

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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In re:) Chapter 11
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CAESARS ENTERTAINMENT OPERATING) Case No. 15-01145 (ABG)
COMPANY, INC., et al., ¹)
)
Debtors.) (Jointly Administered)
)
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CAESARS ENTERTAINMENT OPERATING) Chapter 11
COMPANY, INC., et al.,)
) Adversary Case. No. 15-00149 (ABG)
<i>Plaintiffs</i>)
vs.)
)
BOKF, N.A., WILMINGTON SAVINGS FUND	) Evidentiary Hearing Date: June 8,
SOCIETY, FSB, RELATIVE VALUE-	) 2016, at 10:30 a.m. (prevailing
LONG/SHORT DEBT PORTFOLIO, A SERIES	) Central Time)
OF UNDERLYING FUNDS TRUST, TRILOGY)
PORTFOLIO COMPANY, LLC, AND)
FREDERICK BARTON DANNER,)
)
)
)
)
<i>Defendants.</i>)
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**NOTICE OF DEBTORS' EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING
DEFENDANTS FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

PLEASE TAKE NOTICE that on **June 8, 2016, at 10:30 a.m. (prevailing Central Time)** or as soon thereafter as counsel may be heard, the Debtors will appear before the Honorable A. Benjamin Goldgar or any other judge who may be sitting in his place and stead, in Courtroom 642 in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, for an evidentiary hearing on the attached *Debtors' Emergency*

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Motion for a Temporary Restraining Order and Preliminary Injunction Enjoining Defendants from Further Prosecuting Their Guaranty Lawsuits (the “Emergency Motion”).

PLEASE TAKE FURTHER NOTICE that copies of the Emergency Motion and all other documents filed in these chapter 11 cases are available free of charge by visiting <https://cases.primeclerk.com/CEOC> or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.ilnb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: June 6, 2016
Chicago, Illinois

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**DEBTORS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Pursuant to section 105(a) of the Bankruptcy Code and Rule 7065 of the Federal Rules of Bankruptcy Procedure, the Debtors respectfully request that the Court issue a temporary restraining order and preliminary injunction enjoining Defendants from continuing to prosecute guaranty lawsuits seeking billions of dollars from the Debtors' ultimate parent, Caesars Entertainment Corporation ("CEC"). As set forth below, the continued prosecution of these actions greatly endangers the Debtors' restructuring. In support thereof, the Debtors state as follows:

PRELIMINARY STATEMENT

1. In February 2016, this Court entered an injunction to allow the Debtors and their stakeholders a window of opportunity to try to reach a global settlement following the issuance of the Examiner report. With the help of a mediator, the Debtors have negotiated a materially enhanced contribution from CEC and its affiliates, and made substantial progress toward resolving what the Seventh Circuit has described as "an immense, and immensely complicated, bankruptcy proceeding." *Caesars Entm't Op. Co., Inc. v. BOKF, N.A. (In re Caesars Entm't Op. Co., Inc.)*, 808 F.3d 1186, 1187 (7th Cir. 2015).

2. The Debtors and CEC have now reached an agreement in principle under which CEC will support the Debtors' proposed reorganization plan (Dkt. 3832, and as amended from time to time, the "Plan"). The Plan is predicated on a \$4 billion (midpoint valuation) contribution from CEC and its affiliates. Negotiations with the Statutory Unsecured Claimholders' Committee ("UCC"), the ad hoc group of first lien bank lenders and first lien noteholders and the indenture trustee for the Debtors' subsidiary guaranteed unsecured notes have materially progressed. But one major roadblock to the Debtors' ability to pursue the Plan remains: two second lien indenture trustees and two groups of noteholders that claim to hold approximately \$125 million of senior unsecured notes are continuing to press guaranty lawsuits that seek to recover billions of dollars from CEC. Second lien indenture trustees Wilmington Savings Fund Society ("WSFS") and BOKF, N.A. are

prosecuting two of the suits while groups of senior unsecured noteholders represented by Frederick Barton Danner (“Danner”) and Trilogy Portfolio Company, LLC (“Trilogy”) are pursuing the other two actions (collectively, the “Guaranty Creditors”). Should the Guaranty Creditors prevail in their lawsuits, it will unravel the Plan the Debtors and their stakeholders have long been trying to achieve, bankrupt CEC, and return this restructuring to square one.

3. Rulings on dispositive summary judgment motions in each of the guaranty lawsuits are imminent. The Delaware Chancery Court could enter judgment against CEC as soon as June 16 on \$3.7 billion in claims being pursued by WSFS. The U.S. District Court for the Southern District of New York likewise could enter judgment between June 24 and July 22 on another \$7.7 billion in claims against CEC.² Absent injunctive relief, CEC could be hit with \$11.4 billion in adverse judgments by the end of this month.

4. This Court should enjoin the Guaranty Creditors from further prosecuting their guaranty suits until the Court issues its decision confirming or denying confirmation of the Debtors’ Plan. Given that rulings on dispositive motions are imminent, the Debtors respectfully request that the Court enter a temporary restraining order prohibiting the parties from proceeding with oral arguments scheduled for June 16 in Delaware and June 24 in New York to provide the Court time to determine whether to enter the preliminary injunction. This Court’s practical ability to prevent judgments from being entered in the guaranty suits may be diminished following oral argument. At that point, the parties will not need to take any additional steps themselves before a judgment may be

² Two other parties have brought actions against CEC seeking to enforce guaranties. In June 2015, UMB Bank, N.A., as trustee under certain CEOC first lien indentures, sued CEC in the Southern District of New York seeking \$6.345 billion. (105 Order at 5) In October 2015, Wilmington Trust, N.A., as successor trustee for the 10.75% Senior Unsecured Notes, sued CEC in the Southern District of New York seeking more than \$500 million. (*Id.* at 7) UMB and Wilmington Trust have agreed to abide by the terms of any injunction the Court issues. If the Court denies the Debtors’ motion, however, UMB and Wilmington Trust will continue to prosecute their guaranty lawsuits to ensure their interests are not prejudiced in a CEC bankruptcy.

entered. Thus, an injunction against these parties after oral arguments may not stop the courts from entering judgment. Either court also could rule on these motions at or immediately after argument.

5. As the Seventh Circuit previously held, the question for this Court is whether the injunctive relief sought by the Debtors is likely to enhance the prospects for a successful resolution of disputes attending their bankruptcy proceedings. For the reasons this Court previously enjoined trial of the BOKF lawsuit, the answer is plainly yes. The facts that entitle the Debtors to a temporary restraining order and preliminary injunction are straightforward and undisputed. The Debtors' Plan is predicated on a \$4 billion (midpoint valuation) contribution from CEC and its affiliates. As this Court previously found, CEC cannot both sustain adverse judgments in the guaranty litigation and make any meaningful contribution to the Debtors' restructuring. Without CEC's contribution, there is no Plan. Moreover, the Debtors are likely to successfully reorganize, at least if an injunction is issued. The Debtors' core business is strong, and the Debtors continue to make material progress in their Plan negotiations with critical creditor groups. (Indeed, assuming creditors have an opportunity to vote on the Plan, the Debtors believe there will be support even from certain second lien noteholders given that the most junior creditors will receive at least approximately 40 cent (midpoint valuation) recoveries if they vote for the Plan as a result of the enhanced contributions the Debtors negotiated from CEC and its affiliates.) Moreover, promoting successful reorganizations and settlements such as the one underlying the Plan is in the public interest. For these reasons, and as this Court has recognized, the Seventh Circuit "effectively endorsed" granting an injunction on this very theory earlier in these proceedings. (105 Order at 4)

6. The requested injunction will provide additional time for the mediator and the Debtors to try to bring the Guaranty Creditors on board to a fully consensual restructuring or, if such a restructuring cannot be achieved, to seek to confirm a Plan that will enjoy wide creditor support. If

the Court confirms the Plan, it will have found that the Plan and the settlement underlying it are in the best interests of the Debtors' bankruptcy estate. Should the Plan fail, the Guaranty Creditors can resume litigating against CEC. But the injunction will have served its purpose: to allow this Court to determine whether a Plan the Debtors and its stakeholders have been pursuing for nearly two years is in the best interests of the bankruptcy estate and should be confirmed. Creditors holding billions in claims should not face the risk that the guaranty litigation derails the Plan before the Court has a chance to review it.

BACKGROUND

7. The relevant facts are not in dispute. Many have already been decided by this Court, and other more recent facts are the proper subject of judicial notice.

I. CEC AND CEOC ANNOUNCE THAT CERTAIN TRANSACTIONS RELEASED CEC'S GUARANTIES OF CEOC'S OBLIGATIONS.

8. Before the leveraged buyout, CEOC issued \$1.5 billion in senior unsecured notes due in 2016 and 2017. (Order granting in part Debtors' motion for injunctive relief [Dkt. 214] ("105 Order") at 2) CEC guaranteed CEOC's obligations under these senior unsecured notes. (*Id.*) Currently, \$530 million of these notes remain outstanding, including approximately \$125 million held by noteholders purportedly represented by Defendants Danner and Trilogy. *Caesars Entm't Op. Co. v. BOKF, N.A.*, 533 B.R. 714, 721 n.7 (Bankr. N.D. Ill. 2015). The remaining outstanding notes are held by parties that are not challenging the release of the guaranties.

9. In 2009, CEOC issued \$3.71 billion in second priority secured notes due 2018. WSFS is a successor trustee under the indenture pursuant to which the notes were issued. (105 Order at 2) CEC also guaranteed CEOC's obligations under these notes. *BOKF*, 533 B.R. at 721. In 2010, CEOC issued \$750 million in second priority secured notes due 2018. *Id.* *BOKF, N.A.* is a

successor trustee under the indenture pursuant to which the notes were issued. *Id.* These obligations were also guaranteed by CEC. (105 Order at 2)

10. In May 2014, CEC and CEOC announced that CEC's guaranty of CEOC's debt was automatically released after CEC sold five percent of CEOC's outstanding common shares to institutional investors unaffiliated with CEC. (*See* CEC & CEOC 5/6/14 8-K)

11. In August 2014, CEC and CEOC announced they had reached an agreement to purchase notes from holders representing greater than 51 percent of each series of senior unsecured notes that were then held by non-affiliates of CEC and CEOC. With the consent of these noteholders, CEOC and the trustees amended the relevant indentures to remove CEC's guaranties of the senior unsecured notes. (*See* CEC 8/22/14 8-K)

II. CREDITORS FILE LAWSUITS CHALLENGING THE GUARANTY RELEASE.

12. On August 4, 2014, WSFS filed a lawsuit in Delaware Chancery Court against CEC and other defendants. (2014 WL 3885966) The lawsuit, as amended, alleges that CEC breached the WSFS indenture and violated the Trust Indenture Act ("TIA"), and requests a declaration that the guaranty is enforceable. (*Id.* at ¶¶ 128-154) If successful, WSFS would obtain a \$3.7 billion judgment against CEC. (105 Order at 2)

13. On September 3, 2014, Trilogy and other holders of 2016 senior unsecured notes filed suit in the Southern District of New York against CEC and CEOC. (14-cv-7091 (SAS) [Dkt. 1]) On October 2, 2014, Danner filed a class action in the Southern District of New York against CEC and CEOC on behalf of a purported class of 2016 noteholders. (14-cv-7973 (SAS) [Dkt. 1]) The Danner and Trilogy lawsuits allege that the August 2014 transaction breached the relevant indentures and the covenant of good faith and fair dealing, and violated the TIA. *BOKF*, 533 B.R. at 723-24. If successful, Danner and Trilogy collectively could obtain a judgment of approximately \$125 million against CEC. (105 Order at 2)

14. On March 3, 2015, BOKF filed a complaint against CEC in the Southern District of New York. (No. 15-cv-1561 (SAS) [Dkt. 1]) BOKF alleges CEC breached the indenture by failing to honor the guaranty, and asserts claims for intentional interference with contractual relations and breach of the duty of good faith and fair dealing. (*Id.* at ¶¶ 160-167, 177-195, 211-224) BOKF also seeks a declaration that the guaranty “has not been terminated or released and remains valid, binding and enforceable against CEC,” and any termination or release of the guaranty would violate the TIA. (*Id.* at ¶¶ 168-176, 196-210) If successful, BOKF would obtain a \$750 million judgment against CEC. (105 Order at 11)

III. JUDGMENTS ARE POTENTIALLY IMMINENT IN THE GUARANTY LITIGATION.

15. On March 18, 2016, WSFS filed a case-dispositive motion for summary judgment in Delaware Chancery Court. (2016 WL 1167641) On April 25, CEC filed its opposition brief and a cross-motion for partial summary judgment. (2016 WL 2610285) Both motions will be fully briefed by June 9 and oral argument is scheduled for June 16. (4/21/16 Order, Transaction ID No. 58893739) The Chancery Court has not indicated when it intends to rule on the summary judgment motions, but it will be in a position to do so at the end of the June 16th arguments.

16. The guaranty suits filed by Trilogy, Danner, BOKF and UMB were assigned to Judge Shira Scheindlin in the Southern District of New York. Before discovery was complete, Judge Scheindlin denied two rounds of summary judgment motions by BOKF and UMB as well as a summary judgment motion by Danner and Trilogy. (105 Order at 6) Judge Scheindlin set trial in the BOKF and UMB actions for March 14, 2016 and the Danner and Trilogy actions for May 9, 2016. (No. 14-cv-7973 [Dkt. 91]) In March 2016, however, Judge Scheindlin announced she was retiring and these lawsuits were reassigned to Judge Jed S. Rakoff. (*See, e.g.*, 3/31/16 minute entry [Dkt. 15-cv-1561]) At a status hearing on April 6, 2016, Judge Rakoff questioned whether any disputed

material issues of fact existed now that discovery was complete, and the parties agreed to another round of summary judgment briefing. On May 10, BOKF, Danner, and Trilogy (as well as UMB and Wilmington Trust) filed case-dispositive motions for summary judgment.³ CEC also filed cross-motions for summary judgment. All motions will be fully briefed by June 14 and oral argument is scheduled for June 24. Judge Rakoff has indicated that he will issue a ruling no later than July 22 and have a trial on any remaining claims commencing on August 22. (4/6/16 Tr. at 41) Judge Rakoff exhibited initial skepticism as to whether the guaranties had been released, suggesting that a disjunctive reading of the relevant indenture provision—which “works out to ‘and’ being ‘or’”—is “an extraordinary proposition.” (*Id.* at 11)

IV. THIS COURT PREVIOUSLY ENJOINED GUARANTY LITIGATION.

17. On March 11, 2015, the Debtors filed an adversary complaint and motion seeking injunctive relief under section 105(a) to temporarily halt the prosecution of actions brought by the Guaranty Creditors. (*See Adv.* 15-00149) The Debtors contended that the guaranty actions threatened their ability to reorganize because CEC could not make a meaningful contribution to the Debtors’ restructuring *and* pay multi-billion dollar judgments to the Guaranty Creditors. In June 2015, the Court held a two-day evidentiary hearing. On July 22, 2015, the Court denied the Debtors’ motion on the grounds that relief was only appropriate where the action the Debtors sought to enjoin against a third party arises from the same acts as Debtors’ claims against the third party. *BOKF*, 533 B.R. at 714. After the District Court affirmed, the Seventh Circuit reversed. *BOKF*, 808 F.3d at 1191. Following remand, on February 26, 2016, the Court granted the Debtors’ request to enjoin the BOKF trial, and continued their request with respect to the other guaranty lawsuits. The Court found the “evidence adduced at the [June 2015] hearing, as well as events post-hearing, demonstrated that

³ 15-cv-1561 [Dkt. 146]; 15-cv-04634 [Dkt. 148]; 14-cv-7973 [Dkt. 122]; 15-cv-8280 [Dkt. 33]; 14-cv-7091 [Dkt 142]

an injunction is likely to enhance the prospects for a successful reorganization, an injunction will serve the public interest, and the equities weigh in the debtors' favor." (105 Order at 9) The Court also held that "[t]he guaranty creditors are competing directly with the estate for the same assets." (*Id.* at 15) The BOKF injunction expired by its terms on May 9. (*Id.* at 18)

18. On May 4, the Court held a status on the Debtors' request to enjoin the WSFS, Danner, and Trilogy actions. Because there was no threat of an imminent judgment in these matters, the Debtors had not reached an agreement in principle with CEC on an enhanced contribution, and more progress in creditor negotiations was needed, the Debtors did not ask the Court to extend the existing injunction. The Court instead carried the matter for status to the disclosure statement hearing. (5/4/16 Tr. at 3-4)

V. THE PRIOR INJUNCTION ALLOWED THE DEBTORS TO MATERIALLY ADVANCE CREDITOR NEGOTIATIONS AND INCREASE CEC'S CONTRIBUTION.

19. The injunction the Court issued on February 26 provided the parties with a critical window in which to advance Plan negotiations toward a consensual plan. The parties used the time effectively. CEC has agreed to increase its contribution from an approximately \$1.5 billion minimum contribution to one with a midpoint valuation of \$4 billion. In exchange for its contribution, the CEC Released Parties (as defined in Plan) will receive releases of all of the Debtors' claims and certain claims held by third parties against them, including claims held by the Guaranty Creditors.

20. The Debtors have also made substantial progress in their negotiations with the UCC, the ad hoc committees representing the first lien bank lenders and first lien notes, and the trustee for the subsidiary-guaranteed notes. Together, these constituencies hold approximately \$12.6 billion of the Debtors' \$18 billion in debt. (*See* Disclosure Statement [Dkt. 3834-1] at 11-12)

21. As this Court previously found, CEC cannot both sustain adverse judgments in the guaranty litigation and make any meaningful contribution to the Debtors' restructuring. (105 Order at 11) As of January 2015, CEC had a market capitalization of \$1.8 billion and an enterprise value of roughly \$3 billion, including not quite \$400 million in cash. (*Id.*) Since then, CEC's ability to withstand adverse judgments has diminished; as of March 31, 2016, CEC only had \$218 million in cash (of which \$96 million was held by insurance captives). (5/5/16 CEC 10-Q at 10) If successful, the Guaranty Creditors will obtain judgments exceeding \$11 billion against CEC as soon as the end of this month. Judgments of this magnitude would "deprive CEC of assets needed to satisfy the estate's claims and rule out any contribution to the plan," and "CEC would end up in a bankruptcy case of its own." (*Id.*) This would lead to "one of the great messes of our time." (*Id.* at 17)

ARGUMENT

22. There is no question the Court has jurisdiction to enjoin Defendants from proceeding in the guaranty litigation. *BOKF*, 808 F.3d at 1188. It also has the statutory authority to enter the requested injunctive relief. Section 105 grants bankruptcy courts "extensive equitable powers ... to perform their statutory duties." *Id.* It provides that "the [bankruptcy] court may issue *any* order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a) (emphasis added).

23. As this Court previously found, it is not necessary to satisfy the traditional elements for injunctive relief to obtain a section 105(a) injunction. (105 Order at 9, citing *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998)) As long as the third-party litigation would defeat or impair the bankruptcy court's jurisdiction over the case before it, the debtor need only show (1) there is a likelihood of success on the merits, which in this context means likelihood of a successful reorganization, and (2) the injunction would serve the public interest. (105 Order at 9-10) The debtor need not show irreparable harm or inadequate remedy at law. (*Id.*)

I. THIS REMAINS A TEXTBOOK CASE FOR INJUNCTIVE RELIEF.

24. The critical question before this Court is whether a temporary injunction “is likely to enhance the prospects for a successful *resolution of the disputes* attending [the CEOC] bankruptcy.” *BOKF*, 808 F.3d at 1188 (emphasis added). The answer is plainly yes. The Debtors have a Plan that, if approved by the Court, will provide substantial recovery to creditors and resolve what has been a contentious and difficult reorganization. This Plan is only possible because CEC and its affiliates are making a \$4 billion contribution. This contribution, however, is at risk because of imminent potential multi-billion dollar judgments in the guaranty litigation.

25. For this reason, the Seventh Circuit previously recognized that the Debtors have a “direct and substantial interest” in the guaranty litigation that “would be furthered by a temporary injunction staying the lenders’ lawsuits against CEC.” *Id.* at 1189. It reasoned:

If before CEOC’s bankruptcy is wound up CEC is drained of capital by the lenders’ suits to enforce the guaranties that CEC had given them, there will be that much less money for CEOC’s creditors to recover in the bankruptcy proceeding. CEOC seeks on behalf of the creditors to recover from CEC assets that CEC caused to be fraudulently transferred to it from CEOC, and to use the recovered assets to pay the creditors. The less capital CEC has for CEOC to recapture through prosecution or settlement of its fraudulent-transfer claims, the less money its creditors will receive in the bankruptcy proceeding.

Id.

26. CEC is close to being “drained of capital” necessary to fund the Debtors’ restructuring. There are case dispositive summary judgment motions pending in each of the six guaranty lawsuits. As soon as June 16, the Delaware Chancery Court could issue a \$3.7 billion judgment against CEC. Between June 24 and July 22, the Southern District of New York could issue \$7.7 billion in judgments against CEC. There is no dispute that CEC cannot pay judgments of this magnitude. As this Court previously found, these judgments “would deprive CEC of the assets

needed to satisfy the estate's claims and rule out any CEC contribution to the plan"; instead, "CEC would end up in a bankruptcy case of its own." (105 Order at 11) That remains equally true today.

27. This Court twice has noted "these facts describe a 'textbook case' for a section 105(a) injunction." (105 Order at 11; *BOKF*, 533 B.R. at 732) For this reason, "bankruptcy courts often have enjoined litigation against a non-debtor, usually but not always a guarantor of the debtor's debts, who intends to contribute financially to the debtor's reorganization." (105 Order at 11, citing cases) This Court, of course, did so earlier in this case. (*Id.* at 18) Other courts in this district have done likewise. See *In re R&G Props*, No. 09-37463 (Bankr. N.D. Ill.) (Goldgar, J.), Feb. 3, 2010 Tr. 9:13-23 (issuing injunction where guarantors' ability to contribute "time and money, particularly money, [would] be jeopardized if the state actions proceed[ed]"); *Gander Partners LLC v. Harris Bank, N.A. (In re Gander Partners LLC)*, 432 B.R. 781, 788 (Bankr. N.D. Ill. 2010) ("If the lawsuits proceed their outcome could impair this court's jurisdiction to help the Debtors to reorganize as the source of funds to assist the reorganization would no longer be available.").

28. The undisputed facts show that this remains a textbook case as the requested injunctive relief is "likely to enhance the prospects for a successful resolution of disputes" attending this highly litigious bankruptcy. *BOKF*, 808 F.3d at 1188.

II. THE DEBTORS ARE LIKELY TO SUCCESSFULLY REORGANIZE.

29. The Debtors are likely to successfully reorganize, at least if an injunction is issued. There is no dispute the Debtors have a strong business. They have a highly valuable gaming franchise, with a signature hotel and casino, Caesars Palace Las Vegas, centrally located on the Las Vegas Strip. (105 Order at 10) The Debtors had more than \$5 billion in annual revenue and more than \$1 billion in EBITDA in the twelve months prior to the June 2015 evidentiary hearing. (*Id.*) This strong performance has continued post-petition. (*See, e.g.*, Disclosure Statement [Dkt. 3834-1] at 87 (the Debtors had \$4.54 billion in net revenue, \$610 million in income from operations and

substantial free cash flow after accounting for capital expenditures from the petition date through February 29, 2016)) The Debtors also have a Plan that is gaining widespread creditor support across the capital structure. The Debtors expect that support will grow in the days and weeks ahead.

III. AN INJUNCTION SERVES THE PUBLIC INTEREST.

30. The requested injunctive relief also serves the public interest. Both this Court and the Seventh Circuit recognized in their rulings on injunctive relief that successful reorganizations are in the public interest in the bankruptcy context because reorganizations preserve value for creditors and ultimately the public. (105 Order at 14, citing cases; *BOKF*, 808 F.3d at 1189) As the Court found several months ago, the Debtors have considerable value as a going concern and possess valuable claims against CEC. (105 Order at 14) The requested injunctive relief “will maintain the value of those claims (by protecting the CEC assets that would pay them)” while the Court decides whether to confirm the Plan and approve the settlement on which it is based. (*Id.*; *see also BOKF*, 808 F.3d at 1189 (the interest of all creditors in receiving more rather than less in the bankruptcy case “would be furthered by a temporary injunction staying the lenders’ lawsuits against CEC.”))

31. The other compelling public interest is in promoting settlements. (105 Order at 14, citing cases) The Seventh Circuit recognized that “successful resolution of disputes arising in bankruptcy proceedings is one of the Code’s central objectives.” *BOKF*, 808 F.3d at 1189. Public policy also favors settlements generally. *Nat’l Cas. Co. v. White Mountain Reins. Co.*, 735 F.3d 549, 556 (7th Cir. 2013). The Debtors’ Plan will resolve complex disputes among its stakeholders. The Debtors also expect the Plan to garner wide support of its creditors. They just need time to complete negotiations and seek confirmation. Under these circumstances, the public interests in successful reorganizations and settlements outweigh the Guaranty Creditors’ interests in enforcing their guaranties. (*See* 105 Order at 15)

IV. THE BALANCE OF EQUITIES WEIGHS IN THE DEBTORS' FAVOR.

32. The balance of the equities still heavily favors the Debtors. (105 Order at 15) As this Court noted, it is unclear whether this factor is even relevant as “neither of the Seventh Circuit decisions setting out the elements of a section 105(a) injunction mentions balancing the equities as one of them.” *BOKF*, 533 B.R. at 728 n.13. Given this silence and that there is no irreparable harm requirement, the Debtors do not believe the Court needs to reach this issue.

33. Regardless, the same factors that led the Court to conclude that the “balance of equities also heavily favors” the Debtors still apply. (105 Order at 15) The Debtors “stand to suffer very real harm” if an injunction is not granted. (*Id.*) If an injunction is not issued and the Guaranty Creditors obtain multi-billion dollar judgments against CEC, CEC will not be able to make a material financial contribution to the Debtors’ restructuring and instead will itself become a debtor. (*Id.*) If CEC files, the Debtors will have to pursue equitable remedies to obtain the return of assets transferred to CEC, which will result in an unrivaled “litigation forum” and massive administrative expenses. (*Id.* at 15-16) As the Debtors’ financial advisor testified, it would be “one of the great messes of our time.” (*Id.* at 16)

34. By comparison, the Guaranty Creditors will lose little if the Court grants the injunctive relief. The Debtors seek an injunction through plan confirmation. That injunction would allow more time for settlement discussions among the Debtors, CEC, and the Guaranty Creditors without the threat of imminent multi-billion dollar judgments and a CEC bankruptcy filing.

35. Absent settlement, the Guaranty Creditors will be able to argue at confirmation that the settlement underlying the Plan is not fair and reasonable. If they prevail, they can proceed with their guaranty claims against CEC. *See, e.g., Bank of the West v. Fabtech Indus., Inc. (In re Fabtech Indus. Inc.)*, 2010 WL 6452908, at *1-2, 6 (9th Cir. B.A.P. July 19, 2010) (affirming order enjoining creditor from enforcing guaranty against Debtor’s CEO through confirmation even though plan

precluded creditor from subsequently pursuing guaranty claims); *Otero Mills Inc. v. Security Bank & Trust (In re Otero Mills)*, 21 B.R. 777, 779 (Bankr. D. NM 1982) (entering permanent injunction to prevent creditor from pursuing judgment against guarantor to “allow the debtor an opportunity to present a plan and put it into operation” but allowing creditor to seek to lift injunction if “the debtor fails to file a plan within the required time or if the plan is not approved”). If the Court confirms the Plan over their objection, it will mean the Court has concluded that the Plan is fair and reasonable to all creditors—including the Guaranty Creditors. But this Court will never have the opportunity to assess whether the Plan, the culmination of nearly two years’ worth of efforts, is fair and reasonable if the injunction is not entered. Instead, CEC will be forced into bankruptcy and its \$4 billion contribution will go up in smoke. That result is directly contrary to both this Court’s and the Seventh Circuit’s rationale in recognizing the propriety of an injunction against the guaranty claims.

V. A TEMPORARY RESTRAINING ORDER TO PRESERVE THE STATUS QUO IS WARRANTED.

36. As set forth above, the Debtors have demonstrated each of the elements necessary to obtain a section 105(a) injunction. Nothing more is needed to obtain a temporary restraining order. A party does not need to show irreparable harm or inadequate remedy at law to obtain an injunction under section 105. (105 Order at 9-10, citing *Fisher*, 155 F.3d at 882) And the “standards for issuing temporary restraining orders are identical to the standards for preliminary injunctions.” *Long v. Bd. of Educ., Dist. 128*, 167 F. Supp. 2d 988, 990 (N.D. Ill. 2001) (citing *Bernina of America, Inc. v. Fashion Fabrics Int’l, Inc.*, 2001 WL 128164, at *1 (N.D. Ill. Feb. 9, 2001)). Thus, in the section 105 context, a court may issue a temporary restraining order without considering whether there is irreparable harm or an inadequate remedy at law. *In re Britestarr Homes, Inc.*, 368 B.R. 106, 108 (Bankr. D. Conn. 2007) (explaining “the usual grounds for injunctive relief ... such as irreparable

injury, need not be shown in a proceeding for an injunction under section 105(a),” and affirming entry of temporary restraining order to preserve status quo).

37. Even if irreparable harm and inadequate remedy at law were required, they are present here. As the Court previously found, the Debtors “stand to suffer very real harm” if an injunction is not granted and multi-billion dollar adverse judgments force CEC to file for bankruptcy. (105 Order at 15) As discussed, once oral arguments occur on June 16 in Delaware and June 24 in New York, this Court’s practical ability to prevent judgments from being entered in the guaranty suits may be diminished. The parties will not need to take any additional steps themselves before a judgment is entered and so an injunction against these parties may not stop the courts from entering judgment. Either court also could rule at or immediately after argument on these dispositive motions. Accordingly, the Court should enter a temporary restraining order to prevent the parties from proceeding with oral argument on these case dispositive motions while the Court considers the Debtors’ request for further injunctive relief.

CONCLUSION

38. Just three months ago, this Court entered an injunction “[b]ecause the debtors’ reorganization depends, one way or another, on the estate’s claims against CEC, because CEC does in fact ‘lack the money to satisfy all of its obligees,’ ... and because CEC will indeed be “drained of capital by the lenders’ suits to enforce the guaranties’ if those suits are not enjoined before adverse judgments are entered.” (105 Order at 14 (internal cites omitted)) The same threat again looms large. Summary judgment against CEC could be a pen stroke away, with devastating consequences for a Plan that will recover \$4 billion for the estate and provide substantial recoveries to creditors. In accordance with its and the Seventh Circuit’s prior rulings, the Court should exercise its extensive equitable powers to prevent the guaranty litigation from endangering the Debtors’ restructuring.

Dated: June 6, 2016
Chicago, Illinois

/s/ David J. Zott, P.C.

James H.M. Sprayregen, P.C.

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order Granting Temporary Restraining Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al., ¹	)	Case No. 15-01145 (ABG)
)	
Debtors.	)	(Jointly Administered)
)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	Chapter 11
	)	Adversary Case. No. 15-00149 (ABG)
<i>Plaintiffs</i>)	
vs.)	
)	
BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, TRILOGY PORTFOLIO COMPANY, LLC, AND FREDERICK BARTON DANNER,)	
)	
)	
	)	Re: Docket Nos. _____
)	
<i>Defendants.</i>)	

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER ENJOINING DEFENDANTS FROM FURTHER
PROSECUTING THEIR GUARANTY LAWSUITS**

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) granting Debtors’ emergency motion for a temporary restraining order enjoining Defendants from further prosecuting their guaranty lawsuits, all as more fully set forth in the Motion; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to section 105(a) of the Bankruptcy Code, pending further order of this Court, the Defendants are hereby temporarily enjoined from further prosecuting their guaranty lawsuits, styled: *Wilmington Savings Fund Society, FSB v. Caesars Entertainment Corp.*, C.A. No. 10004 VCG (Del. Ch.); *BOKF, N.A. v. Caesars Entertainment Corp.*, No. 15-cv-1561 (JSR) (SDNY); *Trilogy Portfolio Co., LLC v. Caesars Entertainment Corp.*, No. 14-cv-07091 (JSR) (SDNY); and *Danner v. Caesars Entertainment Corp.*, No. 14-cv-07093 (JSR) (SDNY).
3. A hearing on Debtors’ motion for a preliminary injunction is set for June ____, 2016 at _____ (prevailing Central Time).
4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

Dated: _____, 2016
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

Exhibit B

Proposed Order Granting Preliminary Injunction

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<hr/>)
In re:		) Chapter 11
)
CAESARS ENTERTAINMENT OPERATING		) Case No. 15-01145 (ABG)
COMPANY, INC., et al., ³)
)
Debtors.		) (Jointly Administered)
<hr/>)
)
CAESARS ENTERTAINMENT OPERATING		) Chapter 11
COMPANY, INC., et al.,)
		) Adversary Case. No. 15-00149 (ABG)
<i>Plaintiffs</i>)
vs.)
)
BOKF, N.A., WILMINGTON SAVINGS FUND)
SOCIETY, FSB, RELATIVE VALUE-)
LONG/SHORT DEBT PORTFOLIO, A SERIES)
OF UNDERLYING FUNDS TRUST, TRILOGY)
PORTFOLIO COMPANY, LLC, AND)
FREDERICK BARTON DANNER,)
)
)
)
		) Re: Docket Nos. _____
)
<i>Defendants.</i>)

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR
A PRELIMINARY INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

³ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Upon the motion (the “Motion”)⁴ of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) granting Debtors’ emergency motion for a preliminary injunction enjoining Defendants from further prosecuting their guaranty lawsuits, all as more fully set forth in the Motion; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to section 105(a) of the Bankruptcy Code, the Defendants are hereby enjoined from further prosecuting their guaranty lawsuits, styled: *Wilmington Savings Fund Society, FSB v. Caesars Entertainment Corp.*, C.A. No. 10004 VCG (Del. Ch.); *BOKF, N.A. v. Caesars Entertainment Corp.*, No. 15-cv-1561 (JSR) (SDNY); *Trilogy Portfolio Co., LLC v. Caesars Entertainment Corp.*, No. 14-cv-07091 (JSR) (SDNY); and *Danner v. Caesars Entertainment Corp.*, No. 14-cv-07093 (JSR) (SDNY). The injunction will remain in place until the Court issues its decision confirming or denying confirmation of the Plan (as may be amended from time to time), or until further Order of the Court.
3. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

Dated: _____, 2016
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

⁴ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.