

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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In re:) Chapter 11
)
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) Hearing Date: August 17, 2016, at 1:30 p.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>)
)
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**NOTICE OF DEBTORS' MOTION FOR A PROTECTIVE ORDER FORBIDDING
WILMINGTON SAVINGS FUND SOCIETY, FSB FROM DEPOSING
CEOC DIRECTOR RONEN STAUBER FOR THE 105 HEARING**

PLEASE TAKE NOTICE that on **August 17, 2016, at 1:30 p.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 the Ceremonial Courtroom 2525 in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, and present the attached *Debtors' Motion for a*

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>.

*Protective Order Forbidding Wilmington Savings Fund Society, FSB from Deposing CEOC Director Ronen Stauber for the 105 Hearing (the “Motion”).*²

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 12, 2016
Chicago, Illinois

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

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

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Counsel to the Debtors and Debtors in Possession

² The Debtors have scheduled the presentment of this Motion for the August omnibus hearing in the Debtors’ chapter 11 cases rather than for the Court’s regularly scheduled hearing time for new motions in chapter 11 cases at 9:30 a.m. for ease of the Court and the parties due to the already scheduled omnibus hearing.

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<i>Defendants.</i>)
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**DEBTORS' MOTION FOR A PROTECTIVE ORDER FORBIDDING
WILMINGTON SAVINGS FUND SOCIETY, FSB FROM DEPOSING
CEOC DIRECTOR RONEN STAUBER FOR THE 105 HEARING**

Pursuant to Federal Rule of Civil Procedure 26 (as made applicable through Federal Rule of Bankruptcy Procedure 7026), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully request that the Court enter a protective order, substantially in the form attached hereto as Ex. A, prohibiting Wilmington Savings Fund Society,

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>.

FSB (“WSFS”) from deposing CEOC Independent Director Ronen Stauber in connection with the Debtors’ request to extend the Court’s injunction under section 105 of the Bankruptcy Code.

In support of this motion, the Debtors respectfully state as follows:

1. On August 8, 2016, the Debtors filed their *Motion to Extend the Section 105 Injunction Enjoining Defendants from Further Prosecuting their Guaranty Lawsuits* (the “105 Extension Motion”). [Dkt. No. 284]

2. On August 9, WSFS and BOKF, N.A. served requests for production on the Debtors. They also informed the Debtors of their intent to depose CEOC Independent Directors Steve Winograd and Ronen Stauber, as well as the Debtors’ financial advisors, Jim Millstein and Brendan Hayes, from Millstein & Co. (8/9/16 Levinson to Zeiger)

3. In response, counsel for the Debtors explained that “the issues on the 105 motion are narrow”; that the parties “already have developed an extensive evidentiary record on this motion”; and that “[t]here is no basis to depose the independent directors on issues that are relevant to the 105.” (8/10/16 Zeiger to Levinson) The Debtors confirmed that “[o]ut of these four individuals, only Mr. Hayes will be a witness at the hearing.” (*Id.*) The Debtors offered as a compromise to tender Mr. Hayes for a 3-hour deposition, provided that Defendants would tender their primary witness for a 3-hour deposition. (*Id.*)

4. Counsel for WSFS, Jones Day, persisted in seeking the depositions of Messrs. Winograd and Stauber “with respect to their knowledge of any deals with other creditors, or any negotiations with the Noteholder Committee or others.” (8/11/16 Levinson to Zeiger) They warned that “[i]f the Debtors are not prepared to make [Messrs. Winograd and Stauber] available for deposition on Tuesday, we recommend that you be prepared to file a motion for protective order and schedule it for hearing on Monday.” (*Id.*)

5. Jones Day also argued that the Debtors could not possibly succeed in extending the injunction under the standard the Court set forth: “the only issue to be decided [at the 105 hearing] is whether, despite any purported overtures by the debtors and CEC, the guaranty plaintiffs have not participated in extensive good-faith negotiations,” and that “[g]iven the Debtors’ assertions in Paragraph 4 of [the 105 Extension Motion], including the participation of the Noteholder Committee in ‘three in-person mediation sessions’ with a fourth scheduled on August 16 ... there is no basis for the Debtors to meet the Court’s standard.” (*Id.*)

6. Despite their view of the narrow issue at play, in total Defendants have sought depositions and documents from at least nine parties. These include deposition subpoenas to Second Lien Noteholders who support the Second Lien RSA,² as well as a deposition subpoena to the lobbying firm Brownstein Hyatt (which Jones Day served “on or around July 25, 2016,” but did not inform the Debtors until August 8).

7. The Debtors’ counsel and Jones Day held two telephonic meet-and-confers on August 11, and a third meet-and-confer on August 12, and were able to reach agreement on most issues. However, WSFS has refused to withdraw the deposition notice for Mr. Stauber.³ The Debtors thus file this motion for a protective order to prevent a deposition that is irrelevant to the issues presented in the 105 Extension Motion and, at best, duplicative of other discovery, particularly the deposition testimony of Mr. Hayes.

² The Debtors also have met-and-conferred with counsel for BOKF regarding the deposition subpoenas issued to these supportive Second Lien Noteholders. Counsel for BOKF stated that these depositions have been noticed solely to address evidentiary issues and, to the extent the parties can enter into stipulations with respect to the authenticity and foundation for admissibility of any documents produced by the Second Lien Noteholders, the deposition subpoenas will be withdrawn.

³ The Debtors have agreed to tender Mr. Hayes for deposition, and WSFS has withdrawn the deposition notice and subpoena for Mr. Winograd and Mr. Millstein because of their availability issues.

ARGUMENT

8. Rule 26 requires the Court to limit discovery when “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

9. As an independent director, Mr. Stauber has both a limited role in and limited knowledge regarding the mediation, negotiations, and progress. Mr. Hayes is the far more knowledgeable, convenient, appropriate, and less burdensome source of the information WSFS seeks. Just as the Debtors are not seeking to depose any principals of the Defendants—but rather will simply depose their financial advisor—there is no legitimate reason for the Defendants to take the depositions of the independent directors. Where Mr. Hayes will testify at the 105 hearing, Mr. Stauber will not. Where Mr. Hayes has been on the front lines of the negotiations of the “deals with other creditors” and “negotiations with the Noteholder Committee or others”—the purported reasons for deposing Mr. Stauber (8/11/16 Levinson to Zeiger)—Mr. Stauber has minimal firsthand knowledge of the details of those deals or the progress of those negotiations and no firsthand knowledge that Mr. Hayes also would not have. In fact, much of Mr. Stauber’s information regarding these issues comes from Mr. Hayes.

10. Courts routinely deny such cumulative and duplicative depositions. *See Ramirez v. Palisades Collection, LLC*, No. 07 C 3840, 2008 WL 7506560, at *4 (N.D. Ill. Jan. 7, 2008) (“This Court finds considerable difficulty in understanding why the deposition [of] Kevin Waithika is not cumulative, since it appears that the information he would testify to was already provided by Ms. Bey. Kevin Waithika is Ms. Bey’s subordinate and has access to the same information. Therefore, the request to take the deposition of Kevin Waithika is denied.”); *Stopka v. All. of Am. Insurers*, No. 95 C 7487, 1996 WL 204324, at *12 (N.D. Ill. Apr. 25, 1996) (quashing deposition where the testimony offered would be duplicative).

11. WSFS previously appears to have recognized the irrelevance of the independent directors' testimony to the 105 injunction issues. CEOC's independent directors have never testified in any of the 105 proceedings, even though the issues of proof were comparable and indeed only have narrowed. None of the Defendants ever has sought depositions or documents from the independent directors in any of the prior 105 proceedings. Indeed, the Defendants have not subpoenaed documents from the independent directors in *this* proceeding.

12. Given Mr. Stauber's limited knowledge, and the narrowness of the current inquiry, one wonders: what is going on? It is no coincidence that the Noteholders sought the depositions of the independent directors in connection with their standing motion. But that motion should be mooted by the filing of the Debtors' adversary complaint. So the Noteholders are using the 105 proceedings as their latest inappropriate vehicle to prematurely interrogate Mr. Stauber. The independent directors no doubt will be deposed in connection with confirmation. But those depositions should happen once, and in the proper context—confirmation—in order to avoid unnecessary and duplicative discovery. (June 7, 2016 Tr. at 9:15-19 (WSFS counsel: "[T]here will be no duplication of the discovery, so we will do it once, and we won't seek the same discovery again.")).

13. The Debtors also are concerned that WSFS's discovery requests are calculated to chill ongoing negotiations and place obstacles in the path of a consensual deal. WSFS has sought discovery into all communications that the Debtors have had related to the Second Lien RSA; all communications that the Debtors have had with Danner, his attorneys, and his advisors; and all communications that the Debtors have had with Trilogy Portfolio Company, LLC, Relative Value-Long/Short Debt Portfolio and any of their attorneys or advisors. (Request for Production Nos. 5, 11, 14) These requests do not seek to uncover evidence that might be

probative of the issues at the 105 hearing. Rather, they seek to get into ongoing mediation and other settlement discussions that has allowed the Debtors, creditor constituencies (including numerous Second-Lien holders), and other stakeholders to come to the table and negotiate forthrightly and constructively. The Debtors fear that Jones Day will seek to use its depositions to slow the progress Debtors are making, and then claim the injunction should be terminated for lack of progress.

CONCLUSION

14. WSFS will have all of the information it needs for the 105 hearing from the very broad discovery it has served and is pursuing against many parties. Indeed, neither it nor its counsel before viewed the testimony of the CEOC independent directors to be necessary to the section 105 injunction issues, even when the issues were broader. Rather, the deposition of Mr. Stauber will be cumulative and duplicative of other discovery, particularly the deposition of Mr. Hayes. Accordingly, the Debtors respectfully request that the Court issue a protective order forbidding WSFS from deposing Mr. Stauber.

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Dated: August 12, 2016
Chicago, Illinois

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

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
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FREDERICK BARTON DANNER,)
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<i>Defendants.</i>) Re: Docket No. ____
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**PROTECTIVE ORDER FORBIDDING
WILMINGTON SAVINGS FUND SOCIETY, FSB FROM DEPOSING
CEOC DIRECTOR RONEN STAUBER FOR THE 105 HEARING**

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") prohibiting

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.

Wilmington Savings Fund Society, FSB (“WSFS”) from deposing CEOC Independent Director Ronen Stauber in connection with the Debtors’ request to extend the Court’s injunction under section 105 of the Bankruptcy Code, 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. WSFS is prohibited from deposing Ronen Stauber in connection with the *Motion to Extend the Section 105 Injunction Enjoining Defendants from Further Prosecuting their Guaranty Lawsuits* [Dkt. No. 284].

Dated: _____, 2016
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge