

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., ¹)
)
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	) Hearing Date: August 23, 2016 at 9:00 a.m.
SOCIETY, FSB, RELATIVE VALUE-	) (prevailing Central Time)
LONG/SHORT DEBT PORTFOLIO, A SERIES)
OF UNDERLYING FUNDS TRUST, TRILOGY)
PORTFOLIO COMPANY, LLC, AND)
FREDERICK BARTON DANNER,)
)
)
)
<i>Defendants.</i>)
<hr/>	

**NOTICE OF DEBTORS' MOTION TO EXTEND THE
SECTION 105 INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

PLEASE TAKE NOTICE that on **August 23, 2016, at 9:00 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' Motion to*

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>.

Extend the Section 105 Injunction Enjoining Defendants from Further Prosecuting Their Guaranty Lawsuits (the “Motion”).

PLEASE TAKE FURTHER NOTICE that written objections to the Motion are optional but if filed must be filed with the Court by **August 19, 2016**.

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all 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: August 8, 2016
Chicago, Illinois

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

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
David J. Zott, P.C.
Jeffrey J. Zeiger, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C.
Nicole L. Greenblatt, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

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., ²)
)
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	) Hearing Date: August 23, 2016 at 9:00 a.m.
SOCIETY, FSB, RELATIVE VALUE-	) (prevailing Central Time)
LONG/SHORT DEBT PORTFOLIO, A SERIES)
OF UNDERLYING FUNDS TRUST, TRILOGY)
PORTFOLIO COMPANY, LLC, AND)
FREDERICK BARTON DANNER,)
)
)
)
<i>Defendants.</i>)
<hr/>	

**DEBTORS' MOTION TO EXTEND THE SECTION 105 INJUNCTION ENJOINING
DEFENDANTS FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

² 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 extend the injunction enjoining Defendants from further prosecuting guaranty lawsuits that seek billions of dollars from the Debtors' ultimate parent, Caesars Entertainment Corporation ("CEC"), until the first omnibus hearing after the Court issues its decision confirming or denying confirmation of the Debtors' plan of reorganization (the "Plan"). In support of their motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. The injunctions have served their intended purpose. Since the Court entered the first injunction, the Debtors have made substantial progress towards a fully consensual plan with numerous key stakeholders:

- **Subsidiary-Guaranteed Noteholders.** On April 26, the Debtors made a settlement offer to the subsidiary-guaranteed noteholders ("SGN"). On June 7, the Debtors entered into an RSA with certain of these noteholders. The RSA went effective on June 21, when holders of more than 65% of the subsidiary-guaranteed notes executed the RSA.
- **Caesars Entertainment Corporation.** On June 7, the Debtors entered into an RSA with CEC. The RSA committed CEC to support the Debtors' Plan and accelerated the timeline for CEC and Caesars Acquisition Company ("CAC") to enter into a merger agreement, which is an important source of funding for the Plan. On July 9, the CEC RSA went effective, and CEC and Hamlet Holdings LLC (the vehicle through which the sponsors hold their equity interests in CEC and CAC) ("Hamlet") entered into a Voting Agreement whereby Hamlet agreed, subject to certain terms and conditions, to vote its shares as a stockholder of CEC in support of the CEC-CAC merger.
- **Caesars Acquisition Company.** On June 12, the Debtors entered into an RSA with CAC that contained similar terms as the CEC RSA. On July 9, the CAC RSA went effective, and CAC and Hamlet entered into a Voting Agreement whereby Hamlet agreed, subject to certain terms and conditions, to vote its shares as a stockholder of CAC in support of the CEC-CAC merger.
- **First Lien Bank Lenders.** On June 20, the Debtors entered into an amended and restated RSA with certain holders of first lien bank debt, under which lenders holding more than 80% of first lien bank debt have committed to support the Debtors' Plan. The amended bank RSA became effective on June 21.
- **Statutory Unsecured Claimholders' Committee.** On June 22, the Debtors entered into an RSA with the Statutory Unsecured Claimholders' Committee (the "UCC"), pursuant

to which the UCC agreed to support the Debtors' Plan. The UCC RSA became effective on June 22.

- **Second Lien Noteholders.** On August 1, the Debtors entered into an RSA with holders of 27% of the second lien notes (the "Second Lien RSA"). When combined with the second lien notes held by parties subject to other RSAs, a total of 37% of the second lien noteholders now support the Debtors' restructuring. The Second Lien RSA, which will go effective if holders owning greater than 50.1% of notes issued under each of two indentures execute it, provides for enhanced recoveries of up to 55% to second lien noteholders that sign the Second Lien RSA (as compared to recoveries under the Plan of approximately 39% at the Debtors' midpoint valuation). As discussed below, the Debtors have continued to negotiate in mediation and otherwise with the Official Committee of Second Priority Noteholders (the "Noteholder Committee") and CEC using the Second Lien RSA as a framework to achieve further consensus.
- **First Lien Noteholders.** The Debtors are continuing to negotiate with the ad hoc committee of first lien noteholders to amend their existing RSA. Although the parties have not yet agreed on an amended RSA, the Plan provides for recoveries to the first lien noteholders of par plus substantial interest. Given these recoveries, the Debtors fully expect the first lien noteholders will continue to support the overall deal, and likewise support extending the injunction to allow the Debtors to pursue that deal.
- **Frederick Barton Danner.** The Debtors recently reached an agreement in principle with Frederick Barton Danner that is subject to final documentation, which the Debtors are working to complete promptly.

2. Much of this progress has occurred during the first 53 days of the 74-day injunction that the Court entered on June 15. Since then, the SGN, CEC and CAC RSAs all went effective, the Debtors entered into an amended RSA with the first lien bank lenders, and the Debtors entered into new RSAs with the UCC and certain second lien noteholders (all of which are effective except for the Second Lien RSA). The Debtors also reached an agreement in principle with Danner. In total, the Debtors estimate that \$14 billion of their \$18 billion capital structure currently supports the Debtors' proposed restructuring, which provides billions of dollars of recoveries for creditors and is premised on CEC's ability to make multi-billion dollar contributions under the Plan.

3. That leaves the Noteholder Committee (which includes Defendants WSFS and BOKF) and the Ad Hoc Group of 5.75% and 6.5% notes (which represents holders of \$23 million in claims, including Defendants Trilogy and Relative Value) as the sole remaining creditor groups that

oppose the Plan. The Debtors remain committed to achieving a fully consensual plan and are working hard to reach consensus with all parties. To that end, the Debtors are engaged in active dialogue with both of these groups.

4. Since the Court issued the injunction on June 15, the Debtors, CEC and its affiliates and the Noteholder Committee have participated in three in-person mediation sessions with Joseph J. Farnan, Jr., former Chief Judge of the U.S. District Court for the District of Delaware. A fourth session is scheduled for August 16. In addition, there have been frequent and extensive discussions among principals and advisors for the Debtors, CEC and its affiliates and the Noteholder Committee, as well as among principals and advisors for these parties and the mediator. The Ad Hoc Group of 5.75% and 6.5% notes also has participated in one of the in-person mediation sessions and is involved in additional discussions with the Debtors and CEC to try to resolve its claims.

5. The day after the first mediation session following entry of the current injunction, the Noteholder Committee publicly stated that holders of more than 50.1% in principal amount of second lien notes have agreed in writing to reject the Plan. The Debtors continued negotiations with second lien noteholders that are not on the Noteholder Committee, which led to the Second Lien RSA. The Second Lien RSA would provide \$900 million in additional creditor recoveries at the Debtors' midpoint valuation if all of the second lien noteholders agree to it. It also serves as a framework for additional negotiations with the Noteholder Committee in the ongoing mediation.

6. In addition, the Debtors have spent substantial time, both in and out of mediation, engaged in negotiations with the Noteholder Committee and other parties as a result of CAC's announcement on July 30 that it is selling its social mobile gaming business for \$4.4 billion in cash.³

³ The Debtors have litigation claims related to the assets that are being sold. Accordingly, the Debtors negotiated for, and CAC agreed to provide under the CAC RSA, 30-days' notice to the Debtors of the closing of the transaction. The Debtors have not yet received that notice. The

While this may allow the Debtors to distribute substantial additional cash rather than securities under the Plan and simplify certain valuation issues among the parties, there are significant ongoing negotiations regarding the allocation and use of these proceeds in addition to the negotiations regarding the amount of the ultimate creditor recoveries.

7. The Debtors also have outperformed their budget while in chapter 11. This too has led to further negotiations among the parties as to how to allocate this additional value.

8. All of these discussions and negotiations take time. The mediator continues to have almost daily discussions with the principals and advisors for the Debtors, CEC and its affiliates, and the remaining parties who have not signed RSAs. The mediator also has scheduled another in-person mediation session for August 16.

9. The Debtors are also attempting to eliminate other disputes so the parties can focus on mediation and confirmation. As previously indicated, the Debtors are working with counsel for the Noteholder Committee to finalize a comprehensive complaint to preserve the estate's claims. It will be filed this week. At that time and consistent with the Court's comments, the Debtors also will seek to continue the Noteholder Committee's standing motion, stay all remaining standing-specific discovery and stay any further litigation on the complaint. If the Court continues the standing motion, following more than a year and a half of disputes in a highly litigious bankruptcy, the parties will be able to focus their efforts on mediation and confirmation. This too is progress.

10. While the Debtors have made significant additional progress toward a fully consensual plan since the Court issued the most recent injunction and a fully consensual plan remains their overriding goal, relief under section 105 is not limited to injunctions that help parties

Debtors also negotiated for and CAC agreed to escrow under the CAC RSA the majority of the sale proceeds while the parties work through the impact of the sale on the chapter 11 process. In addition, the Debtors reserved their rights to seek to enjoin the closing.

achieve a fully consensual plan. Such a limitation would contradict the express grant of “extensive equitable powers” inherent in the terms of section 105, and resurrects the very “cramped interpretation” that the Seventh Circuit rejected. *Caesars Entm’t Operating Co. v. BOKF, N.A. (In re Caesars Entm’t Operating Co.)*, 808 F.3d 1186, 1188-89 (7th Cir. 2015). Indeed, it would effectively write section 105 out of the Bankruptcy Code as parties could only obtain injunctive relief when they do not need it—where there is a fully consensual restructuring.

11. Instead, as the Seventh Circuit previously held, the questions for this Court are whether extending the injunction is likely to enhance the prospects for a successful resolution of disputes attending these bankruptcy proceedings, and whether denying the injunction would thus endanger the success of the bankruptcy proceedings.

12. For the reasons the Court has previously found, the answers to these questions are plainly yes. The Debtors’ Plan is predicated on a \$4 billion (midpoint valuation) contribution from CEC and its affiliates. 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 through confirmation. The Debtors’ core business is strong, and the Debtors continue to make material progress with their critical creditor groups. Finally, promoting successful reorganizations and settlements such as the one underlying the Plan is in the public interest.

13. The requested extension of the injunction will provide additional time for the mediator and the Debtors to try to bring the remaining creditors on board with a fully consensual restructuring or, if such a restructuring cannot be achieved, for the Debtors to seek to confirm a Plan that enjoys the support of all but two of the Debtors’ numerous creditor groups. Either way, the

injunction enhances the prospects for a successful resolution of disputes in this case. Disputes, after all, can be resolved through settlements or the courts.

14. An unfortunate byproduct of the Court's June injunction order is that it has vested the Noteholder Committee with undue negotiating leverage. The Committee's incentive is to *not* reach a settlement during the injunction period, since the Court has stated a further injunction is unlikely, and the prospect of imminent guaranty judgments means the Noteholder Committee will not have to face the risk of losing a contested Plan confirmation hearing. Negotiating balance can best be restored if all parties—including the Noteholder Committee, CEC and the sponsors, and the Debtors—know that, absent settlement, they face the risk of a contested confirmation hearing. As discovery progresses, and a confirmation trial approaches, pressure will steadily mount to reach a deal. This will restore both the “uncertainty” and the “deadlines” that the Court recognized have the best chance of achieving a fully consensual deal.

15. If the Court confirms the Plan, it will have found that the Plan and the settlement underlying it are fair and reasonable, and in the best interests of the Debtors' estates. Should the Plan fail, the guaranty plaintiffs can resume litigating against CEC. But the injunction will have served its purpose: to allow this Court to determine whether a Plan that the Debtors and its stakeholders have been pursuing for 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

I. THIS COURT TWICE PREVIOUSLY ENJOINED THE GUARANTY LITIGATION TO ALLOW THE DEBTORS TO MAKE SUBSTANTIAL PROGRESS ON A PLAN.

16. The Court previously has found the relevant background facts regarding CEC's guaranty of certain CEOC obligations, the release of the guaranty, and the lawsuits creditors filed in

response to the release of the guaranty. (*See, e.g.*, Order granting in part Debtors' motion for injunctive relief [Dkt. 214] ("Feb. 105 Order") at 2; *Caesars Entm't Operating Co. v. BOKF, N.A.* (*In re Caesars Entm't Operating Co.*), 533 B.R. 714, 721, 721 n.7 (Bankr. N.D. Ill. 2015))

17. On March 11, 2015, the Debtors filed a complaint and motion seeking injunctive relief under section 105(a) to temporarily halt the prosecution of actions brought by WSFS, BOKF, Danner and Trilogy (collectively, the "Guaranty Creditors"). (*See* Adv. 15-00149) Following 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 727, 735. After the District Court affirmed, the Seventh Circuit reversed. *BOKF*, 808 F.3d at 1191.

18. Following remand, on February 26, 2016, the Court granted the Debtors' request to enjoin the BOKF trial. The Court found "[t]he evidence adduced at the [June 2015] hearing, as well as events post-hearing, demonstrated that 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." (Feb. 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)

19. On June 6, 2016, after reaching an agreement in principle with CEC on an RSA and making significant progress with various creditor groups, the Debtors filed an emergency motion to again enjoin the guaranty litigation. [Dkt. 239] Following a three-day evidentiary hearing, the Court enjoined the guaranty plaintiffs from prosecuting their actions against CEC until the close of business on August 29, 2016. (Order Granting Mot. for TRO and Prelim. Inj. [Dkt. 274] ("June 105 Order") at 1) The Court found that an additional injunction is "likely to enhance the prospects for a

successful resolution of the disputes attending” the CEOC bankruptcy. (*Id.* at 4 (citing *BOKF*, 808 F.3d at 1188)) The Court warned, however, that the “chances of further injunctive relief are slim” and “encourage[d] the debtors and CEC to make good use of” the additional 74-day period. (*Id.* at 2, 5)

20. As set forth above, the Debtors have made substantial progress towards a fully consensual plan since the Court entered the initial injunction.

II. CEC FACES AN IMMINENT THREAT OF BILLIONS OF DOLLARS IN POTENTIAL GUARANTY JUDGMENTS.

21. There are fully briefed cross-motions for summary judgment pending in all six of the active guaranty actions. (June 105 Order at 1) Following entry of the injunction in June, Judge Jed S. Rakoff rescheduled argument on the motions pending before him for August 30 at 4 p.m. ET—the day after the current injunction expires. Oral argument in the Delaware Chancery Court has been rescheduled to September 13 at 1:30 p.m. Thus, absent further injunctive relief, \$11.4 billion in judgments could be entered against CEC by mid-September.

22. As this Court previously found, CEC cannot both sustain adverse judgments in the guaranty litigation and make any meaningful contribution to the Debtors’ restructuring. (Feb. 105 Order at 11) Should the Guaranty Creditors prevail, it will unravel the Plan that the Debtors and their stakeholders have long been trying to achieve, bankrupt CEC, and return this restructuring to square one.

ARGUMENT

23. The Court enjoined the Guaranty Creditors to “facilitate a negotiated resolution of the disputes in this case.” (June 105 Order at 5) As set forth above, the Debtors made material progress during the injunction periods. It is not clear, however, that the Debtors will be able to reach a fully consensual plan without reallocating some of the risk back to the Noteholder Committee. At this

point, the Noteholder Committee holds all of the cards in the negotiations given the Court's statements that future injunctive relief is unlikely, which mitigates the risk to the Noteholder Committee of ever facing a contested confirmation hearing. To be clear, no one wants a "cram down" confirmation hearing. The risks to the Debtors, CEC, the sponsors, and the Noteholder Committee are enormous in that scenario. But restoring balance to those risks by extending the injunction to Plan confirmation provides the best path to a fully consensual deal.

I. THE COURT HAS THE POWER TO ENJOIN THE GUARANTY LAWSUITS THROUGH PLAN CONFIRMATION.

24. The Seventh Circuit has described section 105 as a "broad grant of power" which "grants the extensive equitable powers that bankruptcy courts need to be able to perform their statutory duties." *BOKF*, 808 F.3d at 1188. Section 105 provides that "the [bankruptcy] court may issue *any* order ... that is necessary or appropriate to carry out the provisions of this title." *Id.* (citing 11 U.S.C. § 105(a)) (emphasis added by Seventh Circuit). Nothing in the text of the statute limits the Court's authority to issuing injunctions to facilitate fully consensual deals, and the Seventh Circuit has rejected a "cramped interpretation" of the scope of section 105. *Id.* at 1187-88. Indeed, other courts have enjoined creditors under section 105 from pursuing guaranty claims to allow a debtor to seek confirmation of its plan.

25. For example, in *Bank of the West v. Fabtech Indus., Inc. (In re Fabtech Indus., Inc.)*, 2010 WL 6452908 (9th Cir. B.A.P. July 19, 2010), the bankruptcy court enjoined a creditor under section 105 through the date of plan confirmation from continuing its state court action to enforce a guaranty against the debtor's CEO. *Id.* at 1. The creditor appealed on the grounds that the proposed plan would limit the creditor's ability to pursue its guaranty claim post-confirmation. *Id.* The appellate panel upheld the injunction, concluding it would allow the debtor's CEO to focus on confirming the debtor's plan without being distracted by the guaranty litigation. *Id.* at 5-6.

26. Similarly, in *Otero Mills, Inc. v. Sec. Bank & Trust (In re Otero Mills, Inc.)*, 21 B.R. 777 (Bankr. D.N.M. 1982), the court permanently enjoined a creditor under section 105 from enforcing a guaranty judgment against the debtor's president to "allow the debtor an opportunity to present a plan and put it into operation." *Id.* at 779. The creditor sought to foreclose on property that the debtor's president intended to sell to fund distributions to all creditors. *Id.* The court reasoned "the debtor is entitled to present a plan which should be considered by all creditors." *Id.*

27. Simply put, the Court's power under section 105 extends to entering an injunction that would allow the Debtors to seek confirmation of their Plan. To obtain such relief, the Debtors do not need to satisfy the traditional elements for an injunction. (Feb. 105 Order at 9, *citing Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998)) As long as the third-party litigation would impair the bankruptcy court's jurisdiction over the case before it, the Court should extend the injunction if (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. (*Id.* at 9-10) The Debtors need not show irreparable harm or inadequate remedy at law. (*Id.*)

II. THIS REMAINS A TEXTBOOK CASE FOR AN INJUNCTION.

28. The critical questions before this Court are whether extending the injunction through Plan confirmation is "likely to enhance the prospects for a successful *resolution of the disputes* attending [the CEOC] bankruptcy" and whether "its denial will thus endanger the success of the bankruptcy proceedings." *BOKF*, 808 F.3d at 1188 (emphasis added). The answers are plainly yes. The Debtors have a Plan that, if approved by the Court, will provide substantial recoveries to creditors and resolve a highly contentious and "immense, and immensely complicated, bankruptcy proceeding." *Id.* at 1187. 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.

29. 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.

30. CEC is close to being “drained of capital” necessary to fund the Debtors’ restructuring. More than \$7.7 billion in judgments could be entered against CEC as soon as August 30 at 4 p.m., when Judge Rakoff has set argument on the cross motions in the five New York actions. The Delaware Chancery Court could issue a \$3.7 billion judgment against CEC by September 13. 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.” (Feb. 105 Order at 11) That remains true today.

31. Moreover, extending the injunction will enhance the prospects of a consensual deal by rebalancing the parties’ negotiating leverage or, absent a consensual deal, preserve CEC’s contribution that is the bedrock of any confirmable plan. Either way, the undisputed facts show this remains a textbook case as the requested injunctive relief is “likely to enhance the prospects for a successful resolution of the disputes” attending this highly litigious bankruptcy.

III. THE DEBTORS ARE LIKELY TO SUCCESSFULLY REORGANIZE.

32. The Debtors are likely to successfully reorganize, at least if the injunction is extended through confirmation. There is no dispute that the Debtors have a highly valuable gaming franchise. (Feb. 105 Order at 10) And they have outperformed their budget while in chapter 11. (June 105 Order at 4) As set forth above, the Debtors also enjoy widespread creditor support for their Plan.

33. To satisfy this element, the Debtors do not need to show it is likely they will achieve a fully consensual plan. *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1097 (9th Cir. 2007) (“it is not a high burden to show a reasonable likelihood of success in reorganization”); *In re Lyondell Chem. Co.*, 402 B.R. 571, 589 (Bankr. S.D.N.Y. 2009) (only a reasonable likelihood of a successful reorganization is required). Indeed, one court found a debtor was likely to successfully reorganize where it had been in chapter 11 for seven years, competing plans had been filed, and the confirmation process was underway. *W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.)*, 386 B.R. 17, 33 (Bankr. D. Del. 2008). Other courts have rejected attempts to limit what constitutes a “successful reorganization.” *Lyondell*, 402 B.R. at 590 (rejecting argument that probability of success requires 100% recoveries by unsecured creditors); *Matter of Chicago, Milwaukee, St. Paul & Pac. R. Co.*, 830 F.2d 758, 764 (7th Cir. 1987) (“A successful reorganization does not mean all creditors are therefore to be paid in full.”); *see also* Collier on Bankruptcy, 2-105 (“If reorganization is at risk due to litigation or other pressures brought to bear on nondebtors ... injunctions under section 105 are possible if the litigant can show likely success on the merits -- such as the likelihood of a plan of reorganization...”).

IV. EXTENDING THE INJUNCTION SERVES THE PUBLIC INTEREST.

34. The requested injunctive relief also serves the public interest. Both this Court and the Seventh Circuit recognized that successful reorganizations are in the public interest because they preserve value for creditors and ultimately the public. (Feb. 105 Order at 14; *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. (Feb. 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)

35. The other compelling public interest is in promoting settlements. (Feb. 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, and enjoys the wide support of the Debtors’ creditors. Under these circumstances, the public interests in successful reorganizations and settlements outweigh the Guaranty Creditors’ interests in enforcing their guaranties. (*See* Feb. 105 Order at 15)

V. THE BALANCE OF EQUITIES WEIGHS IN THE DEBTORS’ FAVOR.

36. The balance of the equities still heavily favors the Debtors. (Feb. 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.

37. Regardless, the same factors that led the Court to conclude that the “balance of equities also heavily favors” the Debtors still apply. (Feb. 105 Order at 15) The Debtors “stand to suffer very real harm” if an injunction is not extended. (*Id.*) As noted, if CEC loses the guaranty litigation, it 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)

38. By comparison, the Guaranty Creditors will lose little if the Court extends the injunction. The Guaranty Creditors expressed concern that the Trust Indenture Act (“TIA”) may be amended during the injunction period. (June 105 Order at 5) But this is a risk that will exist for years regardless of whether the Court issues the injunction. Until all appeals are exhausted and a judgment becomes final, Congress may amend the TIA to impact the outcome of the guaranty lawsuits. *See Berning v. A.G. Edwards & Sons, Inc.*, 990 F.2d 272, 277 (7th Cir. 1993) (“Congress is free to change the law applicable to pending cases, even when ... the cases have left the trial courts and are being heard on appeal.”); *Georgia Ass’n of Retarded Citizens v. McDaniel*, 855 F.2d 805, 813 (11th Cir. 1988) (“When it so intends, [Congress’] ability to affect the content of a nonfinal judgment in a civil case, through retroactive legislation ceases only when a case’s journey through the courts comes to an end.”).

39. Extending the injunction through Plan confirmation would rebalance the leverage among the parties and allow more time for settlement discussions among the Debtors, CEC, the sponsors and the Noteholder Committee without the threat of imminent multi-billion dollar judgments and a CEC bankruptcy filing. If extended, the Debtors, CEC, the sponsors and the Noteholder Committee will *all* know that absent settlement, they face the looming risks inherent in a contested confirmation hearing. These risks will increase each day on each of these constituents as the confirmation hearing draws near. The length of the injunction, which would be in place through an early 2017 confirmation hearing, simply reflects the additional time the Noteholder Committee wanted to prepare for confirmation. But it also provides additional time for the mediation process to continue and succeed in averting what the Noteholder Committee has promised will be a

“monumental confirmation fight.” This will create the right mix of “uncertainty” and “deadlines” that the Court recognized have the best chance of getting to a fully consensual deal.

40. 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 claims against CEC. 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.

41. 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 extended. 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.

CONCLUSION

42. The Debtors remain committed to achieving a fully consensual plan and are working hard to reach consensus among all parties. The Debtors have made good use of the 74-day injunction issued by the Court in June. But without an extension, the Debtors soon may be back at square one. 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: August 8, 2016
Chicago, Illinois

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

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C.

Nicole L. Greenblatt, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**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., ¹)
)
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,)
)
)
)
<i>Defendants.</i>	) Re: Docket No. ____
)
<hr/>	

**ORDER GRANTING DEBTORS' MOTION TO EXTEND
THE SECTION 105 INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

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") enjoining the continued prosecution

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>.

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

of four lawsuits in two federal and state courts between holders of the Debtors' second lien or unsecured debt (or trustees representing them) and Caesars Entertainment Corporation, all as more fully set forth in the Motion; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
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 first omnibus hearing after 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