IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*, *Debtors*.	Chapter 11 **Case No. 15-cv-01145 (ABG)** (Jointly Administered) Hon. A. Benjamin Goldgar Hearing Date: May 25, 2016 Hearing Time: 1:30 p.m.

OBJECTION OF FREDERICK BARTON DANNER
TO DISCLOSURE STATEMENT FOR THE DEBTORS'
SECOND AMENDED JOINT PLAN OF REORGANIZATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Frederick Barton Danner, proposed Class Plaintiff and holder of 6.50% Senior Notes Due 2016 (the "**2016 Notes**"), pursuant to the Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the Northern District of Illinois, and the procedures set forth in debtors' (the "**Debtors**") *Notice of (A) Disclosure Statement Hearing and (B) Deadline for Filing Responses or Objections to the Disclosure Statement* [Docket No. 3485], hereby submits this objection (the "**Objection**") to the *Disclosure Statement for the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the "**Amended Disclosure Statement**") [Docket No. 3484-1].[1] In support of this Objection, Mr. Danner respectfully submits the following:

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Amended Disclosure Statement.

INTRODUCTION

1. Danner is a beneficial owner of 2016 Notes and is a plaintiff in an action against Caesars Entertainment Corporation ("**CEC**") in the U.S. District Court for the Southern District of New York initially filed on October 3, 2014 and captioned *Danner v. Caesars Entm't Corp.*, Case No. 14-cv-07973-SAS (the "**Danner SDNY Action**"). Danner alleged that CEC violated the Trust Indenture Act of 1939 and breached the governing 2016 Notes Indenture by unlawfully impairing and altering Plaintiff's absolute and unconditional right to receive payment of principal and interest on the 2016 Notes by releasing CEC from its guarantee obligation on the 2016 Notes. Mr. Danner is a defendant in the adversary proceeding *Caesars Entertainment Operating Company, Inc. et al. v. BOKF, N.A. et al.*, Case No. 15-01145, Adversary Case No. 15-00149 (N.D. Ill. Bankr.).

2. Mr. Danner believes that the Disclosure Statement fails to provide creditors the information they need to decide whether to accept or reject the Debtors' plan. Mr. Danner also believes that the Plan is patently unconfirmable insofar as its Third Party Release provisions do not pass muster under controlling Seventh Circuit precedent. In light of the Court's comments at the hearing on March 16, 2016, this present objection does not argue patent unconfirmability and reserves all rights to object to confirmation of the Plan, on this and any other grounds. Rather it focuses on the text of the disclosure statement and whether the information in the disclosure statement is adequate. Thus, this objection provides proposed revisions to remedy each of Mr. Danner's objections.

OBJECTION TO DEBTORS' AMENDED DISCLOSURE STATEMENT

3. "Section 1125(b) requires that before acceptance or rejection of a plan may be solicited from creditors, the proponent of a plan must submit a disclosure statement which, after

notice and a hearing, must be approved by the court. In order to approve a disclosure statement, the court is obligated to determine that the disclosure statement contains 'adequate information.'" *In re Unichem Corp.*, 72 B.R. 95, 96 (Bankr. N.D. Ill.), *aff'd*, 80 B.R. 448 (N.D. Ill. 1987) citing 11 U.S.C. 1125(b); *see also In re Envirodyne Indus., Inc*., 183 B.R. 812, 821 (N.D. III. 1995) ("The importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court. Given this reliance we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information'").

4. "The purpose of a disclosure statement is to provide creditors the information they need to decide whether to accept or reject the debtor's plan. The determination of whether the disclosure statement contains adequate information is made on a case-by-case basis under the facts and circumstances presented." *In re GAC Storage El Monte, LLC*, 489 B.R. 747, 765 (Bankr. N.D. Ill. 2013) (citation omitted); *see also In re Unichem*, 72 B.R. at 97 ("whether a disclosure statement contains adequate information is governed solely by the provisions of the Bankruptcy Code" and "[d]etermination of the adequacy of a disclosure statement, and, therefore, approval of it, is within the sound discretion of the bankruptcy court").

5. Debtors' Amended Disclosure Statement fails to contain adequate information in that it contains omissions and inaccuracies that deprive creditors with the information they need to decide whether to accept or reject Debtors' plan and should be modified in several ways.

6. Generally, the Amended Disclosure Statement is fundamentally deficient because it does not disclose the recovery percentage of allowed claims that creditors in Class F (Unsecured Claims) would receive nor does it include information sufficient to determine CEC's contribution to the plan in return for the nonconsensual third party releases, including the release

of the Danner SDNY Action (the "**General Objection**"). This type of information is precisely the type of information that creditors need to know in order to determine how to vote on the Plan.

7. Additionally, Danner raises a number of specific objections and to the extent possible, includes on Exhibit A draft proposed language that was provided to the Debtors in advance of the objection deadline (collectively, the "**Specific Objections**").[2]

8. **First**, the third bullet, "Third Party Releases," of Article I.E, "Plan Contingencies," on page 10 fails to disclose that third parties, including Mr. Danner, object to the release of their third party claims against CEC, and should be modified to reflect this fact.

9. **Second**, Article II.D.4, "The Debtors' Capital Structure, Senior Unsecured Notes," on page 23, fails to disclose that, while Debtors owed approximately $530 million in principal amount outstanding to holders of Senior Unsecured Notes issued pursuant to the Senior Unsecured Notes Indentures, approximately $289 million is owed by Debtors to their Affiliate independent public company Caesars Acquisition Company ("**CACQ**"), that Preferred Noteholders, holding approximately $82 million of the Senior Unsecured Notes, have released the guarantees of CEC pursuant to the terms of the Note Purchase and Support Agreement, and that there remains only a total approximately $159 million principal outstanding of Senior Unsecured Notes that is neither owned by Debtors' Affiliates or the Preferred Noteholders that

[2] Danner's counsel raised the Specific Objections with the Debtors (via one of their attorneys at Kirkland & Ellis) prior to the filing of this objection. Based on conversations with attorneys at Kirkland & Ellis, the undersigned counsel understands that most of these Specific Objections may be resolved by the Debtors' inclusion of the proposed language in a further amended version of the Debtors' Amended Disclosure Statement. No such amended disclosure statement has been filed to date. Pending the actual filing of such a further amended disclosure statement, these Specific Objections remain outstanding.

have consented to the release of CEC's parent guarantees. The Amended Disclosure Statement should be modified to reflect all of these facts.

10. **Third**, Article III.D, "Litigation Regarding Challenged Transactions and CEC's Guarantees." inaccurately describes and omits relevant facts concerning the Danner SDNY Action. Specifically, the paragraph on page 27 should be amended to note that the Senior Unsecured Noteholders have also asserted that the Senior Unsecured Notes Transaction gives rise to a claim for breach of the covenant of good faith and fair dealing and that Mr. Danner also filed an amended complaint in the Danner SDNY Action. Furthermore, the Amended Disclosure Statement provides the docket numbers for filings in the MeehanCombs SDNY Action but fails to provide the docket numbers for filings in the Danner SDNY Action; the Danner SDNY Action docket numbers should be included or all docket numbers should be omitted for accuracy and consistency. Finally, the description of the Unsecured Noteholder SDNY Actions should be further amended to reflect the current status of the cases, including the fact that the Unsecured Noteholder SDNY Actions have been reassigned to Judge Jed Rakoff and that the parties agreed to a renewed summary judgment schedule culminating in June 24, 2016 oral argument and a "global" trial starting on August 22, 2016, if needed.

11. **Fourth**, Article IV.D.8, "Special Governance Committee Investigation, The Senior Unsecured Notes Transaction," at page 45, states that, with respect to the Senior Unsecured Notes Transaction, "it is unlikely that the Debtors possess any viable claim . . . as the Examiner concluded, this transaction reflects the valid exercise of the Debtors' business judgment." While this portion of the Amended Disclosure Statement is titled "Special Governance Committee Investigation," it nonetheless relies upon the findings of the Examiner. Thus, it should provide adequate information concerning the Examiner's findings. In its current

form, it omits the fact that the Final Report of Examiner, Richard J. Davis, dated March 15, 2016 (the "**Examiner's Report**") specifically notes, at page 5 note 8 that the "guarantee release is the subject of a pending litigation by various CEOC 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 CEOC has claims arising from the release of the guarantee." Furthermore, the Examiner's Report states that the Senior Unsecured Notes Transaction "can only be described as 'ugly' with one group of noteholders (constituting a slight majority of the notes held by non-related parties) getting paid at a premium over market in exchange for agreeing to prejudice the remaining noteholders by eliminating the Bond Guarantee from the governing indentures." Examiner's Report at 69. In order to provide adequate information, the Amended Disclosure Statement should be modified to include both of these statements from the Examiner's Report.

12. **Fifth**, Article IV.N.1, "Adversary Proceedings and Contested Matters, Section 105 Adversary Proceeding," at page 61, should be updated to reflect the current status of the Unsecured Notes SDNY Action as noted in paragraph 10 above. Furthermore, this section of the disclosure should also be supplemented to note CEC's admissions, at trial in *Caesars Entertainment Operating Company, Inc. et al. v. BOKF, N.A. et al.*, through Steven Zelin, a Senior Managing Director of the Blackstone Group, CEC's financial advisor and investment banker, that CEC has the financial wherewithal to pay any judgment in the Danner SDNY Action and still make the contemplated contribution to Debtors' plan, *see* 6/4/15 Tr. at 98-100, thus confirming that the Danner SDNY Action will have no impact on CEC's contribution to Debtors' plan.

13. **Sixth**, Article V.A.2, "Summary of the Plan, Proposed Treatment of Each Class of Claims and Interests, Classified Claims," as noted in the General Objection, fails to provide adequate information in that it fails to disclose the estimated percent recovery of various classes of impaired creditors under the plan and should be updated to disclose this information.

14. **Seventh**, Article VIII.B.1, "Requirements for Confirmation of the Plan, The Debtor Release, Third Party Release, Exculpation and Injunction Provisions," fails to note that Mr. Danner objects to the release of his third party claims against CEC, and should be modified to reflect this fact.

15. Accordingly, the Court should deny approval of the Amended Disclosure Statement until the deficiencies addressed herein are remedied. For the Court's convenience, the suggested revisions to the Amended Disclosure Statement addressing the specific objections articulated above are attached in Exhibit A.

CONCLUSION

Wherefore, Mr. Danner respectfully requests that the Court condition approval of the Debtors' disclosure statement upon the inclusion of modifications that address the General Objection and the Specific Objections described herein and on Exhibit A.

Dated: May 17, 2016

Respectfully submitted,

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Exhibit A

Importantly, the Plan is a joint plan of reorganization for all Debtors in the Chapter 11 Cases, and the Plan takes into account the different rights and claim priorities at each Debtor in allocating recoveries as well as the various intercreditor arrangements between the Debtors' various funded debt stakeholders.

For a further description of the classification, exact proposed treatment, distributions, voting rights, and projected recoveries of Claims against and Interest in the Debtors, as well as the timing and calculation of amounts to be distributed under the Plan, the sources and uses of such distributions, and the process for handling Disputed Claims, please see Article V hereof and the Plan.

E. Plan Contingencies

Although, subject to the marketing process described below, the Debtors believe that the settlement and restructuring proposed in the Plan is the best alternative for maximizing stakeholder recoveries, the Plan is subject to a number of conditions and there are certain material risks to the Debtors' ability to implement the Plan and consummate near term creditor distributions, including the following:

- Syndication Requirement: The Plan contains a material financing contingency in that the Debtors have agreed to syndicate OpCo and CPLV debt to third parties so that at least $3,335 million in Cash proceeds are distributed to first lien creditors. Although requisite holders of the Debtors' first lien debt may waive the syndication requirements with respect to certain debt and agree to accept "take back" paper on the terms specified in the Plan, there are no guarantees that the Debtors will be able to satisfy their syndication obligations or that creditors will waive the syndication requirement.

- CEC Merger with Caesars Acquisition Company: CEC has agreed to provide substantial contributions to the Debtors' restructuring through direct contributions to the estate, consideration in the form of cash and securities directly to the Debtors' creditors, and important ongoing credit support for the REIT structure. On December 22, 2014, CEC entered into a merger agreement with CAC, which merger will provide CEC with access to cash necessary to fund its obligations to the Debtors as contemplated by the Plan. Moreover, the combined value of the merged CEC-CAC underlies the value of the CEC securities to be issued in connection with the Plan. This merger of two public companies, however, remains subject to ongoing negotiation. In particular, the Debtors expect that independent committees of the boards of directors of CEC and CAC will review the terms of the CEC-CAC merger to ensure each receives maximum residual value for their respective public shareholders. Put simply, the amount of New CEC equity given to CEOC creditors could impact the viability of the merger. The Debtors are focused on ensuring that the Plan obtains the greatest possible consideration from both CEC and CAC on account of the Estate and Third-Party Claims while maintaining the viability of the merger to ensure such contributions. If CEC is unable to complete this merger for any reason, CEC will not be able to meet its funding obligations under the Plan and the feasibility of the Plan would be threatened.

- Third-Party Releases: To facilitate the substantial contributions that CEC is making in support of the Debtors' reorganization, the Plan is predicated on, and dependent upon, the settlement of all of the Debtors' claims and causes of action against CEC and certain non-Debtor affiliates as well as releases of certain claims third parties may have against CEC and those non-Debtor affiliates. Such releases include, among other things, any claims and causes of action related to CEC's purported guarantees of the Debtors' funded debt obligations, which are subject to the pending Parent Guarantee Litigation.[19] Various third parties, including ____, ____, and Frederick Barton Danner, object to the release of their third party claims against CEC. If CEC's guarantee obligations are reinstated in the Parent Guarantee Litigation, there is a material risk that CEC may be unwilling or

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The First Lien Bank Lenders' recovery reflects a par recovery from estate distributions, as well as additional consideration provided by CEC under the Bank RSA.

[19] As discussed more fully in Article IV.N.1 herein, certain of the Parent Guarantee Litigation has been stayed by the Bankruptcy Court from commencing trial or completing case-dispositive briefing until May 9, 2016, subject to further proceedings.

(b) Guarantor Intercreditor Agreement

The First Lien Agents and the Subsidiary-Guaranteed Notes Indenture Trustee, among others, entered into that certain Intercreditor Agreement, dated as of January 28, 2008 (as amended, restated, modified, and supplemented from time to time, the "Guarantor Intercreditor Agreement"). The Guarantor Intercreditor Agreement governs, among other things, the relative priority of the Subsidiary-Guaranteed Notes and the First Lien Creditors, and includes a provision requiring the Holders of Subsidiary-Guaranteed Notes to turnover a portion of the payments made to them by any Subsidiary Guarantor prior to the indefeasible payment in full in cash of Prepetition Credit Agreement Claims and First Lien Notes Claims.

4. Senior Unsecured Notes

As of the Petition Date, CEOC owed approximately $530 million in principal amount outstanding to holders of Senior Unsecured Notes issued pursuant to the Senior Unsecured Notes Indentures, including the 5.75% Senior Unsecured Notes Indenture and the 6.50% Senior Unsecured Notes Indenture. Of the $530 million in principal amount outstanding to holders of Senior Unsecured Notes issued pursuant to the Senior Unsecured Notes Indentures, ~~including the 5.75% Senior Unsecured Notes Indenture and the 6.50% Senior Unsecured Notes Indenture.~~ approximately $289 million is owed by CEOC to Caesars Acquisition Company, Debtors' affiliate.

ARTICLE III.
EVENTS LEADING TO THE CHAPTER 11 FILINGS

The Debtors and their non-Debtor affiliates operate one of the largest and most comprehensive portfolios of casino properties in North America. The Debtors' combination of both local and destination options for gaming and entertainment offers many patrons a unique opportunity to enjoy a high-quality gaming experience not only on vacation, but throughout the year. Unlike competitors that offer only regional gaming properties, the Debtors have been able to obtain higher than average spending at their regional properties because their industry-leading customer loyalty program, Total Rewards®, provides customers with entertainment and gaming rewards that can be used in Las Vegas and other destinations. 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 trips to destinations such as Las Vegas. This symbiotic relationship between the Debtors' properties promotes higher customer traffic and spending throughout the enterprise, including both regional and destination properties.

A. Economic Challenges

1. The 2008 Recession

The 2008 recession had a significant impact on the Debtors, with enterprise-wide net revenues before promotional allowances falling from $12.7 billion in 2007 to $10.3 billion in 2009. In response to the 2008 recession, the Debtors eliminated hundreds of millions of dollars of corporate, marketing, and operational costs. Despite these efforts, CEC's adjusted EBITDA dropped from $2.1 billion in 2007 to $1.7 billion in 2009, and has continued to decline thereafter.

2. Changing Consumer Spending Habits

The challenges facing the Debtors were not limited to the 2008 recession. Even though the economy has improved, the Debtors are now facing changing consumer preferences. For example, the "Millennial" generation has shown less interest in gaming than previous generations. Thus, although Las Vegas's tourist numbers have largely rebounded to pre-recession rates, visitors, on average, are younger and less willing to gamble. According to the Las Vegas Convention and Visitors Bureau, 47 percent of Las Vegas visitors in 2012 indicated that their

investigation into these claims is discussed more fully in Article IV.D below. Similarly, the Examiner's Report on the Challenged Transactions is discussed in Article IV.E below.

On August 4, 2014, Wilmington Savings Fund Society, FSB, solely in its capacity as indenture trustee under the 10.00% Second Lien Notes Indenture dated as of April 15, 2009 ("WSFS"), commenced an action in the Court of Chancery of the State of Delaware against, among others, CEC, CEOC, CGP, CERP, CEC's directors, and certain of CEOC's directors in a case captioned *Wilmington Savings Fund Society, FSB v. Caesars Entertainment Corporation*, C.A. No. 10004-VCG (the "WSFS Delaware Action"). In the WSFS Delaware Action, WSFS alleged claims for, among other things, intentional and constructive fraudulent transfer, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, corporate waste, and breach of contract. On August 3, 2015, WSFS amended its complaint to assert certain claims under the Trust Indenture Act of 1939 (the "TIA") against CEC related to the release of CEC's guarantee of the amounts outstanding under the 10.00% Second Lien Notes Indenture [Del. Ch. Court Docket ID. 74742841]. The claims in the WSFS Delaware Action are focused on the CIE, CERP, Growth, and Four Properties Transactions, as well as the Shared Services Joint Venture. During the pendency of the Chapter 11 Cases, the action has been automatically stayed with respect to the Debtors as well as derivative claims that belong to the Estates against CEC, CGP, CERP, CEC's directors, and certain of CEOC's directors. Vice Chancellor Glasscock denied a motion to dismiss with respect to CEC on March 18, 2015. Plaintiffs have advised the Bankruptcy Court that they agreed their derivative claims are automatically stayed and therefore are only pursuing their independent breach of contract and TIA claims, alleging that CEC remains liable under the parent guarantee formerly applicable to 10.00% Second-Priority Notes due 2018. On March 14, 2016, WSFS moved for partial summary judgment, asking the court to determine that WSFS is entitled to its $3.6 billion claim because the relevant section of the indenture is unambiguous and an event of default occurred [Del. Ch. Court Docket ID. 76344683]. This summary judgment motion is pending as of the date hereof. In addition, as described below in Article IV.N.1, the Debtors' request to enjoin the WSFS Delaware Action is set for a status hearing on May 4, 2016.

On August 5, 2014, CEC and CEOC commenced a lawsuit in the Supreme Court of New York, County of New York, against certain institutional holders of First and Second Lien Notes, which is captioned *Caesars Entertainment Operating Company, Inc. and Caesars Entertainment Corporation v. Appaloosa Investment Limited Partnership I, et al.*, Index No. 652392/2014 (the "New York State Action"). The members of the Special Governance Committee abstained from the decision to file the New York State Action. In the New York State Action, CEC and CEOC asserted that the defendants tortiously interfered with CEC's and CEOC's businesses in an attempt to improve defendants' credit default swap and other securities positions. CEC and CEOC also sought declarations that no defaults occurred under CEOC's First and Second Lien Notes Indentures and that there have been no breaches of fiduciary duty or fraudulent transfers. Defendants filed motions to dismiss this action in October 2014. On June 29, 2015, the court dismissed the complaint without prejudice, reserving its decision on Count I of the complaint pending a motion by the defendants [Docket No. 155]. On July 20, 2015, the court dismissed Count I of the claim with prejudice [Docket No. 160], so the entire complaint is now dismissed.

On November 25, 2014, the First Lien Notes Indenture Trustee, in its capacity as trustee under the 8.50% First Lien Notes Indenture, commenced an action in the Court of Chancery of the State of Delaware against CEC, CEOC, CGP, CERP, CEC's directors, and all of CEOC's directors in a case captioned *UMB Bank v. Caesars Entertainment Corporation*, C.A. No. 10393-VCG (the "UMB Receiver Action"). In the UMB Receiver Action, the First Lien Notes Indenture Trustee has alleged that CEC engaged in a fraudulent scheme to strip assets from CEOC, and seeks, among other things, to have the Delaware Chancery Court appoint a receiver to manage CEOC's affairs for the benefit of its noteholders. Pursuant to the Prepetition RSA, the UMB Receiver Action was consensually stayed as to all defendants upon the filing of the Chapter 11 Cases.

On September 3 and October 2, 2014, certain Senior Unsecured Noteholders commenced two actions against CEC and CEOC in the United States District Court for the Southern District of New York, which are captioned *MeehanCombs Global Credit Opportunities Master Fund, LP v. ~~Caesars Entertainment Corp. and Caesars Entertainment Operating Co., Inc.~~*, ~~Case No. 14-cv-07091-SAS (the "MeehanCombs SDNY Action"), and *Danner v.*~~ *Caesars Entertainment Corp. and Caesars Entertainment Operating Co., Inc.*, Case No. 14-cv-07091-SAS (the "MeehanCombs SDNY Action"), and *Danner v. Caesars Entertainment Corp. and Caesars Entertainment Operating Co., Inc.*, Case No. 14-cv-07973-SAS (the "Danner SDNY Action," and together with the MeehanCombs SDNY Action the "Unsecured Noteholder SDNY Actions"). Through the

Unsecured Noteholder SDNY Actions, these Senior Unsecured Noteholders have asserted that the Senior Unsecured Notes Transaction breached the Senior Unsecured Notes Indentures and violated the TIA and breached the covenant of good faith and fair dealing. The Unsecured Noteholder SDNY Actions were stayed with respect to CEOC as a result of the automatic stay, but continue to proceed with respect to CEC. On January 15, 2015, CEC's motion to dismiss in the Danner SDNY Action was denied in its entirety and CEC's motion to dismiss in the MeehanCombs SDNY Action was granted in part and denied in part. *See MeehanCombs Global Credit Opportunities Master Funds, LP v. Caesars Entm't Corp.*, 80 F. Supp. 3d 507 (S.D.N.Y. 2015). The plaintiffs in the MeehanCombs SDNY Action filed an amended complaint on January 29, 2015, which, among other changes, added a cause of action against CEC for breaches of contract and guarantees relating to the Debtors' bankruptcy filings. The plaintiff in the Danner SDNY Action filed an amended complaint on February 19, 2015. On October 23, 2015, the Unsecured Noteholders SDNY Action plaintiffs moved for partial summary judgment [Docket No. 67 in the MeehanCombs SDNY Action / Docket No. 60 in the Danner SDNY Action] asserting that the Senior Unsecured Notes Transaction in August 2014 was a violation of the TIA as a matter of law. On December 29, 2015, Judge Scheindlin denied the motion for summary judgment because there were open issues of fact related to certain transactions in May 2014 that also may have resulted in the release of CEC's guaranty of the outstanding obligations under the Senior Unsecured Notes Indentures. *See MeehanCombs Global Credit Opportunities Master Funds, LP v. Caesars Entm't Corp.*, 2015 WL 9478240 (S.D.N.Y. Dec. 29, 2015). On January 13, 2016, the Danner and MeehanCombs plaintiffs filed a letter with the court requesting that the trial be consolidated with the trial in the Secured Noteholder SDNY Actions (as defined below) [Docket No. 90 in the MeehanCombs SDNY Action / Docket No. 89 in the Danner SDNY Action], which at that time was scheduled for March 14, 2016. In response, on January 15, 2016, CEC filed a request that each of the Danner SDNY Action, the MeehanCombs SDNY Action, and the Secured Noteholder SDNY Actions be stayed until the Court of Appeals for the Second Circuit issues its ruling in *Marblegate Asset Management, LLC v. Education Management Corp.,* Nos 15-2124 and 15-2141 (2d. Cir.), filed on July 2, 2015. On January 16, 2016, Judge Scheindlin denied both the request to consolidate and the request to stay. On March 10, 2016, CEC filed a letter requesting a pre-motion conference regarding a proposed summary judgment motion in both Unsecured Noteholder SDNY Actions. MeehanCombs and Danner filed a letter in opposition on March 14, 2016, and CEC filed a reply letter on March 18, 2016. ~~No summary judgment briefing is currently scheduled at this time. The Unsecured Noteholder SDNY Actions are currently scheduled for jury trial on May 9, 2016. In addition, as described below in Article IV.N.1, the Debtors' request to enjoin the Unsecured Noteholder SDNY Actions remains pending at this time, and is set for a status hearing on May 4, 2016.~~[37]

Three additional proceedings have been commenced against CEC subsequent to the Petition Date. Specifically, on March 3, 2015, BOKF, N.A. ("BOKF"), as successor indenture trustee for certain Second Lien Notes, filed an action against CEC in the Southern District of New York, captioned *BOKF, N.A. v. Caesars Entertainment Corporation*, Case No. 15-cv-1561-SAS (the "BOKF SDNY Action"). In the BOKF SDNY Action, BOKF asserted that CEC remains liable under the parent guarantee formerly applicable to the Second Lien Notes and breached the Second Lien Notes Indentures by purportedly releasing such guarantee. BOKF seeks a declaratory judgment that the guarantee was not released and is still in effect. BOKF also alleges claims for damages resulting from CEC's violation of the TIA, intentional interference with contractual relations, and breach of the duty of good faith and fair dealing. Additionally, on June 16, 2015, the First Lien Notes Indenture Trustee commenced an action in the Southern District of New York, captioned *UMB Bank, N.A. v. Caesars Entertainment Corporation*, Case No. 15-cv-4643-SAS (the "UMB SDNY Action" and collectively with the BOKF SDNY Action, the "Secured Noteholder SDNY Actions"). The UMB SDNY Action seeks to reinstate CEC's guarantee of payment on CEOC's First Lien Notes. On August 27, 2015, Judge Scheindlin denied BOKF's and UMB's motions for partial summary judgment, which sought a declaration that the releases of CEC's guarantee in May 2014 violated section 316(b) of the TIA and certified her own opinion for an appeal to the United States Court of Appeals for the Second Circuit. *See BOKF, N.A. v. Caesars Entm't Corp.*, 2015 WL 5076785 (S.D.N.Y. Aug. 27, 2015). On December 22, 2015, the United States Court of Appeals for the Second Circuit denied CEC's interlocutory appeal. Additionally, on November 20, 2015, BOKF and UMB filed a second partial summary judgment motion in the Secured Noteholder SDNY Actions focusing on contract interpretation issues related to the dispute. On January 5, 2016, Judge Scheindlin denied the second motion for summary

~~[37] On March 18, 2016, MeehanCombs Global Credit Opportunities Master Fund, LP withdrew from the MeehanCombs SDNY Action. The other plaintiffs in the MeehanCombs SDNY Action continue to pursue their asserted claims.~~

judgment because the matter would not be case dispositive, and therefore did not reach the merits of the issue. *See BOKF, N.A. v. Caesars Entm't Corp.*, 2016 WL 67728 (S.D.N.Y. Jan. 5, 2016). As discussed more fully in Article IV.N.1 below, the Secured Noteholder SDNY Actions have been enjoined by the Bankruptcy Court until the earlier of 60 days after the issuance of the Examiner's final report and May 9, 2016, though pre-trial activity can continue. ~~On March 14, 2016, BOKF and UMB Bank filed a letter with the court asking to consolidate the Secured Noteholder SDNY Action with the May 9 trial scheduled in the Unsecured Noteholder SDNY Actions. CEC filed a reply letter on March 18, 2016, arguing that such consolidation would confuse the jury and prejudice CEC [Meehan Combs SDNY Action Docket No. 115]. Judge Scheindlin has not yet ruled on the consolidation request.~~

On March 31, 2016, the Unsecured Noteholder SDNY Actions were reassigned to Judge Jed S. Rakoff. Following reassignment of the Unsecured Noteholder SDNY Actions and the Secured Noteholder SDNY Actions to Judge Rakoff, the parties in the Unsecured Noteholder SDNY Actions and the Secured Noteholder SDNY Actions agreed to a renewed summary judgment schedule culminating in June 24, 2016 oral argument and a "global" trial starting on August 22, 2016, if needed. In addition, as described below in Article IV.N.1, the Debtors' request to enjoin the Unsecured Noteholder SDNY Actions remains pending at this time, and is set for a status hearing on May 4, 2016.[37]

The most recent guaranty action to be commenced was on October 21, 2015, when the indenture trustee for the Debtors' 10.75% Subsidiary-Guaranteed Notes (the "Subsidiary-Guaranteed Notes Trustee") filed an action against CEC in the Southern District of New York, captioned *Wilmington Trust, National Association v. Caesars Entertainment Corp.*, Case No. 15-cv-08280-UA (the "Wilmington Trust SDNY Action"), seeking to void the removal of CEC's guarantee of the Subsidiary-Guaranteed Notes and a money judgment against CEC for outstanding interest due and payable under such notes. CEC filed its answer to the complaint on November 23, 2015. The Wilmington Trust SDNY Action has been assigned to Judge Scheindlin. The parties are currently engaged in discovery and no trial date or summary judgment proceedings have been set as of the date hereof.

Judge Scheindlin recently announced her resignation from the bench effective April 28, 2016. The Secured Noteholder SDNY Actions, the Unsecured Noteholder SDNY Actions, and the Wilmington Trust SDNY Action have now been assigned to Judge Jed Rakoff. The implications of Judge Scheindlin's resignation on trial dates and other matters are not known at this time.

E. Prepetition Restructuring Negotiations and Prepetition RSA

The Debtors engaged their stakeholders, including certain First Lien Lenders, certain First Lien Noteholders, and CEC, in extensive, multilateral, arm's-length negotiations regarding the terms of a potential restructuring beginning in late summer 2014.

These negotiations were complicated by a number of factors. First, certain of the Debtors' creditors also held credit default swap positions, which potentially held significant value if the Debtors defaulted on their debts. Parties holding credit default swap positions could therefore be incentivized to seek outcomes that maximized recoveries on those derivative positions rather than their interest in the Debtors' indebtedness while certain other parties held credit default positions that were incentivized to keep the Debtors out of bankruptcy to ensure that such parties would not have to cover such positions. Second, CEC, the Debtors, and certain creditors also were engaged in ongoing, contentious litigation described above. Third, it was critical that CEC support any potential restructuring given gaming regulatory requirements and the fact that the Caesars' businesses are interrelated through shared services and employees as well as the Total Rewards® program. Similarly, the Debtors could trigger significant tax obligations—including for the Debtors—by separating from CEC.

The Debtors and certain of their stakeholders examined various structures in an effort to maximize the value of their Estates and creditor recoveries. After significant diligence and hard-fought negotiations, the parties agreed to reorganize the Debtors' businesses as a REIT, which would enhance the value of the Debtors' real estate

[37] On March 18, 2016, MeehanCombs Global Credit Opportunities Master Fund, LP withdrew from the MeehanCombs SDNY Action. The other plaintiffs in the MeehanCombs SDNY Action continue to pursue their asserted claims.

disposition of "substantially all" of CEOC's assets so that future asset sales would be measured against CEOC's assets as of the date of the supplemental indentures. In addition, with the consent of the August Noteholders, CEOC and the Senior Unsecured Notes Indenture Trustee amended the Senior Unsecured Notes Indentures to modify a ratable amount of the approximately $82.4 million face amount of the 6.50% Senior Unsecured Notes Due 2016 and 5.75% Senior Unsecured Notes Due 2015 (the "Amended Senior Unsecured Notes") held by the August Noteholders to include provisions that holders of those two series of the Amended Senior Unsecured Notes will be deemed to consent to any restructuring of the Senior Unsecured Notes (including the Amended Senior Unsecured Notes) that has been consented to by holders of at least 10 percent of the outstanding 6.50% Senior Unsecured Notes Due 2016 and 5.75% Senior Unsecured Notes Due 2015, as applicable.

The SGC Investigation concluded that with respect to the Senior Unsecured Notes Transaction, it is unlikely that the Debtors possess any viable claim. Unlike the other transactions, CEOC had independent directors (through the Special Governance Committee) and advisors (Kirkland & Ellis LLP), which negotiated the deal on behalf of CEOC and its stakeholders. Accordingly, as the Examiner concluded, this transaction reflects the valid exercise of the Debtors' business judgment. However, as the Examiner explicitly noted, the "guarantee release is the subject of a pending litigation by various CEOC 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 CEOC has claims arising from the release of the guarantee." Examiner Report at 5n.8.

9. The Intercompany Revolver

In 2008, CEC and CEOC established an unsecured revolving credit facility in favor of CEOC. As of late 2012, CEC converted the revolver from a committed to uncommitted facility, required CEOC to make solvency representations to further access the revolver, and did not lend any additional funds to CEOC. Despite the fact that no payments were due until November 2017 (following an amendment in November 2012, which extended the maturity date from January 2014), CEOC repaid more than $409 million in 2012 and 2013. The majority of these proceeds were used to buy back CMBS debt at a discount and to provide cash for the CERP Properties. In May 2014, the Sponsors requested repayment of the remaining amount of principal and interest outstanding under the revolver ($262 million).

The SGC Investigation concluded that with respect to the $[__] million in payments the Debtors made within one year of their bankruptcy filing, the Debtors were highly likely to recover these payments from CEC as avoidable preferences. The SGC Investigation also concluded it is likely that the Debtors could succeed on claims for fraudulent transfer with actual intent against CEC and CERP, breach of fiduciary duty against CEOC's directors and CEC, and aiding and abetting breach of fiduciary duty against the Sponsors to recover $[__] million (the balance of the $[__] million CEOC repaid net of the $[__] million preference) since mid-2012. Finally, the SGC Investigation concluded that it is unlikely the Debtors could succeed on a recharacterization and illegal dividends claim.

10. Additional Investigation Transactions and Topics

Multiple Degradation. As a result of the asset transfers described above, more of CEOC's EBITDA is derived from regional properties than from Las Vegas properties. Following the CERP Transaction, Growth Transaction, and Four Properties Transaction, the percentage of CEOC's EBITDA derived from Las Vegas properties declined from 41 percent to 28 percent. Certain creditors have argued this shift has diminished the overall value of the CEOC enterprise beyond the consideration shortfall in the amount paid to CEOC for the assets transferred.

The SGC Investigation concluded that it is unlikely that the Debtors could recover on any legal claim relating to multiple degradation. Should the Debtors be successful in recovering the fair value of the transferred assets as described above, an additional recovery for "multiple degradation" would likely be a duplicative or double recovery.

Showboat Closure and Sale. In August 2014, CEOC closed the Showboat Atlantic City Casino in Atlantic City, New Jersey. In December 2014, CEOC sold the Showboat property to Stockton College for $18 million. The SGC Investigation concluded that with respect to the Showboat Sale and Closure, it is unlikely that the Debtors could succeed on any legal claim.

The Examiner investigated a number of other transactions but concluded that there were no strong or reasonable claims (or in some cases any viable claims) for constructive fraudulent transfer, fraudulent transfer with actual intent, breach of fiduciary duty, or aiding and abetting breach of fiduciary duty. These include the following:

- The release of CEC's guarantee through the sale of 5% of CEOC equity and distribution of 6% of equity to employees as part of a Performance Incentive Plan.
- CEOC's repurchase of $17 million of PIK Toggle Notes guaranteed by CEC in December 2014.
- The August 2014 Senior Unsecured Notes Transaction where CEOC and CEC purchased $155 million in CEOC notes and CEC contributed $427 million of notes to CEOC for cancellation.
- Easements that Debtors granted in 2011 to Flamingo, Harrah's Imperial Palace Corporation, and Caesars Linq, LLC.

The Examiner's Report states that the Senior Unsecured Notes Transaction "can only be described as 'ugly' with one group of noteholders (constituting a slight majority of the notes held by non-related parties) getting paid at a premium over market in exchange for agreeing to prejudice the remaining noteholders by eliminating the Bond Guarantee from the governing indentures." Examiner Report at 69.

F. Development of the Proposed Restructuring and Plan

Before filing the Chapter 11 Cases, the Debtors worked diligently and tirelessly to reach a consensual restructuring agreement with their creditors. The initial result of these efforts was the Prepetition RSA entered into by the Debtors and a significant portion of the Debtors' creditors on December 19, 2014. The Prepetition RSA, which is described in more detail in Article III.E above, allowed the Debtors to enter the chapter 11 process with the support of a key creditor group and locked in a baseline deal structure to facilitate further negotiations with the Debtors' creditors during the Chapter 11 Cases. Indeed, since the Petition Date, the Debtors engaged in numerous negotiations with certain holders of the Debtors' first and second lien secured debt in an effort to reach a mutual agreement regarding a consensual resolution of the Chapter 11 Cases. These efforts, described in further detail below, resulted in the RSAs (as defined below) which form the baseline recoveries for the proposed restructuring presented by the Plan.

1. The First Lien Notes RSA

The Prepetition RSA contained various milestones that the Debtors were required to meet. Although the Debtors were unable to meet certain of these milestones during the Chapter 11 Cases, the Prepetition RSA remained effective while discussions among the parties thereto continued apace. These discussions led to certain amendments to the Prepetition RSA, which were embedded in the Fourth Amended and Restated Restructuring Support and Forbearance Agreement, dated as of July 31, 2015, and in a Fifth Amended and Restated Restructuring Support and Forbearance Agreement, dated as of October 7, 2015 (the "First Lien Notes RSA"). *See* Caesars Entertainment Corporation, Report on Form 8-K (October 8, 2015). The First Lien Notes RSA is supported by over 80 percent of the First Lien Noteholders (the "First Lien Consenting Noteholders").

Pursuant to the First Lien Notes RSA, the First Lien Consenting Noteholders have agreed to, among other things, support and vote their claims in favor of the proposed Plan, forbear from exercising certain default-related rights and remedies under the indentures governing the First Lien Notes, and not transfer their Secured First Lien Notes Claims or Prepetition Credit Agreement Claims unless the transferee agrees to be bound by the terms of the First Lien Notes RSA. In addition, any litigation between CEOC, CEC, their respective directors, and any of the First Lien Consenting Noteholders was adjourned, stayed, and/or dismissed without prejudice after January 15, 2015, in accordance with the First Lien Notes RSA. The Debtors must meet or comply with various material milestones under the First Lien Notes RSA relating to the timing of filing motions with the Bankruptcy Court as well as the entry of orders with respect to certain aspects of the Chapter 11 Cases. The First Lien Consenting Noteholders have a right to terminate the First Lien Notes RSA if certain milestones are not met, as modified or amended by forbearance agreements, during the pendency of the Chapter 11 Cases. Although the Debtors have not met all such case milestones, the First Lien Notes RSA has not been terminated as of the date hereof.

During this period, a number of deferred compensation plans (the "Deferred Compensation Plans")[43] were created and funded by either CEC or CEOC for the benefit of employees situated throughout the Caesars enterprise. As of the Petition Date, all of the Deferred Compensation Plans were frozen to new contributions.

Currently, there are a total of approximately 340 active and inactive participants in the Deferred Compensation Plans, with plan balances ranging from a few hundred dollars to several million dollars. Traditionally, payments related to the Deferred Compensation Plans have been made by CEOC on account of the entire Caesars enterprise. In 2014, for example, CEOC paid approximately $11.6 million to participants of the Plans. In order to fund liabilities associated with the Deferred Compensation Plans, various corporate-owned life insurance policies (the "COLIs") have been purchased and contributed into either an escrow account (the "Escrow Account") or a Rabbi trust (the "Rabbi Trust," and collectively with the Escrow Account, the "Asset Vehicles"), which are governed by the Trust Agreement (as defined below) and Escrow Agreement (as defined below), respectively. As of the Petition Date, the Escrow Account held approximately $56.9 million of assets and the Rabbi Trust held approximately $65.9 million of assets

Shortly after the Petition Date, certain of the Debtors' creditors, including the Unsecured Creditors Committee, sought additional information regarding the Deferred Compensation Plans and the Asset Vehicles, including information regarding which corporate entity is an obligor under the Deferred Compensation Plans and which entity owns the assets held in the Asset Vehicles. Upon agreement with the Unsecured Creditors Committee under the Wages Order, the Debtors suspended payments on account of the Deferred Compensation Plans pending a more thorough review of such plans.

Shortly after the Petition Date, the Debtors began discussions with CEC to consensually resolve issues related to the Deferred Compensation Plan, including a final settlement of which entities are liable to plan participants and which entities own the assets in the Asset Vehicles. After arm's-length discussions, the Debtors have reached an agreement on the general outline of a settlement with CEC regarding the Deferred Compensation Plans (the "Deferred Compensation Settlement"). Under the terms of the Deferred Compensation Settlement, CEC has agreed to assume liabilities associated with the ESSP II, ESSP, EDCP (solely with respect to certain current and/or former CEC employees), CEDCP, and certain other participants that are former CEC employees. The material terms of the settlement will be memorialized in a formal settlement agreement to be filed as part of the Plan Supplement.

N. Adversary Proceedings and Contested Matters

1. Section 105 Adversary Proceeding

On March 11, 2015, the Debtors commenced an adversary proceeding in the Bankruptcy Court to, among other things, enjoin the continuation of the WSFS Delaware Action, the Unsecured Noteholder SDNY Actions, and the BOKF SDNY Actions (collectively, the "Parent Guarantee Litigation") against CEC pursuant to section 105(a) of the Bankruptcy Code (the "105 Adversary Proceeding"). As further discussed in the Debtors' pleadings in the 105 Adversary Proceeding, the Debtors believe that continuation of the Parent Guarantee Litigation outside of the Chapter 11 Cases imperils the Debtors' ability to reorganize. Specifically, the Debtors believe that their reorganization requires a substantial contribution from CEC, whether through settlement or litigation, to fund recoveries for the Debtors' creditors. Any consideration that CEC pays on account of its purported guarantees of the Debtors' funded debt obligations would reduce CEC's ability to make a contribution to the Debtors under the Plan (or through litigation to the extent that the settlement encompassed in the Plan fails. As CEC stated at trial in the 105 Adversary Proceeding, an adverse ruling in the Parent Guarantee Litigation may very well cause CEC to seek protection under the Bankruptcy Code, which would drastically upset the Debtors' reorganization process given the Debtors' own claims against CEC. However, as also admitted at trial through Steven Zelin, a Senior Managing Director of the Blackstone Group, CEC's financial advisor and investment banker, CEC has the financial wherewithal to pay any judgment in the Unsecured Noteholder SDNY Actions and still make the contemplated contribution to Debtors' plan.

[43] The plans are: (a) Harrah's Entertainment, Inc. Executive Supplemental Savings Plan ("ESSP"); (b) Harrah's Entertainment, Inc. Executive Supplemental Savings Plan II ("ESSP II"); (c) Harrah's Entertainment, Inc. Executive Deferred Compensation Plan ("EDCP"); (d) Harrah's Entertainment, Inc. Deferred Compensation Plan ("DCP"); and (e) Park Place Entertainment Corporation Executive Deferred Compensation Plan ("Park Place EDCP").

Following an evidentiary trial and briefing by the parties, the Bankruptcy Court issued an opinion [Adv. Case. No. 15-00149 (ABG) [Docket Nos. 158] (the "Original 105 Opinion") and order [Adversary Case No. 15-00149 (ABG) [Docket No. 159] on July 22, 2015, denying the Debtors' request in the 105 Adversary Proceeding. The Bankruptcy Court held that controlling precedent required that "[u]nless the debtor's estate has a claim against the non-debtor, and unless that claim is based on the same acts and would be paid from the same assets as the third party's claim against the non-debtor, no relief is possible" from a bankruptcy court to enjoin that non-debtor third party litigation pursuant to section 105." *See* Original 105 Opinion at 28.

On July 24, 2015, the Debtors appealed this ruling, in an appeal captioned *Caesars Entertainment Operating Company, Inc., et al. v. BOKF, N.A. Wilmington Savings Fund Society, FSB, MeehanCombs Global Credit Opportunities Master Fund, LP, Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, SB 4 CF LLC, CFIP Ultra Master Fund, LTD., Trilogy Portfolio Company, LLC, and Frederick Barton Danner*, Case No. 15-cv-06504 (RWG) (the "105 Appeal"). In the 105 Appeal, the Debtors argued that the Bankruptcy Court's "same acts" requirement is a misapplication of precedent from United States Court of Appeals for the Seventh Circuit (the "Seventh Circuit"), and requested that the District Court enter the requested section 105 injunction to protect the Debtors' interests in CEC's contributions to the Debtors pursuant to the Plan, or remand to the Bankruptcy Court to enter such an order or further consider the requested injunction. The District Court held oral argument in the 105 Appeal on September 29, 2015. On October 8, 2015, the District Court entered an order [Docket No. 42], and memorandum opinion and order [Docket No. 43], affirming the Bankruptcy Court's ruling. On October 9, 2015, the Debtors filed a notice of appeal of the District Court's ruling to the Seventh Circuit [Docket No. 45]. Briefing before the Seventh Circuit concluded on November 30, 2015, and oral argument was held before a panel of Seventh Circuit judges on December 10, 2015. On December 23, 2015, the Seventh Circuit vacated the denial of the injunction and remanded to the Bankruptcy Court on the grounds that the "same acts" requirement was a misapplication of controlling Seventh Circuit case law [Docket No. 46]. On January 11, 2016, certain of the Defendants-Appellees filed a petition for rehearing en banc by the full Seventh Circuit [Docket No. 53]. On January 25, 2016, the Seventh Circuit denied this request for rehearing and on February 2, 2016, the Seventh Circuit issued its mandate, revesting jurisdiction in the Bankruptcy Court.

On remand, the Bankruptcy Court took judicial notice of certain additional facts from the Chapter 11 Cases and the Parent Guarantee Litigation, including a pending trial date in the BOKF SDNY Action set for March 14, 2016, and a pending trial date in the Unsecured Notes SDNY Actions set for May 9, 2016. Based on the factual findings from the trial in the 105 Adversary Proceeding and judicial notice of these additional facts, on February 26, 2016, the Bankruptcy Court issued a ruling [Docket No 214] (the "105 Order"), which enjoined the BOKF SDNY Action until the earlier of (a) 60 days after the Examiner files his final (redacted) report and (b) May 9, 2016, which, given the timing for the issuance of the Examiner's final report, will be May 9, 2016. The Bankruptcy Court continued the Debtors' requested relief in the 105 Adversary Proceeding as to the WSFS Delaware Action and the Unsecured Notes SDNY Actions to a status hearing on May 4, 2016, at which time the Bankruptcy Court will consider whether a further injunction is warranted as to the BOKF Action and whether an injunction is warranted as to the WSFS Delaware Action or the Unsecured Notes SDNY Actions. In addition, on March 10, 2016, the Bankruptcy Court clarified that pretrial activity could occur in the BOKF SDNY Action, but no trial could occur before May 9, 2016.[44]

The Unsecured Noteholder SDNY Actions agreed to a renewed summary judgment schedule culminating in June 24, 2016 oral argument and a "global" trial starting on August 22, 2016, if needed.

2. Unsecured Creditors Committee Lien Challenge Adversary

On August 7, 2015, the Unsecured Creditors Committee filed an adversary complaint out of an abundance of caution against the indenture trustees and Collateral Agents under the First Lien Debt and the Second Lien Debt (the "Lien Challenge Adversary"). *See Statutory Unsecured Claimholders' Committee v. BOKF, N.A., et al.*, Adversary Case No. 15-00571 (ABG) [Docket No. 1]. As discussed in detail above, the Unsecured Creditors Committee filed the Lien Challenge Adversary contemporaneously with the UCC Lien Standing Motion, which separately requested

[44] UMB, which filed the UMB SDNY Action after the trial in the 105 Adversary Proceeding, has agreed to be bound by the Bankruptcy Court's decisions in the 105 Adversary Proceeding. UMB has therefore agreed that the UMB SDNY Action is enjoined until May 9, 2016, on the same terms and conditions as the BOKF SDNY Action.

Article VIII.C of the Plan provides for releases of certain claims and Causes of Action against the Released Parties in exchange for the good and valuable consideration and the valuable compromises made by the Released Parties (the "Third-Party Release"). Various third parties, including _____, _____, and Frederick Barton Danner, object to the release of their third party claims against CEC. The Holders of Claims and Interests who are releasing certain claims and Causes of Action against non-Debtors under the Third-Party Release include: (a) the Debtors; (b) the CEC Released Parties; (c) the Consenting First Lien Noteholders; (d) the Consenting First Lien Bank Lenders; and (e) all other Persons or Entities holding Claims against, or Interests in, the Debtors.

Article VIII.D of the Plan provides for the exculpation of each Exculpated Party for certain acts or omissions taken in connection with the Chapter 11 Cases. Each of the Released Parties is an Exculpated Party. The released and exculpated claims are limited to those claims or Causes of Action that may have arisen in connection with, related to, or arising out of the Plan, this Disclosure Statement, or the Chapter 11 Cases.

Article VIII.E of the Plan permanently enjoins Entities who have held, hold, or may hold claims, interests, or Liens that have been discharged or released pursuant to the Plan or are subject to exculpation pursuant to the Plan from asserting such claims, interests, or Liens against each Debtor, the Reorganized Debtors, and the Released Parties.

Under applicable law, a debtor release of the Released Parties will be analyzed under the rules governing a settlement made pursuant to Bankruptcy Rule 9019(a). *See In re Envirodyne Indus., Inc.*, No. 93 B 310, 1993 WL 566565, at *31 (Bankr. N.D. Ill. Dec. 20, 1993) ("Though the Intended Release is not a settlement under Rule 9019(a) of the Fed.R.Bankr.P., the rules governing the approval of a settlement are instructive and helpful to the court in determining whether the Intended Release should be approved as part of the Plan."). Courts reviewing such settlements must determine whether the settlement in question is in the best interests of the estate after comparing, among other things, the terms of the settlement with the probable costs, benefits, degree of success, complexity, and inconvenience of a litigious alternative. *Id.*

Further, a chapter 11 plan may provide for a release of third party claims against non-debtors, such as the Third-Party Release, where such releases are consensual. *See In re Specialty Equip. Cos.*, 3 F.3d 1043, 1046 (7th Cir. 1993) (approving third party release where "each creditor could choose to grant, or not to grant, the release irrespective of the vote of the class of creditors or interest holders of which he or she is a member"); *In re Conseco, Inc.*, 301 B.R. 525, 528 (Bankr. N.D. Ill. 2003) (approving release by "those creditors who agreed to be bound, either by voting for the Plan or by choosing not to opt out of the release"). In addition, nonconsensual releases of third party claims against non-debtors are also permissible under certain circumstances. *See In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008) (approving nonconsensual release required by financing source where financing "was itself essential to the reorganization," release was of claims in connection with restructuring, release had willful misconduct carveout, and the release is "appropriate and not inconsistent with any provision of the bankruptcy code."); *In re Ingersoll, Inc.*, 562 F.3d 856, 863–65 (7th Cir. 2009) (affirming nonconsensual release of third party litigation by non-creditor against non-debtor where "it was central to the negotiation and ultimate success of the plan," narrowly-tailored, and supported by "good and valuable consideration [that] will enable unsecured creditors to realize distribution in this case"); *Hotel 71 Mezz Lender LLC v. Nat'l Ret. Fund*, No. 13 C 03306, at *25–29 (N.D. Ill. Aug. 21, 2015) (finding that the nonconsensual third party release of withdrawal liability under ERISA was "narrowly tailored" because it was limited to claims arising in connection with the restructuring, was not a blanket immunity, and was "essential" to providing any meaningful recovery for general creditors).

Frederick Barton Danner, the Plaintiff in the Danner SDNY Action, objects to the nonconsensual release of his claims against CEC, including the claims asserted against CEC in the Danner SDNY Action, as the releases provided in the Plan are not permitted under applicable law.

Courts evaluate the appropriateness of exculpation provisions based upon a number of factors, including whether the plan was proposed in good faith, whether liability is limited, and whether the exculpation provision was necessary for plan negotiations. *See Captran Creditors' Trust v. McConnell* (*In re Captran Creditors' Trust*), 128 B.R. 469, 476 (M.D. Fla. 1991) (noting that the factors used to evaluate the language of an exculpation provision "include, but are not limited to: how the exculpatory clause limits liability, intent of the parties, and the manner in which the exculpatory clause was made a part of the agreement"); *In re Berwick Black Cattle Co.*, 394 B.R. 448, 459 (Bankr. C.D. Ill. 2008) ("As one court has explained, the now customary exculpation for acts and omissions in