – among other things – that the January 2021 Realignment and December 2021 Transaction (i) constituted both actual and constructive fraudulent transfers designed to enrich Ides Entertainment at the expense of NERO, (ii) were designed to move NERO's assets beyond the reach of NERO's creditors, and (iii) represented a transfer of NERO's assets for less than fair value, which constituted an event of default under NERO's various second lien note indentures.

  Poseidon, Ides Entertainment, NERO, IMLVC, and ROME have asserted a number of key arguments in response. Firstly, they point to valuations obtained in connection with the December 2021 Transaction, which appear to support the amounts paid to NERO by

IMLVC and ROME for the properties acquired. Secondly, they assert that a plain reading of the underlying credit documents affirms their position that the sale of [10%] of the ownership of Ides Entertainment to institutional investors does have the effect of releasing the Parent Guarantee.

The Second Lien Noteholders did not find either of these positions persuasive, pointing to the fact that (i) the assets which were transferred from NERO to ROME and IMLVC were never the subject of a sophisticated, good-faith attempt to sell them to the highest bidder, and (ii) that the 'strict read' of the credit agreement clause on which the Poseidon, Ides Entertainment and its affiliates rely is the subject of a typo and unlikely to withstand legal scrutiny.

OhNo recently attempted to approach Second Lien Noteholders' counsel to explore the possibility of a settlement but was quickly turned away. Based on a brief exchange between senior legal representatives, the Second Lien Noteholders appear to (i) view their claims as substantive and colorable, (ii) believe that their litigation will prevail, and (iii) be unwilling to drop their lawsuit for anything less than "immediate payment of par plus accrued."

Counsel for the Second Lien Noteholders further advised that their constituents would seek appointment of a chapter 11 trustee if NERO attempted to restructure by way of a chapter 11 filing. They went on to add that "everyone has a target on their backs," and advised that they would quickly object to any cash collateral motion or interim financing arrangement which their constituents felt was "too rich."

- While NERO's fact pattern is front and center for the management team, some members – most notably, [Creed Bratton,] the Director of Shared Services – have become increasingly concerned about potential knock-on effects with vendors. More specifically, Bratton believes that key suppliers – many of whom provide goods and services to NERO, ROME, and IMLVC by way of the Shared Services Agreement – could be confused, alienated, or inclined to discontinue service if NERO were to file for chapter 11, and is concerned that a NERO filing could create operational reverberations throughout the Ides Entertainment portfolio. He has taken the position that – if NERO is seriously considering a chapter 11 filing – that all trade creditors must be paid in full on the eve of the same. The members of the management team are largely sympathetic, but many are concerned that there is simply not enough liquidity to facilitate.
- As NERO's challenges have continued to mount, the Company's creditors – especially those with lower priority in the capital stack – have become concerned about a lack of transparency with respect to how the Shared Service Agreement is managed and enforced, going so far as to raise questions as to the fairness of the agreement and whether value may be migrating to ROME and IMLVC at the expense of NERO.

  Management vehemently denies this, pointing to (i) the substance underlying the Shared Services Agreement and the amount employed in the allocation of costs across NERO, ROME, and IMLVC, and (ii) the amount estimated savings that it generates for NERO's business. However, it is understood that a heavy diligence workstream to defend the program may be required to facilitate a negotiated outcome with creditors, and the filing of formal proceedings is likely to increase creditor's expectation of the same.
- The Shared Services Agreement is not the only intercompany mechanism which has come under scrutiny from creditors; in recent months, the Empire's End loyalty program has been a topic of increasing focus.

  The interest in the Empire's End program stems primarily from the decision *not* to modify the terms or conditions as part of the January 2021 Realignment or December 2021 Transaction. To elaborate, despite the fact that NERO, ROME, and IMLVC are now legally separate – with discrete operations, capital structures, and creditors – Ides Entertainment clientele retain the freedom to earn and redeem points across the Ides network on a completely unrestricted basis, without regard for the legal separation that now exists between certain casinos. As a result, certain creditors have envisioned scenarios whereby ROME or IMLVC locations benefit from the revenue generated by customers earning points through play at ROME or IMLVC casinos, whilst NERO – most specifically, Caligula's Palace – is forced to shoulder an overweight share of the associated costs due to the redemption of points for complimentary hotel stays, food and beverage offerings, and similar customer perks.

Consistent with the Shared Services Agreement, management anticipates heavy incoming creditor diligence regarding the Empire's End program. However, there is real concern that – on a nominal basis – the numbers will demonstrate that earning and redemption patterns do indeed benefit ROME and IMLVC casinos at the expense of NERO. While NERO management believes that the intangible benefits conferred by the Empire's End network ultimately outweigh the cost, these assertions can be challenging to support with direct evidence and are likely to receive significant airtime in a chapter 11 scenario.

Management's Financial Projections

The below provides a snapshot of the Company's projected financial performance over the next five (5) years.

Income Statement	FY2022E	FY2023P	FY2024P	FY2025P	FY2026P	FY2027P
Revenues						
Gaming	$3,657	$3,536	$3,587	$3,654	$3,724	$3,811
Food	509	494	507	520	532	547
Beverage	266	260	265	271	277	284
Lodging	485	474	489	501	515	529
Other	220	213	218	222	228	234
NERO Online Revenues	295	538	476	405	407	409
Less: total promo allowance	(634)	(585)	(596)	(608)	(621)	(636)
Net revenue	**4,798**	**4,930**	**4,946**	**4,965**	**5,062**	**5,178**
Operating expenses						
Direct expenses:						
Gaming expense	(1,867)	(1,750)	(1,778)	(1,806)	(1,832)	(1,868)
Food expense	(467)	(440)	(451)	(459)	(467)	(477)
Beverage expense	(146)	(137)	(140)	(142)	(144)	(147)
Lodging expense	(197)	(178)	(183)	(187)	(190)	(194)
Other expense	(120)	(104)	(107)	(109)	(111)	(113)
Total direct expense	**(2,797)**	**(2,610)**	**(2,659)**	**(2,702)**	**(2,745)**	**(2,799)**
G&A, facilities, and other costs	(949)	(854)	(870)	(883)	(897)	(912)
NERO Online Expenses	(255)	(475)	(405)	(340)	(346)	(353)
Depreciation and amortization	(430)	(371)	(387)	(399)	(412)	(425)
Other expenses and adjustments	(285)	(87)	(49)	(46)	(42)	(42)
Income (Loss) from operations	**82**	**532**	**577**	**595**	**620**	**648**
(Loss from loan accel.) / Gain on sale	(115)	(2,362)	63	-	-	-
Interest expense	(2,222)	(1,709)	(1,710)	(1,709)	(1,709)	(1,709)
Other items	6	(335)	-	-	-	-
Net income	**(2,249)**	**(3,874)**	**(1,070)**	**(1,114)**	**(1,089)**	**(1,061)**
Adjustments						
Loss from loan accel. / (Gain on sale)	115	2,362	(63)	-	-	-
Interest expense	2,222	1,709	1,710	1,709	1,709	1,709
Depreciation and amortization	430	371	387	399	412	425
Other	308	456	85	83	81	81
Adjusted EBITDA	**$826**	**$1,024**	**$1,048**	**$1,077**	**$1,113**	**$1,154**

The 2023 portion of NERO's projections represents the output of a collaborative process involving the corporate finance department and each of NERO's property managers. Each of NERO's properties was responsible for delivering a departmental income statement forecast for their gaming operation. Property managers received significant input and guidance from corporate finance, including:

- Access to historical performance results for each casino location;
- Guidance received from marketing, operations, and other relevant departments regarding the nature, scope, and anticipated impact of upcoming cost reduction initiatives; and

- Regional revenue growth / contraction forecasts developed by NERO's gaming analytics group.

Property managers combined the corporate finance group's guidance regarding cost saving initiatives and anticipated regional growth expectations with their own knowledge of the property's cost structure and unique operating environment to create an income statement projection for their location. These forecasts were aggregated by corporate finance and collectively form the 2023 portion of NERO's long-range projections.

The 2023 portion of NERO's long-range projections contemplate approximately $200M of year-over-year improvements to Adjusted EBITDA including many short-term, high impact actions such as headcount reductions and elimination of specific external spend as categorized and quantified below:

- **Operations** - Adjusted EBITDA Improvement Initiatives (~$100M) - A blend of headcount reductions, growth / construction programs, pricing increases and efficiency initiatives at each property.
- **Marketing and Advertising** - Adjusted EBITDA Improvement Initiatives (~$75M) - A series of discrete, actionable items to reduce direct costs and marketing promotions to better focus related spend and take advantage of better data evaluation around player profiling.
- **Corporate** - Adjusted EBITDA Improvement Initiatives (~$25M) - Consists largely of IMES headcount reductions for which NERO will realize a corresponding benefit. Certain external spend reductions also contemplated.

For conservatism, the Budget does not reflect the full amount of the identified EBITDA improvement related to these initiatives. Substantially all of the head count related initiatives will be implemented prior to the end of the 2022 calendar year.

Longer-term growth rates were developed in conjunction with the gaming analytics group's detailed assessment of the markets in which NERO operates, with additional input incorporated based on property-specific and competitive factors.

The gaming analytics group assesses data over a 10-year time-frame to estimate forecasted gaming revenue by market. NERO operates in a large number of regions with unique market factors impacting gaming revenue trends. As such, revenue growth assumptions across different geographies can show significant variation.

Current Situation

The challenges faced by NERO due to a downturn in the broader gaming marketplace – when coupled with a highly-leveraged post-transaction balance sheet and the overhang of litigation commenced by an aggressive second lien constituency – has placed the Company in a position whereby a formal restructuring may be necessary.

- NERO's CEO, Pam Beasley, views the pending litigation as a major distraction. She has been an outspoken advocate of an in-court restructuring process absent a major near-term breakthrough with the Second Lien Noteholders. In her view, a chapter 11 filing and the automatic stay would provide the management team with the breathing room needed to (i) implement the large suite of initiatives being prioritized for 2023, and (ii) focus on the redevelopment of its customer engagement strategy and marketing spending plan. While Poseidon and the Ides Entertainment management team agree with Beasley regarding the importance of the turnaround plan, they are adamantly opposed to any "free-fall" filing, having expressed significant concerns about the potential for spiraling costs and a loss of control of the restructuring process.

- While the broad approach to a restructuring remains a point of contention, each of Poseidon, Ides Entertainment, and NERO agree that significant ongoing capex investment will be required. In the collective view of both the Ides Entertainment and NERO management teams, NERO's inability to invest in its business will place the company in a further compromised competitive position, and put its five-year projections at risk.

  The NERO network has historically required approximately [$300 million] of capex each year relating to normal-course property investment, digital investment, corporate investment, and maintenance, and management anticipates that this same level of need will persist over the course of the next five years.

  However, management expects that the amount required for corporate, non-property functions – which has accounted for approximately one-third of total capex spending in recent years – can be managed down to roughly 15% of total spend during the pendency of the projection period and allow for a renewed focus on much-needed investment in room renovations, hospitality offerings, and other elements of the guest experience.

- The foregoing challenges are exacerbated by NERO's current liquidity situation. As of [October 31, 2022], NERO had approximately [$200 million] of cash on hand, with semi-annual interest payments on its Second Lien Notes – the amounts of which exceed [$250 million] – coming due on [January 1, 2023].

  As previously noted, NERO's cash management system operates completely separate from those of ROME and IMLVC. Furthermore, the various credit agreements and indentures to which ROME and IMLVC are subject place significant restrictions on intercompany loans. OhNo has reviewed the loan agreements in question, and is of the view that neither ROME or IMLVC is in a position to make intercompany loans to NERO without triggering a default under their loan documents. While Ides Entertainment and IMES are not specifically subject to the same covenant restrictions, neither of those entities had meaningful cash-on-hand as of the October 2022 month-end.

Board of Directors

The Board comprises six (6) members, four (4) of which are affiliated with Poseidon Capital:

- James Crockett (Chairperson)
- Two board members, James Jones and Michaela Jordan, are professional acquaintances of Poseidon Capital and Dagny Taggart, but don't serve on any other boards that are in any way affiliated with the Company. (In other words, although these board members are designees of Poseidon Capital, they are technically independent.)
- Two board members, Wyatt Russo and Archer Stone, are Managing Directors at Poseidon Capital and also serve as board members on several other Poseidon Capital portfolio companies.
- One board member, Allison Smith, is the retired CEO of a large regional gaming company which was acquired by NERO in the early 2000s.

The Board has been engaging more and more frequently with the bankruptcy counsel from Ohman & Notgood ('**OhNo**'), and last week had a very contentious meeting during which lead counsel gave the board a strong lecture about its duties, obligations, and the risks that it faces – both against the backdrop of the Second Lien Complaint generally, and as the Company risks entering the 'zone of insolvency.'

Role

You and your team need to prepare for three meetings:

- *Round 1:* A meeting with the Company's creditors. Holders of the First Lien Debt, 1.5 Lien Debt, and the Second Lien Debt are all expected to attend.
- *Round 2:* A meeting with a special sub-committee of the Board of Directors. Members of the Board that are expected to attend this meeting are Ben Stokes, Danni Wyatt, and Maureen Ali.
- *Round 3: (the finals – top 3 teams from Rounds 1 and 2):* A mock bankruptcy court plan confirmation hearing. You will represent the Company's interests and present your restructuring plan for the Company. There will be a representative from each of the primary creditor constituencies (First Lien Bank Debt, First Lien Bond Debt, and the Second Lien Debt) as well as a representative of the unsecured creditors committee (which represents the collective interests of all unsecured creditors). A (mock) bankruptcy judge will preside.

You will need to carefully judge what support materials you will use. Too little detail will fail to convince your audiences. Too much detail runs two risks; (1) you will lose the attention of your audience, and (2) you will run out of time to cover the remainder of your agenda. Also, be very mindful of the audience to whom you are presenting, recognizing the different positions and interests of the different parties.

You should be prepared to address the following issues at each of your meetings (in addition to whatever other questions may be thrown at you by your judging panels!):

Round 1: Creditor Meeting

You will have 40 minutes to present to the creditor constituents. There will also be a 10-minute feedback session at the conclusion.

There will be one holder of First Lien Bank Debt, one holder of First Lien Bond Debt, and one holder of Second Lien Debt at the meeting. You are worried that this meeting will be contentious and that the different creditor constituents have very different motivations coming into the meeting.

Your goal should be to try to build a consensus around your proposed restructuring solution with the constituents if that is possible. You will need to be especially mindful of what you've come to learn about the various creditors' key priorities and pending disputes, and should be prepared to cover the following points:

- Establish the Company's liquidity position. This portion of the presentation should elaborate on any cash-related challenges that NERO faces in the coming months, including an estimate of 'new-money' financing needs (if any) and constructive ideas on how to raise this additional capital.
- Discuss your plan for the restructuring of the balance sheet. This portion of the presentation should include a 5-year business plan and forecast. You should also be very specific about the treatment of each constituency and your rationale for the treatment.
- Make specific requests from each of the creditor constituencies for what you want them to support as part of an overall consensual restructuring. Be prepared to answer how you will treat existing equity holders as part of any consensual restructuring.
- Candidly address the strengths and weaknesses of each creditor constituents' position and present your view of what their treatment would be in the absence of a consensual out-of-court transaction (*i.e.*, under a bankruptcy plan).

- Discuss any potential operational initiatives for the Company, and how the Company is going to fund any costs. This portion of the presentation should include analytics supporting your recommendations.
- Discuss any other operational changes that you are going to ask the Company to make.
- Attempt to establish lender support for your recommendations.

Round 2: Board of Directors Meeting

You will have 40 minutes to present to a sub-committee of the Company's board of directors. There will also be a 10-minute feedback session at the conclusion. James Jones, Archer Stone, and Allison Smith are all expected to attend. You understand that the board of directors as a whole is divided in their view of the problem and the solution to address the issues the Company faces. The sub-committee is tasked with proposing the best path forward for the Company in light of their legal obligations. You expect that the meeting may be turbulent. Your role is to try to develop consensus around your proposed approach. Your presentation should include:

- Summarize your overall approach to the restructuring and what you are asking for from each of the creditor constituents as well as equity holders. Update the subcommittee on your meeting with the creditors and your assessment of the level of support from creditors for your proposed plan.
- Assume that – following the Creditor Meeting held in Round 1 – that holders of NERO's Second Lien Debt have refused to signal any flexibility or willingness to negotiate with the Company, going for far as to indicate that 'they will not settle for a dollar less than par plus accrued.' Come prepared with suggestions regarding a proposed forward path that the Board can seriously consider.
- Update the sub-committee on the Company's liquidity position. This portion of the presentation should include a postpetition financing exercise, during which you explain (i) how much additional financing the Company will need to raise in a chapter 11 scenario (if any), (ii) the intended use of these incremental proceeds (if any), and (iii) other salient terms relevant to your postpetition financing plan.
- Discuss any operational initiatives that the Company should consider and your recommendations with respect to those initiatives. Be prepared to identify how the Company will fund your recommended course.
- Discuss any other operational changes you would recommend that the Company consider and the financial costs and benefits of those changes.
- Discuss how you propose to restructure the Company's balance sheet. Be sure to explain the implications to all constituents of your plan and your view as to the perspectives of each of the constituencies. Also, discuss the prospects and structure of new capital that might be available.
- Discuss how you propose to implement your restructuring. Is an out-of-court workout reasonably possible? If not, can your proposal be implemented through the bankruptcy process? Who, if anyone, do you anticipate will oppose your proposal and how do you plan to implement it over their dissent?
- Solicit the support from the sub-committee to implement your proposed restructuring.

Round 3: Mock Bankruptcy Court Confirmation Hearing

The top three teams (based on their performance in Rounds 1 and 2 *and* their performance on the written materials) will be proponents for the Company of a plan of reorganization before a mock bankruptcy court. In addition to a mock bankruptcy judge, there will be one representative present from each of the First Lien Bank Debt, First Lien Bond Debt, and Second Lien Debt ad hoc groups, and one that represents the official committee of unsecured creditors (the '**UCC**'). The UCC is appointed to represent the interests of all unsecured creditors generally. For purposes of Round 3, you should assume that they will focus on the interests of unions, trade creditors, and other potential unsecured claimants. Your goal in the finals is to build sufficient support to permit the bankruptcy judge to confirm your plan of reorganization for the Company.

Figure out who you need to have to support your plan and be sure to avoid pitfalls that would make your plan unconfirmable! You need to be able to articulate what each constituency is getting under your proposal. And, if your plan *requires* the support of a particular constituency, you will need to identify which constituencies would have a veto. It is not *necessary* to have a confirmed plan to win the competition (and there is precedent for a team with an unconfirmed plan winning the competition), but it will give you a leg up.

Lastly, going into the final round, you'll have to make some assessments about whether to modify your proposed plan based on your morning meetings with creditors and the sub-committee of the board. *The judging panel for the finals will be different from your judging panels in the morning sessions.* However, the morning sessions will give you important feedback on how much support (or lack thereof) there is for your proposals. Don't try to redo your analysis or proposal in any radical way, but you will gain important feedback from the morning rounds and should figure out whether it is appropriate to try to assimilate it in the finals.

In addition to the above, you need to be prepared to address the following:

- Summarize your restructuring plan, including the value of the reorganized enterprise. Identify the treatment of each class of creditors and equity holders under your plan and identify whether that class is entitled to vote under your plan.
- Summarize the Company's liquidity position during the course of the bankruptcy. Explain the key terms of any proposed postpetition financing arrangements, including the amount of any financing which the Company seeks to raise (if any), the rationale for the size of the any postpetition financing facility (if any), and critical terms or milestones to which NERO and its lenders (be the prepetition lenders, postpetition lenders, or both) have agreed.
- Describe the operational changes that you propose to make through the bankruptcy, the financial impact of those changes, as well as the impact on various constituencies of the Company, including, without limitation, the landlords and the unions.
- Respond to questions and challenges to your plan from the various constituencies, one or more of whom may be seeking to defeat your plan.
- Request that the bankruptcy judge permit creditors to vote on your plan, poll the creditor constituents as to whether they support your plan, and then ask the bankruptcy judge to confirm your plan.

FINAL REPORT OF EXAMINER, SLOANE CONWAY

APRIL 10, 2023

INTRODUCTION

The Examiner investigated over fifteen sometimes related transactions between CEOC (the Debtor)[1] and other entities controlled by IDES (its parent) and the LBO Sponsor (Poseidon). These transactions took place over a one-year period and continued through 2022. The principal question being investigated was whether in structuring and implementing these transactions assets were removed from NERO to the detriment of NERO and its creditors.

The simple answer to this question is "yes." As a result, claims of varying strength arise out of these transactions for constructive fraudulent transfers, actual fraudulent transfers (based on intent to hinder or delay creditors) and breaches of fiduciary duty by NERO directors and officers and IDES. Aiding and abetting breach of fiduciary duty claims, again of varying strength, exist against the Sponsor and certain of IDES 's directors.[2] None of these claims involve criminal or cOMWon law fraud.

The potential damages from those claims considered reasonable or strong[3] range from $4.0 billion to $5.5 billion. Monetary damages are the most common remedy in fraudulent transfer cases, but in certain cases the Court could require that the property that was subject to transfer be returned to NERO, particularly where damages are difficult to calculate.[4] In addition, one uncertainty of potentially significant magnitude is the ability of NERO to recover all or some of the value of the social gaming business of CIE, an entity created in 2020 in connection with the transfer of the World Series of Poker trademark (WSOP) out of NERO. A potential recovery of these damages is not included in the above numbers. Also excluded from the above numbers

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[1] References to NERO or the Debtor should be read to include debtor subsidiaries and affiliates.

[2] In reaching these conclusions the Examiner is not opining on regulatory issues in any jurisdiction or whether any regulatory inquiries are appropriate. Indeed, his findings are largely based on bankruptcy related issues where the issues do not necessarily correspond to regulatory requirements. For example, as discussed below, conduct which might involve no claims if NERO was solvent become the basis for claims in large part because NERO was insolvent. Neither the allegations investigated nor conduct giving rise to claims set forth in this Report had any adverse impact on the day-to-day operation of the casinos. Moreover, none of these findings apply or to purely operational executives (*e.g.*, Jame Crockett, the current CEO of NERO) who played no material role in the transactions at issue.

[3] Claims are being characterized as strong (a claim having a high likelihood of success), reasonable (a claim having a reasonable, or better than 50/50, chance of success), plausible (a claim likely to survive a motion to dismiss but having less than a 50/50 chance of success), weak (a claim with a reasonable chance of surviving a motion to dismiss but unlikely to succeed) or not viable (either likely to be dismissed on motion or highly unlikely to succeed if litigated).

[4] If the transferee cannot establish its good faith, the transferee will only be entitled to an unsecured claim for the amount of the consideration it paid. Where good faith is not established and monetary damages are awarded, the damage award thus would be based on the value of the asset transferred and the transferee would not be entitled to an offset in the amount of the consideration.

are (i) lost profits or other appreciation in the value of properties transferred, and related potential liens or offsets to which good faith transferees may be entitled in connection with such increases in value, and (ii) interest. While the various claims discussed in this Report exist, and the Examiner believes many of them are reasonable or strong, it is clear that they will be vigorously contested by the affected parties and all of them thus are subject to litigation risk.

As to constructive fraudulent transfer claims, one defense involves the so-called safe-harbor provisions for securities transactions under section 546(e) of the Bankruptcy Code. The Examiner believes that a court will not find these provisions applicable to the facts surrounding the asset transfers at issue.[5] Nonetheless, this is a complex issue which, like others, will be the subject of intense litigation. At the same time, the availability of this defense likely will not impact the overall quantum of potential damages since it is not applicable to either breach of fiduciary duty or actual fraudulent transfer claims which also arise from these transactions, and which involve the same or similar damages (albeit in the case of breach of fiduciary duty against different parties).

Central to these claims is the fact that throughout this period IDES and the Sponsor treated NERO as if it was a solvent 100% owned subsidiary when the reality, confirmed in much of the contemporaneous analyses they themselves created, was very different. By December 31, 2020, and continuing through 2022, there is a strong case that NERO was certainly insolvent. Moreover, precisely because of NERO's very problematic financial condition, by sometime in early 2021 the Sponsor adopted and began to implement a strategy, which while providing some benefit to NERO, was designed, among other things, to strengthen IDES's and the Sponsor position in a potential restructuring negotiation with creditors and improve their position in the event of a IDES or NERO bankruptcy. Indeed, by the Fall of 2021, while hoping to avoid a NERO bankruptcy, the Sponsor began planning for what would happen in the event of such a bankruptcy. A consequence of NERO's insolvency was that NERO should have had independent directors and advisors in connection with these transactions, but that did not occur until late June 2022.

In assessing the actions of IDES and the Sponsor, it is important to remember that the Sponsor is among the most financially savvy investors in the country, and Poseidon has extensive experience in dealing with financially troubled companies. This expertise was applied in connection with their investment in IDES and, indeed, during the relevant period Poseidon was the *de facto* chief financial officer of NERO. In the transactions at issue, the Chief Executive Officer of IDES and NERO and other senior management also deferred to the Sponsor on key issues, including the selection of which NERO properties should be sold to

[5] Principally, the asset transactions that were undertaken here involved sales or transfers of intellectual property interests or membership interests in limited liability companies, and thus do not qualify as "settlement payments" or as transfers made "in connection with a securities contract," as required under section 546(e). Nor do such transfers appear to have been made, in most instances, "by or through (or for the benefit of)" a "financial participant" (as that term is defined in the Bankruptcy Code). Section 546(e) does, however, provide a defense to a number of the financial transactions that were investigated.

other affiliated companies controlled by IDES and the Sponsor. Indeed, it appears that the Sponsor' past success in successfully negotiating resolutions involving financially troubled companies was a factor in their assuming they could do so here without the need to pay adequate attention to the requirements associated with being fiduciaries of an insolvent entity.

Analysis of the solvency of NERO and the valuation of assets transferred in connection with the transactions that were investigated are central to the conclusions in this Report. Since it therefore is important for everyone to have a clear understanding of the underlying analyses relied on by the Examiner, the main body of the report contains an extensive discussion of these subjects.

In reaching these conclusions the Examiner and his Advisors reviewed over 8.8 million pages of documents and conducted interviews of 92 individuals, with some individuals being interviewed on multiple occasions.[6] The interviews of 74 individuals were transcribed. Of great value to the Examiner also was the input – both at meetings and through written presentations – received from various key parties, including IDES, the Sponsor, the two Official Committees, NAC and the Ad Hoc Committees of First Lien Note Holders and First Lien Bank Debt, and their advisors. Some of this input was through frequent interaction between the Examiner's professionals and those retained by these groups. The Examiner also, however, met personally with these constituencies on multiple occasions. In early 2023 he also made detailed presentations of his preliminary views to each of these groups so that he could receive their further input. In response he had follow-up meetings with key interested parties, and received extensive written and oral submissions on a wide range of factual and legal issues. The Examiner found this process to be extremely helpful in assisting him in understanding and analyzing the critical issues being investigated. At the same time, the extensive presentations received from interested parties, as well as the volume and delays in the production of documents, undoubtedly lengthened the investigative process.

[6] One reason individuals had to be interviewed a second time was that document production took far longer than expected.

EXECUTIVE SUMMARY

The period since the Sponsor's acquisition to create the entities can be divided into three phases: the LBO itself; the years 2020 and 2021; and 2022 leading up to the NERO bankruptcy filing.

The first phase involved the LBO itself and continued through the COVID-19 outbreak that severely impacted the gaming business, including in its primary location, Las Vegas. One of the rationales for the Sponsor's investment was that the gaming business was generally recession proof. The impact of the events of 2020 proved this to be wrong, and by the end of 2020 NERO was plainly a troubled investment.

The LBO had converted NERO into a highly leveraged entity, and following the LBO the IDES corporate structure involved IDES as the parent entity with two subsidiaries which incurred the debt. First was the Debtor, NERO, which owned approximately 40 properties and had $17.9 billion of interest bearing debt. Second was the CMBS structure, comprised of six properties which were separately financed through $6.5 billion in debt secured by those properties. NERO provided the management services for the CMBS properties, and did so for no compensation other than the reimbursement of allocated and unallocated expenses. The only transaction investigated during this period was the LBO itself and related fees. The Examiner did not find a basis for challenging the LBO or the fees paid in connection with the LBO, principally because NERO was solvent at the time of the LBO, and the LBO did not render it insolvent.

During the second period – from early 2020 through late 2021 – the principal activities appeared to focus on, as the Sponsor and IDES described it, creating "flexibility" This was accomplished through a number of NERO debt amendments to existing credit facilities, an agreement with the CMBS lenders which, among other things, extended the maturity of the CMBS debt until early 2027, and buying both NERO and CMBS debt in the market at discounted prices. During this period there were over 10 financial transactions. As a result of these transactions, by the end of August 2021, the maturity dates of NERO debt had been extended to 2027 and beyond. The hope was that the economy, and the gaming business, would recover by then. While the 2020, early 2021 crisis did ease, that recovery was not sufficient to materially reduce the longer term financial problems afflicting NERO, which remained insolvent, continued to experience negative cash flows and whose EBITDA remained well below pre-LBO levels. The transactions investigated during this period are transfers in 2021 involving the World Series of Poker and the 2020 CMBS Loan Amendment and Trademarks Transfer. The latter, among other things, transferred ownership of certain trademarks from NERO to the CMBS entities should the CMBS lenders want to remove the CMBS properties from the NERO system after a default, while also providing the CMBS lenders with an enhanced ability for the CMBS properties to stay within the IDES system even in the event of such a default. The Examiner identified claims arising out of each of these transactions, although there is a possible statute of limitations issue with regard to the Trademarks Transfer claim.

The third and final period was defined by a more all-encompassing strategic approach to addressing the balance sheet of NERO and CMBS, accompanied by a goal of improving through various transactions IDES's and the Sponsor' strategic position both in negotiating with NERO's creditors and in the event of a NERO (or IDES) bankruptcy. By the middle of 2022 there also was increasing concern about a possible NERO bankruptcy. This led to transactions to make certain that in the event of such a bankruptcy it would not interfere with the operations of non-NERO properties owned directly or indirectly by IDES, and that prior to any NERO bankruptcy IDES's guarantees of NERO debt would be either eliminated or modified so that a NERO bankruptcy did not inevitably cause a IDES bankruptcy.

One fact, however was clear: while as a result of the transactions during this period debt maturities were extended and runway was created, there was never any realistic chance that NERO would ever pay all of its creditors at par through a refinancing of NERO's debt or otherwise, and IDES and the Sponsor, in light of their own analyses, could not reasonably have thought differently. Given NERO's ongoing negative cash flows, the level of its EBITDA and the amount it owed, any resolution of NERO's debt obligations would require significant numbers of creditors to accept material reductions in the amount of principal repayment to which they were entitled. Indeed, significant asset sales designed to enhance short term liquidity reduced NERO's potential ongoing EBITDA, making it even more difficult for NERO to service its debt obligations, and only served to reduce further its ability to pay its debts on maturity. An independent NERO board would have been in an unconflicted position to decide whether to proceed with these transactions, but such a board did not exist. Among the transactions (some of which are related to each other) which took place during this period are: (i) the CMBS refinancing (the ROME transaction); (ii) the creation of Ides of March Las Vegas Casino Company (IMLVCC or Growth), a new entity owned by IDES and IDES's shareholders (including principally the Sponsor and their co-investors) through a new public company (NAC); (iii) the sale to that entity of NERO assets; (iv) the creation of a new joint services company (IMES) in the Spring of 2021 and the transfer to that entity of NERO's management responsibilities as well as a broad, royalty-free, irrevocable license to Total Rewards (A highly valued customer loyalty program) and; (v) the so-called B-7 loan; (vi) the purported release of the IDES guarantee of NERO's bond debt;[7] and (vii) several additional note repurchases. The Examiner identified claims arising out of virtually all of these transactions.

During all of these periods, the Sponsor and management took the view that IDES was one company and decisions were made from that perspective, not from the perspective of NERO. As discussed below, once NERO became insolvent that should no longer have been the prevailing mindset in considering potential transactions.

[7] That guarantee release is the subject of a pending litigation by various NERO creditors. This Report does not address the principal issues in those cases: compliance with the Trust Indenture Act and breach of the Indenture. Instead, it focuses on whether NERO has claims arising from the release of the guarantee.

A. Solvency

There are three aspects to the analysis of NERO's solvency. First, is a determination of whether at the relevant time NERO was insolvent or failed the other tests discussed below for measuring financial condition. Second, is what the principal participants said about the issue of NERO's insolvency, and third, what information was available to them at the time which should have informed their judgment on this subject.

Before discussing the solvency of NERO, however, it is necessary to understand why whether a company is solvent is important, particularly for a highly leveraged entity like NERO, whose leverage increased from 8.8x EBITDA at the time of the LBO to, according to an October 2022 IDES' analysis, 21.6x EBITDA. Once an entity is insolvent the fiduciary obligations of officers, directors and controlling shareholders change. While their obligation remains to the entity, the residual beneficiaries of an insolvent entity are no longer limited to its equity holders, but also include its creditors. Thus, how particular actions impact creditors should become a core consideration. As discussed below, this change of obligations was explained to the IDES Board by DCH to the independent directors of NERO in August 2021.

Once NERO became insolvent there thus was the potential for conflict between IDES, the equity owner of NERO, and NERO itself. IDES, and its officers and directors, owed their duties to IDES 's equity holders, but that was not the case for NERO's officers and directors. Actions that might have been beneficial to IDES might have been less clearly, or potentially not, in the interest of NERO and its creditors. Those who were officers and directors of both entities were in an inherently conflicted position. IDES, the Sponsor and their advisors, however, at least until late May 2022, never acted as if this were the case. Decisions on behalf of NERO were effectively made by IDES and the Sponsor, and in none of the investigated transactions prior to August 2022 did NERO have independent directors or advisors looking out for its interests. As the IDES CFO testified in a recent deposition in a related case, for so long as NERO was wholly owned by IDES (until May 2022) decisions on behalf of NERO were made at the IDES level:

Q: Was there a period of time when decisions for NERO were made at the IDES level?

A: Yes.

Q: When was that time period?

A: That would have been the time period during which NERO was a wholly- owned subsidiary.

Instead, NERO should have had its own independent directors and advisors in connection with each of the challenged transactions. The need for such independent directors and advisors was particularly clear for those transactions that took place in 2020-21.

In assessing the financial condition of a company for purposes of fraudulent transfer, preference and breach of fiduciary duty, courts engage in three separate inquiries. While often lumped together as all relating to the solvency of an entity, they are, in reality, different tests. Failing any one of these tests is the predicate for a variety of claims. The tests are:

1. Balance Sheet Test – This test measures solvency and asks: Is the fair value of NERO's assets in excess of its debts?

2. Cash Flow Test – Did NERO have the ability to pay its debts as they came due? This test has both an objective component which focuses more on whether obligations are being paid in the short term, and a subjective component which focuses on the longer term ability of a company to pay its debts when they mature. Failing either the subjective or the objective aspects of the test forms the basis for potential liability.[8]

3. Capital Adequacy – Did NERO have adequate capital for the business in which it was engaged?

There is a strong case that NERO was insolvent at the end of 2020, 2021, and 2022 under the Balance Sheet Test, and a strong case that it failed the capital adequacy test in each of those years.

[8] For breach of fiduciary duty claims, Delaware courts will apply only the balance sheet or cash flow tests.

IDES has maintained that NERO was solvent under the Balance Sheet Test, at least through early 2022. In its analysis under the Balance Sheet Test presented to the Examiner, however, it deducts from NERO's debt 100% of the cash held by NERO at the relevant date. Doing so, however, is inappropriate as NERO could not operate without cash to pay trade debt and other expenses (including having the required amount of "cage cash"). As discussed, the evidence does not show that NERO had excess cash during this period. To compute ente1prise value, IDES 's analysis also used EBITDA numbers higher than reported in their financial reports, and then applied multiples to that EBITDA ranging from 9.3x to as high as 17.2x, while in other contexts they relied on the lower multiples for Las Vegas strip properties (ranging from 6x-10x) used by the financial advisors in the various transactions.

The IDES and Sponsor witnesses uniformly took the position that they did not believe NERO was insolvent because it was paying its debts, had not defaulted and had created "runway" by extending maturities on its debt.[9] This view ignores everything but the objective aspect of the cash flow test and bears no relationship to the actual solvency test. Also, in many cases IDES and the Sponsor either indicated ignorance of the relevant legal tests or simply seemed to ignore them based on their view that they believed NERO's long-term debt could be addressed over time, although as discussed above during the relevant time, and particularly in 2020-2021, there was no realistic possibility that the debt could ever be repaid at anything close to face value.

Examples of the positions taken are:

- Archer Stone of Poseidon, a IDES director, stated that while he understood that a company could be a going concern and still be insolvent, he looked at the solvency issue as being whether in the future a company had the "opportunity to have assets equal or exceed liabilities."

- Wyatt Russo, another Poseidon IDES director, thought the issue was addressed by the existence of current liquidity and the creation of "runway."

- Michaela Jordan, an independent IDES Director and Chair of the Audit Committee, viewed solvency as being essentially the same as "going concern" so that an entity would be solvent if it had an ability to meet obligations over a defined period of time, and he focused on the fact that NERO was current on its debt obligation and current on its payments to creditors.

[9] They have also claimed that NERO's solvency was evidenced by the willingness of new lenders to participate in the B-7 financing in 2022, the positive equity value in IDES stock and the willingness of the Sponsor, their co-investors and other IDES Shareholders to contribute more than $1 billion in new capital.

A fact finder would not, however, find these positions to be credible, particularly given that the IDES Board was explicitly advised about the legal definition of insolvency and, more importantly, the numerous facts available to IDES, its Board and the Sponsor which were clear signs of insolvency. For example:

- During the year after the LBO, EBITDA at NERO was only able to fund cents on every dollar of interest expense, a sure sign that it would not be able to refinance or pay its non-trade debt at maturity. Poseidon and IDES analyses and Board presentations also described NERO as being free cash flow negative by a wide margin for the foreseeable future absent extraordinary – and wholly unrealistic – increases in NERO EBITDA, even without considering repayment of principal.

- The Sponsor and IDES created numerous analyses which described the dire financial condition of NERO. For example, a June 2022 Poseidon analysis demonstrated that NERO would be billions of dollars short if it paid debts as they became due. Moreover, the stated rationale for the creation of Growth was that NERO lacked the financial resources to develop new opportunities and invest the necessary capital in its existing properties.

- Certain of NERO's debt instruments were trading at a significant discount, and commentators regularly discussed the lack of equity value of NERO. IDES also regularly captured discounts *via* open market purchases or exchange offers in NERO/CMBS debt since the holders of that debt understood it could not be refinanced at par.

- IDES and the Sponsor understood by no later than late 2021 that NERO would need to sell significant assets simply to avoid running out of cash by the end of 2022, even without paying principal on its debt, a clear sign of insolvency.
- An October 2021 analysis showed that under all remotely realistic scenarios NERO's creditors would not come close to being paid in full on maturity.
- Potential transactions were regularly analyzed from the perspective of what would happen in a NERO bankruptcy.
- In very early 2022, the Sponsor began to consider the need for independent directors at NERO because of a recognition that NERO likely would need a major restructuring or a bankruptcy filing.

The issue is not whether the Sponsor and IDES should have commissioned some form of solvency analysis, although that certainly would have been prudent. Rather, given all the available information, they – among the most sophisticated investors in the country – should have understood the reality of NERO's financial condition, and acted on that basis. As one of the independent directors appointed to the NERO Board in late June 2022 said in his interview, he did not need a formal solvency analysis; he just looked at the available information and concluded that his operating assumption had to be that NERO was insolvent. If the Sponsor and IDES did not want to undertake some more complete analysis of solvency, they, at a minimum, should have followed the same approach. Instead, the governance implications of NERO being insolvent were ignored.

B. Financial Advisors and Contemporary Valuations

In most of the challenged transactions IDES, Poseidon or IDES Special Board Committees retained financial advisors to provide "fairness" opinions[10] to the IDES Board and, in some cases

[10] The language of the opinions obtained was not uniform. In some instances, financial advisors opined on the "fairness" of the consideration received "from a financial point of view," which is standard terminology for investment banker fairness opinions. In other instances, financial advisors were retained to render opinions as to whether the value of the consideration represented "reasonably equivalent value" or was consistent with the value a hypothetical buyer would have paid in an arm's-length transaction negotiated between unrelated parties. In some

at the request of lenders, to the NERO Board. Such opinions were sought in recognition of the fact that if NERO was insolvent, such an opinion would be important in avoiding fraudulent transfer claims and, in some cases, to comply with credit agreement requirements for related party transactions. In certain of these cases the retained financial advisor actively participated in the negotiation of the price on which it was opining. While issues involving particular transactions are described in the context of the discussions of specific transactions, some general observations relating to the financial advisors and the valuations used in connection with those transactions are:

- While disagreeing with certain of the analyses underlying various of these opinions, there does not appear to be any basis for a claim against the financial advisors providing the opinions. There is no evidence that any of them acted in bad faith or with improper motives or undisclosed conflicts of interest.

- The opinions rendered by the advisors relied heavily on the accuracy of information and assumptions provided by management. While in some cases meaningful due diligence was undertaken before relying on the assumptions and information, that was not always the case, particularly as to opinions provided by non-investment banks. Moreover, even when due diligence was performed the opinions explicitly disclaimed responsibility for the reliability of information central to the opinions. These disclaimers (which reflect regular practice by those providing opinions), and the lack of meaningful due diligence by the non- investment banks, undermine the value of these types of opinions when being considered by a neutral fact finder seeking to determine the value of an asset.

- In certain instances a portion of the fee for a financial advisor's opinion was contingent on the consummation of the transaction. While such fee arrangements are not unusual for investment banks, Delaware law recognizes that the existence of such a contingency may undermine the independence of the entity providing the opinion. Lack of independence is particularly clear where, as here, the contingency is not linked to obtaining a higher price for the seller.

- While the persuasiveness to a neutral fact finder of the valuation contained in an opinion by an investment bank opining that the price it itself negotiated was fair is subject to question, it does appear that such a bank would be considered independent under Delaware law. Thus, an independent Board Committee could rely on such an opinion in fulfilling its responsibilities even if a neutral trying to actually determine the value of an asset might not place great weight on that opinion.

- An argument has been advanced that the properties sold to Growth in late 2020 and mid-2021 and to ROME in late 2021 have not performed as well as expected, and that how they have performed should be considered in analyzing whether adequate consideration was paid at the time of the transactions. It is too early to assess the long-term performance of these properties as the value of a long-lived asset is not predicated on one or two years' financial performance.

- Generally speaking, the projections that should be used in valuations are the most recently available ordinary course company projections, and not projections created solely for the purpose of securing a fairness opinion. That was not always the case in the transactions investigated. For instance, the financial advisor did not use the most recent projections because the company did not provide them despite being requested to do so.

C. Attorneys

Until May 2020 NERO had been represented by O'Meigh & Weregood LLP (OMW), who had represented the Sponsor in the LBO. The lawyers involved in that representation moved to Dewey, Cheetam & Howe LLP (DCH) in late spring 2020, and since that time DCH represented NERO in virtually every transaction investigated by the Examiner. In each of these transactions, first OMW, and then DCH, also represented IDES, NERO's then 100% shareholder. During this entire period Poseidon also was a very significant client of DCH on matters unrelated to the Company. This fact was not known to the independent directors of IDES. The General Counsel was aware of this, and believed that DCH was more responsive to the Poseidon directors than they were to him. Neither OMW nor DCH has identified any retention letter relating to its representation of NERO, and it appears that none exists.

Certain creditors raised questions about the role of DCH in various of the transactions which were investigated. In analyzing the relevant transactions, the Examiner thus considered whether there are any claims that NERO has against DCH.[11] In this regard, issues of conflict of interest, malpractice and aiding and abetting breach of fiduciary duty were analyzed. While the Examiner has concluded that probably by the Fall of 2020 and more clearly by the Fall of 2021 DCH did have a conflict of interest in representing both NERO and IDES in at least some of the relevant transactions, for the reasons discussed below the Examiner believes that any claim by NERO against DCH would be weak.

It is important to understand that it is not unusual for lawyers to represent portfolio companies of their private equity clients, although doing so can raise some ethical issues once there are public shareholders. Nor is it unusual for the same law firm to represent a parent

[11] Given when their representation ended, the Examiner does not believe there are any potential claims against OMW.

corporation and its 100% owned subsidiary. In each of these circumstances, however, the situation changes once the company being represented becomes insolvent.

Once insolvent, a company's residual beneficiaries change from its equity holders to its creditors. When the subsidiary is insolvent, actions that may be in the interest of the parent may not be in interest of the subsidiary. Nonetheless, there certainly are circumstances where a parent and its insolvent subsidiary can be represented by the same counsel, such as when they are litigating against a common defendant. The situation is different, however, when the parent and insolvent subsidiary are on opposite sides of the same transaction and the same law firm purports to represent both entities. In that case the interests of the two entities diverge. And, once such a divergence of interest occurs, a lawyer can only undertake or continue representing multiple clients if it is clear that the lawyer can competently represent both clients and if both clients provide informed consent based on a full disclosure by the lawyer of the issues involved in the simultaneous representation. Here it does not seem that either requirement was satisfied. The issues then are when was DCH adequately on notice of NERO's potential insolvency, and in what transactions did such a divergence of interest occur.

An example of where the interests of IDES and NERO most clearly diverged were in the negotiations over the ROME transaction and in the creation of IMES. As to ROME, the transaction involved the sale of assets by NERO to IDES which then transferred them to the new ROME entity, a 100% owned IDES subsidiary. Thus by representing both IDES and NERO, DCH was representing both the buyer and the seller in this transaction. A seller's counsel might have considered a variety of issues. One mixed legal and business issue involved in the transaction was the extent to which certain purported indirect benefits to NERO from the transaction could or should be counted as consideration. These indirect benefits accounted for over 70% of the consideration received by NERO. A zealous advocate for IDES would argue that including these benefits as consideration was legally justified. A zealous advocate for NERO could well have taken the opposite position.

Since, as discussed above, NERO had been insolvent since 2020 the real issue is when did, or should have, DCH recognized that there was a sufficient risk of NERO being insolvent to trigger any of the above potential conflicts. Lawyers, after all, are not financial advisors and have neither the responsibility, nor likely the skill, to perform solvency analyses themselves. But whether an entity is solvent is a mixed question of law and fact.

Here DCH has argued first that it did not believe a conflict existed because IDES and the Sponsor were proposing transactions which were designed to benefit NERO as well as IDES, and NERO was paying its bills as they came due. A conflict, they argued, would only arise when they understood that a bankruptcy was sufficiently probable which, they say, was not the case at the time of any of these transactions. Paying current bills, however, is not the legal definition of solvency, and saying transactions were in the interests of creditors begs the real question since an independent counsel might have assessed the merits of these transactions, from NERO's perspective, differently. Moreover, insolvency creates a potential conflict before a bankruptcy becomes probable.

DCH also argues that it was not on notice of NERO's insolvency. Assessing when it was on notice of NERO's potential insolvency is a complex issue. Based on the following, the earliest there is a reasonable case that it was on such notice is in the Summer/Fall of 2021.

- At least one DCH partner had in his possession an October 2020 Poseidon presentation which made clear that absent an increase in NERO's EBITDA from $1.1 billion to $2.2 billion – an extraordinary leap – NERO would have negative cash flow every year. That same deck made clear NERO could not pay maturing debt in the coming years.[23]

- In connection with the ROME Transaction, in July 2021 DCH did research on the implications of a NERO insolvency.

- Numerous DCH partners had in their possession an October 2021 a Company analysis which states that NERO then was billions of dollars short of being able to pay debt maturities in the coming years.

- In August 2022, DCH was doing legal analyses of bankruptcy risks associated with transactions being considered by Poseidon and advising on the implications of a NERO insolvency on directors' fiduciary duties.

- In late 2022, DCH was recommending independent directors be considered for NERO because of the financial challenges relating to NERO's debt or, potentially, a bankruptcy filing. It is difficult to argue that NERO would need independent directors, but not its own counsel.

None of these facts may constitute definitive proof that NERO was insolvent. Absent doing an actual solvency analysis, which DCH did not recommend, they are, however, plain indicia that NERO was insolvent. Based on these facts, the Examiner believes there is a reasonable case that a Court would find that a conflict existed in one law firm representing both IDES and NERO in at least the ROME and the CES transactions, if not all of the transactions.

D. Remedies

This Report identifies a number of potential fraudulent transfer claims. The remedy for such a claim can include either an order for a return of the property or money damages. In practice, courts most often award damages but that is in part due to the fact that this is the most common remedy sought by plaintiffs. Where valuing an asset is particularly difficult, that is a factor that could cause a court to order return of the property. In general, this Report identifies the remedies available under particular claims but does not predict how a court would exercise its discretion in crafting a remedy. Where monetary damages can be calculated, the Report does so.

If the value of the property has increased since the time of the fraudulent transfer, the monetary remedy would be for the value of the property at the time of the judgment as opposed to the value at the time of the transfer. A good faith transferee would be entitled to a lien in the amount of the cost of any improvements which contributed to the increase in value. A good faith transferee also is entitled to a lien for any consideration paid.

E. The 2020-2021 Transactions

Following the transactions discussed above, NERO, acting through IDES and the Sponsor, began the process which led to a series of transactions which closed in late 2020 and in the first eight months of 2021. The articulated purpose of these transactions was to provide added liquidity to NERO and extend debt maturities so as to create additional "flexibility" while awaiting the expected recovery in the gaming industry, to refinance the CMBS debt and, through the creation of two new entities, to secure new investment into the overall IDES structure while better positioning that structure to exploit development projects.

The two new entities created were NERO Acquisition Corporation (NAC), a new public company, and Growth. The concept was that the Sponsor and, to the extent they desired, other shareholders of IDES , would invest new capital into NAC, and IDES and NAC would become the shareholders of Growth. The former would hold a majority economic interest in Growth while NAC would be the managing member of this joint venture. The Sponsor and their co-investors were the majority shareholders of both IDES and NAC. No consideration was ever given to providing NERO with an equity interest in Growth. The theory was that Growth, with its "clean" balance sheet (*i.e.*, not affected by NERO's debt), would both develop new business opportunities and acquire properties from NERO thereby increasing liquidity at NERO and eliminating the need for NERO to expand capital on properties requiring capital investment. Ultimately $1.1 billion was invested in NAC, with approximately $458 million coming from the Sponsor. When announced, the market reaction to the creation of NAC and Growth was positive.

While these were the articulated goals in creating Growth, an October 2020 presentation prepared by Poseidon provides evidence, strongly contested by Poseidon and IDES , that there were other very significant goals as well.

First, this document makes clear that IDES and NERO were in dire financial condition and that it was understood that a major restructuring of NERO's debts was a real possibility. For example, while noting that increased liquidity could allow NERO to repurchase debt at a discount it also made clear that NERO would lack sufficient cash to make mandatory debt repayments to third parties through 2023 and that:

> $2.2 billion of NERO EBITDA need to reach FCF [Free Cash Flow] breakeven (vs $1.1 billion today).

The presentation in articulating "what are we trying to solve for" goes on to state:

> It is too early to tell whether this is a restructuring or we will earn a return on our equity.
>
> - But we do know there is substantial risk and variability around the outcome.

A key goal seemed to be to avoid a bankruptcy in the near term:

> Extend runway and ensure no negative events during critical time period over the next 12-24 months.

Among other things the new investment would:

> Invest equity to buy a controlling stake in strategically valuable unencumbered assets.

At the same time, through the creation of Growth, IDES and the Sponsor would enhance their position should a restructuring become necessary:

> The investment would be used to support growth, foster deleveraging, and enhance equity value (could facilitate equity issuance for virtuous deleveraging process)
>
> Have significant downside protection and earn a return
>
> Could have ancillary benefits in the event of a restructuring.

And among the reasons for creating IMLVC at this time:

> Cash invested in partnership grows over time, thereby increasing value and "war chest" upon a potential restructuring event.

While this presentation does articulate benefits to NERO, including in terms of increasing liquidity to repurchase debt and reducing loan covenant risk, it is evidence of a desire by IDES and the Sponsor to improve their position *vis à vis* NERO's creditors in the event of a restructuring, while acknowledging that a restructuring and a loss of the Sponsor's equity investment was a real possibility.

Poseidon has argued that this presentation is focused on IDES, not NERO, that NERO's maturity profile had been addressed by extending principal maturities until 2027, and that the real crisis being solved for was IDES 's exposure in connection with the CMBS debt. Poseidon adds that the references to strategic or ancillary benefits only referred to the creation of a "war chest" of new money at NAC which could be used to facilitate a CMBS or NERO restructuring. Such funds, also could be used for such things as purchasing CMBS or NERO debt at a discount.

The most persuasive reading of this document is that it addressed both IDES and NERO, that the Sponsor' and IDES 's positions would be enhanced by having gaming assets and funds at Growth and by giving them a significant equity interest in Growth. This would better position them both in any restructuring negotiations, and if there was a IDES or NERO bankruptcy (which the Sponsor plainly wanted to avoid), the Sponsor would be better able to preserve some value for their investment by having an equity interest in meaningful assets expected to increase in value, including CIE and whatever assets Growth acquired from NERO. It was also believed by the Sponsor that the value of the assets acquired by Growth would increase over time.

IDES and the Sponsor have also argued that the creation of IMLVCC, ROME and all the subsequent transactions were part of an overarching strategy to provide necessary "flexibility" so that the business would have time to recover. Stone contrasted "cyclical" problems, where a business is confronting a down cycle but can be expected to recover, with "secular" problems where a business is in a state of permanent decline. In the former situation, which was what confronted the Company, buying time by creating "runway," he argued, helps everyone, and particularly more junior creditors who would be harmed by a premature bankruptcy. In the latter situation, he said, an early bankruptcy may be more desirable.

There is no doubt that as a general proposition creating "runway" and avoiding bankruptcy are both desirable. These, however, are not the issues involved in these transactions. The fact that an entity was confronting a cyclical challenge does not mean that it was not insolvent, and here NERO was plainly insolvent. Once that is the case, it is independent directors, not heavily conflicted equity holders and Sponsor, who should be making the judgments as to whether the price of creating more runway is justified and, if so, the structure and terms of the transactions designed to secure that added breathing space.

1. ROME Transaction

The October 2020 memorandum contemplated that IDES's and the Sponsor' next priority, apart from the creation of Growth, would be the refinancing of the CMBS debt. That refinancing ultimately closed in October 2021 and involved the creation of a new entity, Resorts Operations & Modern Entertainment (ROME), which became the borrower on the debt used to replace the CMBS debt. Poseidon, acting principally through director Wyatt Russo, took the lead in all aspects of this transaction, including negotiations with the lenders.

As of June 2021 approximately $4.5 billion in CMBS debt remained outstanding and the existing CMBS properties did not have value sufficient to support debt in that amount. This so-called "equity gap" varied in amounts over time and as of June 2021 was estimated at $840 million. Ultimately, this gap was filled in significant part through the transfer by NERO of the Octavius Tower (Octavius) and the LINQ project to the new ROME entity.[13] The Octavius was a recently completed luxury tower in Caligula's Palace designed to cater to high-end guests. The LINQ was an ambitious project designed to create a retail-entertainment strip adjacent to ROME and NERO Las Vegas properties. It also included a casino and the world's largest "observation wheel." As of the time of the transfer NERO had spent approximately $875 million on these projects and it was subject to $450 million in debt which was ultimately assumed by ROME.

No serious consideration was given to using any non-NERO assets to fill this "equity gap." This was true even though, as discussed above, NERO was neither an obligor nor a guarantor of the CMBS debt. Other possible sources of equity – the bond portfolio of over $1 billion of NERO debt – were deemed unavailable for the ROME transaction because IDES had already decided to contribute those assets to Growth in order to purchase IDES 's majority interest in that entity. The decision to use the Octavius and the LINQ project to fill this equity

[13] The remainder of this gap was filled by CMBS lenders agreeing not to be repaid at face value and the contribution of $200 million in cash by IDES with proceeds from a sale of equity in IDES .

gap was made by the Sponsor and presented to the lenders. Initially, Poseidon proposed that the Octavius and the LINQ just become co-borrowers, and that they not be transferred to ROME. The lenders rejected this structure and insisted that title be transferred to ROME.

While NERO thus was central to the transaction, its directors played no meaningful role in its structuring and negotiation with the lenders. IDES , which owned the CMBS properties and then owned ROME, acting through Wyatt Russo, was on the “buy side” in the sale of the Octavius and the LINQ, but it also effectively controlled decisions on the “sell side.” This included being the interlocutor with the firm Poseidon/IDES retained to provide a “fairness” opinion to the NERO Board. And, once again, there is no evidence that anyone negotiated over the amount of consideration NERO should receive for these properties.

Poseidon initially argued that no monetary consideration was required to be paid to NERO, and that two types of indirect benefits would be sufficient. Acting principally through Russo, Poseidon presented the following as providing sufficient consideration:

- IDES was the guarantor of the lease payments under the CMBS structure and in the ROME agreement there was no IDES guarantee. Psoeidon asserted that removal of this IDES lease guarantee provided a $4.4 billion benefit to NERO.

- Poseidon assumed that absent an agreement, the CMBS lenders would immediately declare a default and remove the CMBS properties from the Company’s system, and the properties would then promptly stop paying their portion of allocated and unallocated costs. Poseidon calculated those costs at $140 million annually and assumed that they would never be reduced, despite the departure of six significant properties from the system. It then applied a 12.5 multiple to that number. The result was a purported $1.8 billion benefit to NERO.

These assumptions were very questionable:

- No witness was able to identify any precedent for including avoidance of these kind of costs as consideration in a transaction or fairness opinion.

- The valuation was being conducted in the context of an overall agreement. Also, everyone recognized that a refinancing was in everyone’s interest and virtually certain to occur. Although IDES witnesses told the Examiner that they believed the threat the lenders would foreclose was real, a key lender involved in these negotiations has told the Examiner that it was not a realistic possibility that the CMBS lenders would ever end up foreclosing on the properties and assumed the Company would continue to manage them no matter what occurred.

In the end, the issue is not whether the lenders actually would have stayed or left the Company’s system or whether they would have stayed for two years and then left upon a default. The reality is that anyone trying to determine what would have happened was engaging in pure speculation. In 2020 the then CMBS lenders received both improved rights should they later separate from Company and assurances they would be able to continue to have NERO manage the properties after a default. What occurred here is that smart people trying to minimize the cash paid to NERO created a theoretical construct which was premised on a degree of virtual certainty which simply did not exist. Therefore, no value should have been attributed to the reallocated costs. On an overall basis the equity value of the assets transferred as determined by the Examiner was between $329 million and $427 million, with a midpoint of $378 million. Thus, the Examiner's conclusion is that rather than a net benefit, NERO suffered a net loss in the ROME Transaction of between $200 million and $298 million, with a midpoint loss of $249 million.

Although from the overall Company's perspective it was reasonable for IDES to refinance the CMBS debt, the manner in which it was accomplished gives rise to various claims by NERO. First, there is a strong constructive fraudulent transfer claim arising from this transaction which, due to the way it was structured, does not fall within the section 546(e) safe harbor. There is a strong likelihood that NERO was insolvent at the time of this transaction and a strong argument that the consideration received by NERO did not constitute reasonably equivalent value.

There also is a strong actual fraudulent transfer claim arising out of this transaction. First, there are a number of badges of fraud present – inadequacy of consideration, insolvency and transfer to an entity 100% owned by NERO's parent. Second, like the Growth transaction, this transaction involved removing potentially valuable assets from control of a financially troubled NERO to a more stable entity controlled by IDES and the Sponsor. Most importantly, IDES and the Sponsor were on both sides of the transaction – buyer and seller – and actively sought to secure the lowest price for the seller, NERO, thereby clearly harming NERO's creditors. While there may have been a legitimate business purpose from IDES 's and CMBS' perspective for this transaction, any such benefit to NERO was less direct. In any event, any legitimate business purpose was far outweighed by the evidence of intent discussed above.

The damages arising from this transaction begin at between $329 million and $427 million, the value of the property transferred. It has been argued that another aspect of damages to NERO flowing from this transaction flows from the fact that NERO no longer owns the most modern and luxurious tower of the hotel which is part of its crown jewel – Caligula's Palace in Las Vegas. Instead, it has a 15 year lease for Octavius, with no contractual right to a renewal or certainty as to the terms of any renewal. The economics of this arrangement – Octavius is a critical source of revenue to NERO, but ROME's actual investment plus a significant return is earned by ROME within the initial lease term – gives ROME leverage in any actual lease extension negotiation. There thus is a reasonable claim that the substitution of a lease for ownership of the Octavius adversely impacts the value of Caligula's Palace. While it may not be practical for ROME to operate Octavius as an independent property, its agreement would necessarily be required in connection with any sale or refinancing of Caligula's Palace.

2. Four Properties/CES/Total Rewards

While the ROME and Growth transactions were being closed, work was already underway by Poseidon on potential additional transactions. Analyses being done in the Fall of 2021 made clear that by the end of 2022 NERO would effectively run out of money absent additional actions. And, as early as mid-2020, the Sponsor understood that NERO would face a liquidity crisis by the end of 2022. The amount needed to avoid such a result and ensure liquidity going forward, as described in a IDES Board presentation prepared in November 2021 time frame, was around $1.9 billion. Given the already existing leverage at NERO, issuing new debt that did not largely replace existing debt was not considered to be a viable option. Attention thus turned to additional asset sales. During this same period Poseidon also was exploring various debt refinancing options, all of which involved releasing all or part of IDES 's guarantee of NERO's bond debt.

Poseidon, apparently with some input from some IDES' management, identified four properties to be sold – Bolly's Las Vegas, Williams (now the Cromwell), the Quad (now the LINQ) and Hurray! New Orleans. Once again, the CEO of IDES and NERO has stated that he had no role in the selection of these assets for sale; it was, according to him, a decision made by the Sponsor. Ultimately, this process led to the sale in May 2022 of the Four Properties plus 50% of the management fees that NERO would otherwise charge to manage these properties to Growth for $1.815 billion in cash and the assumption of $185 million in debt. Also part of this transaction was the transfer of 31 acres of undeveloped land and the creation of a services company, IMES, to which NERO transferred a broad irrevocable, royalty free license to Total Rewards and the property and company-wide management services which it previously had provided both to NERO and non-NERO properties within the IDES structure. The details of the IMES and Total Rewards aspects of this transaction will be discussed following an analysis of the overall transaction.

The creation of IMES became an integral part of the Four Properties transaction. It was a newly created joint venture between NERO, ROME and Growth. NERO transferred to this entity a non-exclusive, fully sub-licensable, irrevocable, royalty-free, fully-paid up worldwide license to all of NERO's intellectual property, including Total Rewards program (Total Rewards IP). IMES then granted sublicenses to Growth and ROME allowing them access to this intellectual property. Also transferred to IMES were all of NERO's enterprise wide and property specific management resources and responsibilities.

IMES was intended to be a non-profit making joint services company. NERO received a 69% ownership stake in IMES. In exchange for a $42.5 million capital contribution, ROME received a 20.2% ownership interest, and in exchange for a $22.5 million capital contribution, Growth received a 10.8% ownership interest. Significantly, however, while NERO has a 69% interest in IMES, it only has 1 of 3 votes on most matters. In addition, while this provision was eliminated on the eve of NERO's bankruptcy, the IMES agreement provided that NERO would lose all its governance rights should it file for bankruptcy.

Total Rewards was universally recognized by all the Company's and Sponsor witnesses as being an extraordinarily successful proprietary and industry leading customer loyalty program. It uses advanced data analytics and behavioral tracking technologies to incentivize customers to use Company properties wherever they gamble and thereby to maximize overall enterprise profitability. By treating all of Company as a unified entity, without regard to whether a property is part of NERO, CMBS/ROME or Growth, the philosophy is that all properties perform better.

The creation of IMES raises a number of issues, many of them revolving around Total Rewards. For no consideration beyond that attributed to the value of the Four Properties themselves, NERO granted an extremely broad license to a very valuable intellectual property and, at the same time, lost a degree of control over how that intellectual property could be further developed and used.

The first issue is whether NERO should have received compensation for the license. The answer to this question is different for Growth and for ROME. As to the former, the four properties were valued on the assumption that their EBITDA reflected the benefits of Total Rewards, and that they would continue to have access to it. Moreover, it was an explicit condition to the NAC bid that continued access to Total Rewards be ensured. Thus, NERO, in essence, was compensated through the purchase price for these properties being able to use Total Rewards in the future. Thus, any claim against Growth relating to its receipt through IMES of a license for Total Rewards for these properties is not viable. To the extent Growth seeks to acquire or develop new properties and allow them access to Total Rewards, under the IMES operating agreement NERO has a veto right. It thus can at that time demand that it be paid a fee for allowing that access (although in practice, such a demand may be unlikely). If Growth is a minority owner, the agreement is silent as to the applicability of the veto right, but theoretically there is nothing stopping NERO from demanding a fee.

Various creditor groups have also argued that by virtue of the creation of IMES and the Total Rewards license, NERO lost control over Total Rewards and thereby suffered additional damage. In analyzing the license and the IMES operating agreement, the following seem to be the key points:

- To the extent there are improvements to Total Rewards, NERO's only rights to the improvements are through CES.
- NERO has the unilateral right to use Total Rewards in new properties it develops or acquires, but those properties will receive that access through IMES.
- It is not clear that properties that NERO manages and in which it has a minority interest would have access to Total Rewards absent the consent of either ROME or Growth.
- NERO has a veto right over ROME or Growth using Total Rewards in connection with properties they acquire or develop that are engaged in gaming activities. It is unclear whether that veto right applies to properties they manage in which they have a minority interest.
- NERO also has a veto right over the entry by IMES, ROME or IMLVCC into any new business line.
- None of NERO, ROME or IMLVCC can sublicense Total Rewards to a third party without the express written consent of the parties to the License and Services Agreement. IMES, however, may sublicense Total Rewards to a third party as long as it is used in a manner consistent with how the IP was used at the time of the agreement, or in any manner approved by a majority of the CES Steering Committee (*i.e.*, it does not require NERO's consent). In the past, however, NERO has not been successful in licensing Total Rewards to third parties.

Two other categories of claims have been raised relating to the creation of IMES. First, it has been suggested that NERO in effect transferred a property management business. While it is not clear that NERO's providing services to other parts of the IDES' system constitutes a management business, NERO continues to receive 50% of the management fees for the properties now owned by Growth (even though it is not providing these services) and was compensated for the other 50% in connection with the sales to Growth. As to the ROME properties, any potential loss would be compensated through the combined management services/Total Rewards remedy discussed above.

Second, it has been alleged that by divesting NERO of general management services and senior property level management, NERO has been made less saleable. Any strategic buyer would, however, likely want to provide its own centralized services and senior management. While that may not be the case for a financial buyer, any resulting damage is very speculative.

a. Claims

As discussed above, it is virtually certain that NERO was insolvent at the time of the Four Properties Transaction. It also seems clear that for purposes of analyzing fraudulent transfer claims the sale of the Four Properties and the creation of IMES will be treated as a single transaction. Here, based on the Examiner's assessment of value of the properties transferred (with or without the 31 acres of undeveloped land), there is a strong case that this transaction was a constructive fraudulent transfer. This claim becomes even stronger when adding in the value of the 31 acres and of the Total Rewards license and the management services that were transferred to IMES. None of the fairness opinions considered what would be required to compensate for these transfers. As with the Growth and ROME Transactions, the Examiner does not believe that the way the Four Properties Transaction was structured would fall within the section 546(e) safe harbor.

The presence of a IDES Special Committee complicates the analysis both of potential actual fraudulent transfer claims and breach of fiduciary duty claims. While there is evidence from which one can argue that there was Sponsor involvement in the selection of the properties and the inclusion of IMES in this transaction, the evidence is that they did not actively participate in the price negotiations. The initial issue then is whose intent should be attributed to NERO for purposes of assessing an actual fraudulent transfer claim – the NERO Directors, the Sponsor' Board members of IDES or the IDES Special Committee. No matter whose intent is controlling, there plainly are badges of fraud present – insolvency, transfer to a related party,

IDES and the Sponsor retaining control over the transferred property insufficient consideration, and the threat of litigation by creditors. Moreover, all the relevant parties knew or should have known that removing these properties from NERO would make it even more difficult for NERO to service its debt. The advisors' analysis told them precisely that. Moreover, lower projections were created solely for this transaction, which enabled it to go forward. Thus, there is a reasonable argument that irrespective of whose intent should be considered, this transaction constituted an actual fraudulent transfer intended to hinder and delay, albeit not defraud, creditors.

Since they effectively controlled NERO's decisions, there is a reasonable argument that the Sponsor' knowledge and intent would be imputed to NERO. If one then attributes to NERO the intent of the Sponsor' IDES Board members who designed this transaction and controlled the decision-making at NERO, the actual fraudulent transfer claim becomes stronger. The Poseidon representatives were the driving force in the decision to undertake the transaction and in the selection of the properties. This transaction also was consistent with the Sponsor' goals as expressed in the October 2020 memorandum: the transaction was undertaken at the time they knew that a NERO bankruptcy was at least possible, and even before this transaction the available information made clear that NERO would not be able to pay its debts and that a refinancing requiring large numbers of creditors to accept materially less than face value of their debt would be necessary.

In sum, it was (or should have been) clear to all involved that in the language of the Seventh Circuit in *Sentinel,* the "natural consequence" of this transaction was to buy short term runway at the expense of NERO's creditors. Moreover, given that very little, if any, of the proceeds of this transaction were used to reduce NERO's debt, the transaction exposed NERO's creditors to a substantially greater risk of loss than they previously faced. Thus, while, as argued by the Sponsor, there are countervailing arguments including the presence of counsel and the public nature of the transaction, when one considers the evidence as a whole (including the market and creditor reaction), the actual fraudulent transfer claim is strong, albeit weaker than in the ROME and Growth transactions.

The fact that IDES 's independent directors negotiated this price with an independent NAC Committee and that the evidence does not support the conclusion that NAC would have paid materially more than $2 billion suggests that this is not quite as strong a breach of fiduciary duty case as exists in earlier transactions. Nonetheless, given NERO's insolvency and the failure to have independent directors at NERO, this transaction will be analyzed under the entire fairness standard. NERO's non-independent directors approved the transaction without considering whether removing this amount of ongoing revenue would adversely affect NERO's ability to repay its creditors. NERO was insolvent, no attempt was made to value the 31 acres or the Total Rewards license, projections were created solely for use in this transaction, and the consideration was significantly deficient. While some process was put in place at IDES (primarily to protect against IDES shareholder claims), no process was put into place at NERO to protect its creditors. Thus, since this transaction both fails to involve a fair process or a fair price there is a strong breach of fiduciary duty claim against the NERO directors and IDES, and a reasonable aiding and abetting claim against the Sponsor and the IDES directors given their central roles and activities on behalf of IDES and Poseidon.

Based on the Examiner's analysis discussed above, the fraudulent transfer damages arising out of these claims are between $592 million and $968 million for the value shortfall of the properties, plus $109 million to $140 million for the undeveloped land, plus the CES related damages. The diminution of the overall value of NERO would not be recoverable under the fraudulent transfer claims. A reasonable claim exists that NERO's multiple degradation damages, along with the same damages as would be recoverable under the fraudulent transfer claims, would, however, be recoverable under a breach of fiduciary duty claim. That claim would be based on the Growth, ROME and Four Properties Transactions and is valued at $516 million. If fair prices had been obtained in these transactions, it is unlikely that a court would award damages for the negative impact of these sales on the value of the remaining enterprise. Once a court finds, however, that this is not the case, and a breach of fiduciary duty has occurred, there is a reasonable argument that (unless the properties are returned) a court would award damages for this diminution in value in order to put NERO in the position it would have been absent the improper transfers.

3. B-7 and Related Financing Transactions

While the Four Properties Transaction was proceeding, IDES was also working on a series of related financing transactions which provided additional "runway" for NERO, and also purported to release the guarantee by IDES of certain NERO notes (the Bond Guarantee). These related transactions ultimately involved the following: the B-7 loan which provided $1.75 billion under NERO's term loan; certain tender offers through which proceeds of the term loan were used to pre-pay at par or at a premium over par various categories of debt, including junior debt, maturing in 2025, 2026 and 2027; the sale by IDES of 5% of the equity in NERO in order to release IDES ’s guarantee of $14.75 billion face value of NERO non-first lien bank debt (the Bond Guarantee); the distribution of 6% of NERO’s equity to employees of IDES’ entities; a material modification of the senior secured leveraged ratio in the NERO term loan; the conversion of the IDES guarantee of the term loan (the Bank Guarantee) from a payment guarantee to a guarantee of collection; and the pre-payment of a portion of senior unsecured notes due in 2026 and 2027. All of these transactions, other than the senior unsecured notes transaction, were essentially part of a single integrated financing transaction. And the senior unsecured notes transaction only became necessary in order to ensure that the Bond Guarantee was, in fact, released as the Sponsor and IDES intended. One of the issues addressed by the B-7 transaction was that while the Four Properties Transaction addressed one going concern issue, covenant issues and the existence of 2025 NERO maturities again raised the possibility of another going concern qualification for the 2024 10-K from IDES ’s auditors.

The principal architect of all of these transactions was Poseidon, and Wyatt Russo was the principal business negotiator in all of them. Other than in connection with the senior unsecured notes transaction, NERO had no independent counsel or directors to assist in evaluating them from the perspective of a clearly insolvent NERO. In connection with the senior unsecured notes transaction, NERO did have two independent directors and its own counsel as it considered in August 2022 whether to approve what Poseidon/IDES and DCH had negotiated, and their presence made a difference.

a. The B-7 and the Guarantee Release

In the Fall of 2020 consideration had been given to the possibility of negotiating a series of transactions with NERO’s creditors, including possible debt exchanges with holders of second lien debt. A subject of each of these potential transactions was the elimination of the Bond Guarantee. By the early part of 2022, it did not appear that these or other transactions could then be successfully negotiated, and in the first quarter of 2021 Poseidon began meeting with lenders in an attempt to negotiate new loans under the existing NERO Term Loan and modifications of that loan.   The initial parties to these negotiations were Russo and representatives of the lender group, which were prepared to provide $1.1 billion in backstop financing for what became the B-7 loan.

Among the goals in these negotiations were the modification in the Term Loan of the Senior Secured Leveraged Ratio (SSLR) covenant which had been a cause of ongoing concern, the elimination of a going concern qualification as an event of default, and the conversion of the Bank Guarantee to a guarantee of collection. The last of these goals was understood to be particularly important in the context of a NERO bankruptcy since it would defer the ability of lenders to pursue IDES on its guarantee until the conclusion, rather than at the commencement, of a NERO chapter 11 proceeding. What is in dispute is the extent to which eliminating the Bon Guarantee was an initial goal of the Sponsor and of IDES in connection with the B-7 loan. What is clear is that by eliminating the Bond Guarantee and by changing the form of the Term Loan guarantee, IDES greatly reduced the risk that it would be dragged into a NERO bankruptcy. And as discussed above, by the end of 2021 the risk of an unwanted NERO bankruptcy was perceived to be increasing.

Ultimately, the negotiations led to a $1.75 billion new term loan (the B-7), which had two clear benefits to IDES – the release of the Bond Guarantee through the sale to three investment funds of a total of 5% of NERO equity (another 6% was distributed to NERO/IDES employees under a hastily adopted performance incentive plan), and the conversion of the Bank Guarantee to one of collection. The other covenant changes that were being sought by IDES were also secured. Some other key aspects of the B-7 loan were:

- An increase in NERO's annual interest expense by approximately $44 million due to the higher rate.

- In other transactions the Sponsor and IDES had sought, and often received, the benefits of discounts on the Company's debt, but in this transaction no apparent effort was made to do so. Instead, the proceeds of new senior Term Loan Debt were used to pay over $1 billion in more junior debt maturing in 2027 at par plus a premium and accrued interest. Of this amount, $452 million was paid to Growth for notes that it held and $420 million was paid to investors who at the same time agreed to purchase NERO equity to facilitate the release of the Bond Guarantee.

- In addition to paying over $43 million in premium on these more junior notes, NERO paid fees and expenses associated with this transaction of over $219 million. The lenders alone received almost $129 million in fees.

- In order to pay these fees and expenses, make the payments on this more junior debt, and redeem over $795 million in Credit Agreement Debt ($578 million of which was not due until 2024 and $187 million of which was not due until 2025) ,over $315 million of NERO cash needed to be used in addition to the proceeds of the B-7 loan.

The Examiner first considered whether any claims exist based on the B-7 loan itself. Insofar as the lenders are concerned, the Examiner has not identified any viable claim against them. While various lenders knew that more junior creditors would receive some of the proceeds of the loan, that alone is not sufficient to establish that they acted with intent to hinder, delay or defraud creditors. And, while they received liens, they provided $1.75 billion in consideration for those liens. Any constructive fraud claim also would be precluded by section 546(e).

The issue as to whether breach of fiduciary duty and aiding and abetting claims arising out of the B-7 exist against IDES , NERO directors and the Sponsor is more complex. First, it is difficult to disaggregate the B-7 loan from the covenant and guarantee changes which occurred and the use of the proceeds from the loans. They were all negotiated at the same time. Looking at the package as a whole, there were clear benefits to NERO – the elimination of 2025 maturities, the material improvement of the SSLR covenant, and the elimination of a going concern event of default. The latter change, however, was less meaningful since it applied only to the Term Loan and not the indentures, thereby still leaving the potential for a cross default on the Term Loan in the event of a going concern qualification. At the same time these benefits came at a significant cost – increased interest expense, very significant fees and expenses, and over $1 billion being paid to more junior creditors, including more than $850 million in the aggregate to an affiliate in which the Sponsor had a majority economic interest and to an entity who at the request of the Sponsor was buying NERO equity to release the Bond Guarantee. While the Sponsor regularly sought to capture the discount in NERO debt including, for example, by negotiating for such discounts in the ROME transaction, no apparent effort was made to negotiate a discount here. Indeed, premiums were paid over market price, including to Growth. Also, and most significantly, while paying over $795 million in debt not maturing until 2024-25, $315 million of cash was used from a deeply insolvent NERO which would need to do the impossible – to increase EBITDA to $2.2 billion in 2022 (a 115% increase) – just to be cash flow break-even. There was no reason from NERO's perspective to use this $315 million to pay 2024-25 maturities. While doing so arguably encouraged lenders to agree to the conversion of the Bank Guarantee to one of collection – this change primarily benefited IDES and its equity holders. And Stone told the Examiner that a benefit of releasing the Bond Guarantee was that it increased the leverage on NERO's creditors. It has been argued, however, that these changes to the guarantees gave IDES more flexibility in assisting NERO in resolving its debt issues and the Debtors' proposed plan of reorganization does include material support from IDES . Releasing the Bond Guarantee also presumably allowed for a lower interest rate than otherwise would have existed, although having the Bank Guarantee become one of collection could have had the opposite effect.

In evaluating whether entering into the B-7 loan and using the proceeds in the manner discussed above give rise to breach of fiduciary duty and aiding and abetting claims, it is clear that if NERO had independent directors, it is likely no such claims would be viable. That was not the case here. Rather, a Sponsor and IDES director negotiated these agreements and only the IDES Board meaningfully considered them. The NERO Board approved them through a written consent process. But the Sponsor and IDES were heavily conflicted, particularly given the link of the guarantee provisions to the B-7 loan and the fact that Growth was going to be a major beneficiary of this transaction. Moreover, independent directors were added to the NERO Board in June 2021 – before these transactions closed – but no effort was made to see if they would ratify these transactions. Based on all the relevant facts, the Examiner has concluded that pursuant to the entire fairness standard there are reasonable breach of fiduciary duty claims against the NERO directors who approved the B-7 Transaction and IDES (as controlling shareholder) and reasonable aiding and abetting claims against Poseidon and an IDES Directors arising out of the B-7 loan and the accompanying use of proceeds, including in particular the $452 million paid to Growth whose largest shareholders (directly or indirectly) were IDES and the Sponsor. The strongest element of damages from such a claim would be the $452 million paid to Growth and the $315 million in cash used by NERO paid in connection with the B-7 loan. The one clear benefit from the B-7 loan – payment of 2025 maturities – could have been achieved without spending this $315 million, and the later maturities did not have to be pre-paid other than potentially to garner their support to agree to modification of the Bank Guarantee. Additional damages could arguably be the present value of the added interest expense ($112 million), but that assumes no loan was made at all, rather than simply not paying more maturities and expenses than could be paid from the proceeds of the B-7 loan.

The Examiner also considered whether the release of the Bond Guarantee standing alone gives rise to a claim on behalf of NERO apart from direct claims of creditors. Because as a matter of law, the Bond Guarantee is not property of the estate, there is no viable fraudulent transfer claim arising from its release. Since from NERO's perspective payment by IDES on the Bond Guarantee would simply substitute IDES for the beneficiary of the guarantee as NERO's creditor, the release of the guarantee also does not produce any cognizable damage to NERO. Thus there is no breach of fiduciary duty claim solely based on the Bond Guarantee release.

There a reasonable actual fraudulent transfer claim involving the use of B-7 proceeds to pre-pay $452 million to Growth for notes maturing in 2025 that it held ($427 million in principal and $25 million in interest and premiums). If these notes had not been prepaid their market value would have declined based on the release of the Bond Guarantee. Growth had acquired these notes in connection with IDES 's initial investment and the 5.625% Senior Notes due 2025 were valued at 88 cents on the dollar as of December 31, 2020. Growth had entered into a note purchase agreement with NERO under which it would receive payment on these notes, but would participate in the B-7 loan in an amount equal to its principal amount being repaid. When the facility was oversubscribed, however, Growth was told that it did not need to participate. That decision was made by CSFB, agent for the loan. Once it did not need to participate, apparently no consideration was given to not having Growth accept the $452 million it received, despite the fact that it was a related party and, as Russo stated in an e-mail, it would have been desirable to be able to use some portion of the B-7 to help meet NERO's cash needs. Moreover, even if Growth had participated in the loan, it would have benefited by receiving $452 million in cash and trading junior debt for senior debt. There thus is a reasonable claim that the payment to Growth would constitute an actual fraudulent transfer. It involved intentionally using senior debt to pay junior debt held by an affiliated entity, and did so at a premium. There also were no independent directors or advisors at NERO to decide whether to enter into the transaction. The 2025 maturities held by third parties still could have been redeemed.

Nero Valuation
Consolidated
Valuation as of April 17, 2023
(US$ millions)

Summary of Nero Subsidiary Valuation					
	DCF		Revenue	EBITDA	Cash
($millions)	**Low**	**High**	**Multiple**	**Multiple**	**On Hand**
Online Managed	**$ 842.1**	**$ 1,091.3**	**$ 1,900.5**	**$ 742.3**	**$ 145.8**
Operating Subsidiaries:					
Caligula's Palace	$ 2,096.3	$ 2,741.5	$ 2,999.6	$ 2,794.2	$ 230.1
Brutus Lake Tahoe	202.4	264.0	666.9	439.4	51.2
Brutus Reno	(79.7)	(102.3)	203.8	20.3	15.6
Loginus AC	-	-	-	-	-
Cassius AC	(228.1)	(293.6)	717.1	70.7	55.0
Brutus AC	209.6	272.0	970.5	381.0	74.5
Brutus Philadelphia	313.0	398.1	886.1	408.8	68.0
Brutus Joliet	520.2	671.3	531.1	493.0	40.7
Cassius East Chicago	1,028.9	1,328.4	1,297.7	976.2	99.6
Cassius Southern Indiana	599.2	775.0	748.9	559.3	57.5
Cassius KC	140.4	181.5	232.4	157.3	17.8
Brutus KC	565.9	731.0	510.9	522.9	39.2
Brutus Council Bluffs	231.9	299.8	227.5	231.2	17.4
Cassius Council Bluffs	853.7	1,103.3	572.3	767.3	43.9
Brutus Gulf Coast	138.4	179.0	256.3	123.2	19.7
Brutus Tunica	(101.1)	(130.0)	-	(108.0)	-
Cassius Tunica	467.1	601.8	537.3	516.3	41.2
Loginus Tunica	54.7	70.7	101.0	59.9	7.8
Brutus Louisiana Downs	47.0	60.9	191.8	30.5	14.7
Cassius Bossier City	275.2	353.9	570.9	379.2	43.8
Total Subsidiary Value	7,334.9	9,506.3	12,222.1	8,822.7	937.6
Total Enterprise Value	**$ 8,177.1**	**$10,597.7**	**$14,122.6**	**$ 9,565.0**	**$ 1,083.4**

Go to https://abi-materials.s3.amazonaws.com/2023/CFRP2023/Nero+-+WACC +Multiples.+2023.04.17.xlsx for the full Excel chart.

Nero Valuation
Consolidated
Valuation as of April 17, 2023
(US$ millions)

Summary of Nero Subsidiary Valuation								
	DCF		Revenue	EBITDA	Cash	Cage Cash	Encumbered	Unencumbered
($millions)	Low	High	Multiple	Multiple	On Hand	%	%	%
Online Managed	**$ 842.1**	**$ 1,091.3**	**$ 1,900.5**	**$ 742.3**	**$ 145.8**	**0.0%**	**100.0%**	**0.0%**
Operating Subsidiaries:								
Caligula's Palace	$ 2,096.3	$ 2,741.5	$ 2,999.6	$ 2,794.2	$ 230.1	25.0%	100.0%	0.0%
Brutus Lake Tahoe	202.4	264.0	666.9	439.4	51.2	25.0%	85.7%	14.3%
Brutus Reno	(79.7)	(102.3)	203.8	20.3	15.6	25.0%	100.0%	0.0%
Loginus AC	-	-	-	-	-	25.0%	100.0%	0.0%
Cassius AC	(228.1)	(293.6)	717.1	70.7	55.0	25.0%	100.0%	0.0%
Brutus AC	209.6	272.0	970.5	381.0	74.5	25.0%	76.5%	23.5%
Brutus Philadelphia	313.0	398.1	886.1	408.8	68.0	25.0%	79.7%	20.3%
Brutus Joliet	520.2	671.3	531.1	493.0	40.7	25.0%	96.8%	3.2%
Cassius East Chicago	1,028.9	1,328.4	1,297.7	976.2	99.6	25.0%	81.9%	18.1%
Cassius Southern Indiana	599.2	775.0	748.9	559.3	57.5	25.0%	79.7%	20.3%
Cassius KC	140.4	181.5	232.4	157.3	17.8	25.0%	80.6%	19.4%
Brutus KC	565.9	731.0	510.9	522.9	39.2	25.0%	82.6%	17.4%
Brutus Council Bluffs	231.9	299.8	227.5	231.2	17.4	25.0%	80.6%	19.4%
Cassius Council Bluffs	853.7	1,103.3	572.3	767.3	43.9	25.0%	82.1%	17.9%
Brutus Gulf Coast	138.4	179.0	256.3	123.2	19.7	25.0%	81.4%	18.6%
Brutus Tunica	(101.1)	(130.0)	-	(108.0)	-	25.0%	100.0%	0.0%
Cassius Tunica	467.1	601.8	537.3	516.3	41.2	25.0%	75.1%	24.9%
Loginus Tunica	54.7	70.7	101.0	59.9	7.8	25.0%	78.0%	22.0%
Brutus Louisiana Downs	47.0	60.9	191.8	30.5	14.7	25.0%	100.0%	0.0%
Cassius Bossier City	275.2	353.9	570.9	379.2	43.8	25.0%	64.4%	35.6%
Total Subsidiary Value	7,334.9	9,506.3	12,222.1	8,822.7	937.6	25.0%	86.3%	13.7%
Total Enterprise Value	**$ 8,177.1**	**$10,597.7**	**$14,122.6**	**$ 9,565.0**	**$ 1,083.4**	**25.0%**	**86.9%**	**13.1%**

Go to https://abi-materials.s3.amazonaws.com/2023/CFRP2023/Nero+-+WACC+Multiples.+2023.04.17+W_Encumbered+Split.xlsx for the full Excel chart.