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
Plaintiffs	Adversary Case. No. 15-00149 (ABG)
vs.	
BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, SB 4 CF LLC, TRILOGY PORTFOLIO COMPANY, LLC AND FREDERICK BARTON DANNER,	**Evidentiary Hearing Date: October 4, 2016, at 10:30 a.m. (prevailing Central Time)**
Defendants.	

NOTICE OF DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION PURSUANT TO SECTION 105 ENJOINING DEFENDANTS FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS

PLEASE TAKE NOTICE that on **October 4, 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' 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.

Preliminary Injunction Pursuant To Section 105 Enjoining Defendants From Further Prosecuting Their Guaranty Lawsuits (the "Motion").

PLEASE TAKE FURTHER NOTICE that copies of the 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: October 3, 2016
Chicago, Illinois

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Defendants.	

DEBTORS' MOTION FOR A PRELIMINARY INJUNCTION PURSUANT TO SECTION 105 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 enter an injunction enjoining Defendants from further prosecuting their guaranty lawsuits until the first omnibus hearing after the Court issues its decision confirming or denying confirmation of the Debtors' plan of reorganization. The Debtors expect all Defendants will consent to the relief sought by this motion other than Trilogy Portfolio Company, LLC. In support of their motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. There is no dispute that the Court has the power to enter an injunction through confirmation. The Court has said it. (8/25/16 Tr. 168:11–12; 8/26/16 Tr. 14:3–9) And Defendants do not dispute it. (No. 16-08423, Dkt. 70 at 2, 32–39) The only issue is whether enjoining the guaranty litigation is a "sensible exercise" of that power. (8/25/16 Tr. 168:14–15) Now, based on the standards previously set out by this Court, the answer is plainly yes.

2. The Debtors have reached agreements in principle with creditors that represent each of the classes across their $18 billion capital structure. Significantly, those agreements now include a deal with the Official Committee of Second Priority Noteholders (the "Noteholder Committee") and new direct contributions of $954 million in value from the Sponsors. New restructuring support agreements are being finalized and the Debtors are amending their current plan of reorganization (as amended, the "Plan") to reflect these agreements. The Debtors anticipate that those agreements will be finalized and executed prior to the October 4th hearing on this motion and that the parties to those agreements will fully support entry of the requested injunction for as long as the RSAs remain in place.[2]

[2] The relief requested herein is conditioned on the existence of an effective restructuring support agreement with the Noteholder Committee. To the extent that such an agreement is not in effect prior to the commencement of the hearing, the Debtors will withdraw this motion without prejudice.

3. The Plan will provide each creditor class with at least a 65% recovery and collectively nearly $18 billion in consideration. These enhanced recoveries are largely the result of approximately $1.3 billion in additional contributions from Caesars Entertainment Company ("CEC") and its Sponsors since the last injunction hearing (including the $954 million in direct contributions from the Sponsors).

4. But these agreements—which took more than two years to achieve—are at risk because of a single holdout creditor (Trilogy) that has a $9.4 million claim. Oral argument on summary judgment motions filed by Trilogy and other Defendants is set for this Thursday morning. Judge Rakoff could issue a decision that day or soon thereafter.

5. Regardless of who prevails before Judge Rakoff, the agreements that the Debtors have reached with their stakeholders will be imperiled. Should Trilogy prevail, creditors holding $11 billion in guaranty claims will have a strong incentive to walk away from the global deal underpinning the Plan and instead use their increased leverage to seek further enhanced recoveries given the overlapping nature of the guaranty claims. Should CEC prevail, CEC and the Sponsors will have a strong incentive to reconsider their current positions on settlement because their risk on the guaranty claims will have been diminished or eliminated. Either way, the Debtors' estates lose if the current hard-fought settlements are jeopardized due to a decision on a guaranty suit.

6. This threat will remain even after the Debtors finalize the RSAs. There will still be numerous open issues that the parties need to resolve before confirmation. The party that prevails in the guaranty litigation will have less incentive to reach a reasonable resolution on these issues given its newly found leverage, which it may use to force the counterparties back to the drawing board.

7. But these risks can all be avoided by enjoining the guaranty litigation while the Debtors seek to confirm a Plan that their creditors overwhelmingly support. The Debtors are no

longer seeking a bridge to a cram down confirmation hearing. The Debtors expect that all creditor classes will overwhelmingly vote in favor of the Plan. Indeed, with respect to the class that includes Trilogy's $9 million claim, the Debtors have reached agreements or agreements in principle with holders of at least $450 million in claims out of the $530 million class. The majority of the ad hoc group to which Trilogy belongs also now supports the Plan.

8. Nor would issuing the injunction be unfair to Trilogy. The Debtors have offered Trilogy the same deal that the Noteholder Committee—which represents debt that is senior to Trilogy's holdings—and other unsecured noteholders accepted: a 65% recovery plus attorneys' fees. If accepted, Trilogy would recover at least $11 million on its $9.4 million claim. If Trilogy prevails in the guaranty litigation, it will do no better and perhaps worse as its attorneys' fees are unlikely to be reimbursed. But as Trilogy admitted before this Court, it is seeking roughly a 150% recovery on its claim. (8/24/16 Tr. 36:22–37:19, 39:13–16; 8/25/16 Tr. 269:3–10) If Debtors agree to pay such hold-up value to one creditor, they risk unraveling the carefully-negotiated deals with other creditors—some of which include most-favored nation provisions—or creating potentially significant discrimination issues within Trilogy's $530 million class.

9. Accordingly, the Debtors seek an injunction to preserve the newfound status quo until they can seek confirmation of a value-maximizing Plan that each class of the Debtors' creditors will now overwhelmingly support.

BACKGROUND

10. The Court previously has entered findings regarding the relevant background facts related to CEC's guaranty of certain CEOC obligations, the lawsuits creditors filed in response to CEC's position that the guaranty has been released, and the Debtors' prior requests for injunctive relief. *See, e.g.*, *Caesars Entm't Operating Co. v. BOKF, N.A.*, 533 B.R. 714, 721 n.7, 735 (Bankr. N.D. Ill. 2015); Dkt. 214 ("Feb. 105 Order") at 2, 9; Dkt. 274 ("June 105 Order") at 2–3; 8/26/16 Tr.

2:21–25; *see also, e.g.*, *Caesars Entm't Operating Co. v. BOKF, N.A.*, 808 F.3d 1186, 1191 (7th Cir. 2015).

11. On February 26, 2016, the Court partially granted the Debtors' request for a section 105 injunction. (Feb. 105 Order at 9) The Court issued the injunction to preserve CEC's substantial contribution and "to give the parties 'a clear shot at negotiating an overall settlement.'" (*Id.* at 13–14 (*citing BOKF*, 808 F.3d at 1189))

12. 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 a motion to further enjoin the guaranty litigation. (Dkt. 239) Following a three-day evidentiary hearing, the Court entered an injunction through August 29, 2016. (June 105 Order at 1) The Court found "the debtors' progress on the settlement front is enough to show a continued likelihood of a successful reorganization – in the sense of a fully consensual plan, the debtors' goal." (*Id.* at 4) But it also warned that the "chances of further injunctive relief are slim." (*Id.* at 2) Consistent with that warning, the Court denied the Debtors' subsequent request to extend the injunction on August 26. (8/26/16 Tr. 3:4–6)

13. Although the Debtors were not able to achieve a consensual plan with all of their creditor groups before the Court's August 29 deadline, they did so shortly thereafter. On September 27, the Debtors and CEC announced they had reached an agreement in principle with all of the Debtors' creditor groups that provides for the following recoveries:

- 115% to the First Lien Bank Lenders, down from 116% under the previous plan;
- 109% to the First Lien Noteholders, which is unchanged from the previous plan;
- 65% to the Second Lien Noteholders, up from 39% under the previous plan;
- 83% to the Subsidiary Guaranteed Noteholders, down from 84% under the previous plan; and
- 65% to the Unsecured Creditors, up from 45% under the previous plan.

14. These significantly enhanced recoveries are largely possible because CEC, the Sponsors and others have agreed to make a $5.8 billion contribution (midpoint value) to the Debtors' restructuring. This contribution exceeds the high end of the Examiner's range of $3.6 to $5.1 billion for the value of the Debtors' estate claims by nearly $700 million and is equal to the high end of the Debtors' Special Governance Committee's range of $3.2 to $5.8 billion. (No. 15-01145, Dkt. 4220, Ex. 1 at 59–60) Since the last section 105 hearing, the Sponsors alone have agreed to directly contribute $954 million of value, which represents the disproportionate contribution of all of their remaining pre-merger CEC shares.

15. The Debtors have not ignored Trilogy, which holds $9.4 million of 6.5% Senior Notes due 2016. (No. 15-01145, Dkt. 3422, Ex. A) Trilogy has been offered a 65% recovery plus its attorneys' fees—the same deal that second lien noteholders who are senior to Trilogy recently accepted. If Trilogy likewise said yes, it would recover $11 million. If successful in the guaranty action, Trilogy is unlikely to do any better and could do worse as it is unlikely to recover its attorneys' fees (which are substantial compared to the size of its claim and growing). (8/24/16 Tr. 40:5–18 (estimated fees of $7 to $10 million on $13.8 million of claims from Relative Value (which has since settled in principle) and Trilogy)) The parties are continuing to negotiate.

16. There are fully briefed cross-motions for summary judgment pending in all six of the guaranty actions. (June 105 Order at 1) Judge Rakoff has scheduled oral argument on the motions pending before him for this Thursday, October 6. His order states: "Unless there is any further extension of the bankruptcy stay, this date and time is firm and final." (No. 14-07091, Dkt. 180) The Delaware court originally scheduled oral argument for October 6 on the WSFS summary judgment motion but Judge Rakoff asked it to wait a day so he could go first. Argument in Delaware is now scheduled for October 7.

ARGUMENT

17. Section 105 of the Bankruptcy Code states that a "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). As noted, there is no dispute that the Court has the power under section 105 to enter an injunction through Plan confirmation.[3] *Supra* ¶ 1; *accord Fisher v. Apostolou*, 155 F.3d 876, 883 (7th Cir. 1998) (affirming injunction staying third party litigation "pending the outcome of the bankruptcy proceeding"); *Bank of the West v. Fabtech Indus., Inc.*, 2010 WL 6452908, at *1–2, 7 (9th Cir. B.A.P. July 9, 2010) (affirming injunction against guaranty action "until the date scheduled for the Debtor's chapter 11 plan confirmation hearing"); *Otero Mills, Inc. v. Sec. Bank & Trust*, 21 B.R. 777, 779–80 (Bankr. D.N.M. 1982) ("an injunction is proper to allow the debtor an opportunity to present a plan and put it into operation."); *In re Western Real Estate Fund*, 922 F.2d 592, 600, 602 (10th Cir. 1990) (enjoining third-party action "during the pendency of th[e] bankruptcy proceeding" to protect the debtor "during preparation and confirmation of a reorganization plan"). This is consistent with the Seventh Circuit's view that section 105 "grants [ ] extensive equitable powers" with few limits beyond "tak[ing] an action prohibited by another provision of the Bankruptcy Code." *BOKF*, 808 F.3d at 1188.

18. To obtain the requested relief, the Debtors must demonstrate that (a) they have a likelihood of a successful reorganization; (b) the injunction is likely to enhance the prospects for a successful reorganization; (c) the injunction advances the public interest; and, based on the Court's August ruling, (d) the balance of equities weighs in the Debtors favor. (8/26/16 Tr. 5:13–6:6) The Debtors do not need to show they would suffer irreparable harm absent an injunction. (*Id*. at 6:6–7)

[3] *Otero Mills* did not involve a case where creditors were paid 100%. (*Cf.* 8/26/16 Tr. 14:14–18) Instead, the debtor sought an injunction to prevent a foreclosure as an orderly sale would maximize creditor recoveries and realize more money than a forced sale. *In re Otero Mills*, 21 B.R. at 779.

I. THE DEBTORS ARE LIKELY TO SUCCESSFULLY REORGANIZE.

19. The evidence at each of the prior hearings has shown that the Debtors are likely to successfully reorganize. (*Id*. at 7:5–7) As the Court found, "[t]he debtors have a strong business that has done well since these cases were filed" and "the debtors have outperformed projections during the first half of this year and have met projections in June and July." (*Id*. at 7:7–12) These facts were undisputed at the time and remain true today.

II. AN INJUNCTION WOULD ENHANCE THE PROSPECTS OF A SUCCESSFUL REORGANIZATION.

20. According to the Seventh Circuit, the critical questions are whether the injunction 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). Whatever doubt existed a month ago, the answers are plainly yes now.

21. The Court previously noted that the Debtors' twin goals in seeking prior injunctions were to preserve the multi-billion dollar contributions they had secured and to gain time to negotiate a consensual deal. (8/26/16 Tr. 13:15–20) The Court principally denied the Debtors' most recent motion because it was no longer convinced that an injunction would enhance the prospect of a successful reorganization in the sense of a consensual deal. (*Id.* at 7:15–18) The Court has recognized, however, that the availability of section 105 relief does not depend on achieving full consensus with all creditors. (*See, e.g.*, 6/13/16 Tr. 275:13–17 ("No, I'm not saying that you need 100 percent consensus … to get the injunction"); *see also W.R. Grace & Co. v. Chakarian*, 386 B.R. 17, 33 (Bankr. D. Del. 2008) (enjoining actions that would "negatively impact[] the Debtors' reorganization" even though "[c]ompeting plans have been filed")) That paradigm would grant undue holdout leverage to a few dissident creditors, no matter how small or large the consensus in

favor of the plan. The Court also denied the Debtors' motion because it believed that the Sponsors were not making a material contribution. (8/26/16 Tr. 11:10–18)

22. Since the Court's ruling, the Debtors and their stakeholders have squarely addressed each of the Court's key concerns:

- The Debtors now have agreements in principle with their entire capital structure except for small holdout creditors. (*Id.* at 8:11–13 ("[I]t's the reaching or an agreement in principle that matters most, not its execution.")) Notably, the Noteholder Committee—previously the Debtors' principal antagonist and the biggest opponent of prior plans—now supports the Plan.

- Trilogy has received an offer that exceeds the amount of its claim.

- The Plan provides materially enhanced recoveries for numerous creditor constituencies. It is based on a $5.8 billion contribution (midpoint) that exceeds the midpoint value of the Examiner's range ($4.35 billion) for the estate claims by nearly $1.5 billion and the midpoint value of the Governance Committee's range ($4.5 billion) by $1.3 billion. (No. 15-01145, Dkt. 4220, Ex. 1 at 59–60)

- The amended Plan keeps the Caesars entities together—which all parties agree is value-maximizing—rather than separating the Debtors through a standalone plan. (*See, e.g.*, 6/13/16 Tr. 123:11–16, 8/25/16 Tr. 95:12–20 (Hilty))

- There can no longer be any question that the Sponsors are making a direct, material and disproportionate contribution at this point. (*Cf.* 8/25/16 Tr. 47:17–48:3, 49:22–50:2 (Hilty) (if the Sponsors "took a part of their existing stock and handed it over" or "ended up being diluted on a non-pro rata basis," that would be a contribution))

23. Through the global deal, the Debtors and their stakeholders also resolve the massive disputes related to the 15 transactions that the Examiner and his professionals investigated for more than a year and analyzed in a 1,769-page report. (No. 15-01145, Dkt. 3720-1 at 1) The deal also eliminates the need for what the Noteholder Committee promised would be a "monumental confirmation fight." (No. 15-00145, Dkt. 3743 at 1) The confirmation hearing had threatened to live up to that billing: 69 parties gave notice of their intent to participate and to call 51 fact witnesses and 16 experts at the hearing. (8/26/16 Tr. 20:4-12) But now few if any will need to testify.

24. But if a single holdout creditor with a $9.4 million claim out of the $18 billion capital structure is allowed to proceed with its guaranty suit, it could destroy the entire deal. Significantly, this is true regardless of how Judge Rakoff rules. Even once there are RSAs in place, numerous open issues will remain that need to be negotiated. For example, parties will need to agree who will serve on various boards of directors and other governance issues, negotiate the definitive terms of "take-back debt" that will provide more than $2 billion in recoveries to senior creditors, and negotiate and execute the lease and lease guaranty that is at the heart of the REIT structure. If Trilogy wins, guaranty plaintiffs holding approximately $11 billion of claims will not have the incentive to reach reasonable compromises on these and other open issues, since they know they can simply proceed on their guaranty claims if the deal craters. If CEC wins, it and the Sponsors similarly will have a strong incentive to reconsider the new landscape. Either way, the risk to the current constructive, consensual environment that has taken two years to achieve is palpable.

25. It makes no difference that the Trilogy claim is small or that CEC could pay a judgment as to the Trilogy claim. There are numerous overlapping issues across the guaranty lawsuits, which is why all of the SDNY cases have been assigned to Judge Rakoff and all of the parties' summary judgment motions in those cases are being briefed, heard and decided in lockstep. Judge Rakoff likewise has indicated that any trial in the guaranty suits would be a single, consolidated trial. (Dkt. 244, Ex. E, 4/6/16 Tr. 10:15–20 ("[I]f we're going to have a trial, we want to invite everyone … so it's going to be a trial on every issue that's in factual dispute."); 6/8/16 Tr. 15:17–16:16 (granting request for judicial notice))

26. If Trilogy is allowed to proceed with its guaranty suit, Judge Rakoff's summary judgment ruling likely will determine issues critical to the other guaranty cases, and thereby threaten the overall global deal that the Debtors and their stakeholders finally have achieved. For example,

Trilogy's "principal claim" is that an August 2014 transaction violated the Trust Indenture Act ("TIA"). (Dkt. 244, Ex. E at 6:10–12) The TIA is also at the center of each of the other guaranty actions. (*See generally id.* Exs. D-1-D-8) Judge Rakoff will need to interpret the TIA even in an opinion that relates solely to Trilogy's claims. Indeed, Judge Scheindlin's opinion on CEC's motion to dismiss Trilogy's claims adopted an interpretation of the TIA that will impact all of the other guaranty cases. *MeehanCombs Glob. Credit Opportunities Funds, LP v. Caesars Entm't Corp.*, 80 F. Supp. 3d 507, 515 (S.D.N.Y. 2015) (criticizing "CEC's narrow reading" of the statute). There is no Second Circuit precedent regarding how the TIA should be interpreted in this context. *Id.* at 516 n.50 (noting lack of controlling precedent). Accordingly, Judge Rakoff's interpretation of the TIA in the Trilogy case will signal if not determine the scope of the TIA for purposes of all of the remaining guaranty cases pending before the same judge. That may be why Judge Rakoff requested to hold argument before the Delaware Chancery Court so a federal judge could interpret this federal statute.

27. Trilogy's approach to briefing issues regarding the TIA confirms that the guaranty actions are all interrelated. A key issue in all of the cases is whether Section 316(b) of the TIA prohibits out-of-court restructurings that impair a plaintiff's practical ability to recover on its notes or whether it simply protects a noteholder's legal right to payment when due. On this central question, Trilogy simply "incorporate[d] by reference the summary judgment arguments made by" BOKF and UMB. (Dkt. 244, Ex. D-3 at 2 n.3) Trilogy's motion thus effectively asks Judge Rakoff to consider and decide issues regarding the scope of the TIA that are the subject of motions filed by the other guaranty claimants.[4]

[4] Trilogy incorporates by reference other arguments as well. (*See, e.g.*, Dkt. 244, Ex. D-3 at 25 n. 23 ("If the Court determines that CEC's Guarantee remains in place, Plaintiffs are entitled to the immediate payment of all principal and interest owed on the Notes for the reasons set forth in Argument Section III of the Brief submitted by BOKF and UMB.")) Other guaranty plaintiffs likewise incorporate Trilogy's arguments. (*Id.*, Ex. D-1 at 16 (incorporating Trilogy argument that

28. There are other issues that Judge Rakoff likely will decide in ruling on Trilogy's motion that will directly impact the other guaranty cases. For example, if Judge Rakoff determines that the August 2014 transaction lawfully stripped the guarantees as to Trilogy, it may result in judgment for CEC in the remaining guaranty lawsuits (apart from the Wilmington Trust action). CEC has argued that under the "Existing Notes" clause in the indentures at issue in the UMB, BOKF and WSFS actions, the guaranties are released as to all of CEOC's first lien and second lien notes (which account for the overwhelming majority of debt at issue in the guaranty lawsuits) once the guaranties on the unsecured notes held by Trilogy are released.[5] (No. 15-04634, Dkt. 145 at 34–35) Thus, even if Judge Rakoff's ruling is limited to Trilogy's claims, it is likely to impact the other guaranty cases. It may be favorable to the other guaranty plaintiffs or to CEC. At this point, no one knows. That is why all of the guaranty plaintiffs (except Trilogy) and CEC support an injunction.[6]

29. This Court also declined to extend the injunction in late August because it was no longer convinced that denying the injunction would endanger the reorganization as a "reorganization can in fact be accomplished without a contribution." (8/26/16 Tr. 14:19–15:3) But section 105 authorizes courts to enjoin actions that "could conceivably have an effect" on the estate. *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990); *see also Zerand-Bernal Group, Inc. v.*

"even if the Court found that one or more of the Guarantee Transactions complied with the TIA, they could not as a matter of law release CEC's guarantee under the applicable indentures"))

[5] The Court can take judicial notice of filings in the guaranty actions. (6/8/16 Tr. 15:17–16:16)

[6] Although the parties could ask Judge Rakoff to adjourn the hearing, his "Individual Rules of Practice" provide that "[n]o adjournments will be granted on the grounds of settlement unless the parties have submitted to Chambers a stipulation or letter on behalf of all parties affirming that the case has been finally settled and that the Court may dismiss the case with prejudice." *See* Individual Rules of Practice No. 10, www.nysd.uscourts.gov/judge/Rakoff. Because all guaranty plaintiffs will not dismiss their claims with prejudice pending confirmation of the Debtors' Plan, oral argument on all of the guaranty actions before Judge Rakoff will proceed on October 6 unless Judge Rakoff departs from this rule or this Court grants this motion. In setting the argument, Judge Rakoff stated that "[u]nless there is any further extension of the bankruptcy stay," the October 6 date is "firm and final." (No. 14-07091, Dkt. 180) This suggests he is unlikely to depart from his Rules of Practice and allow the parties to adjourn the hearing without dismissing the cases with prejudice.

Cox, 23 F.3d 159, 161–62 (7th Cir. 1994) (relying on *Lemco*). In fact, the quintessential case for enjoining third-party litigation to protect a reorganization is where it will "affect the amount of property in the bankrupt estate," *Zerand-Bernal*, 23 F.3d at 162, or "the allocation of property among creditors," *Fisher*, 155 F.3d at 882. This is such a case.

30. While it is possible other restructuring alternatives exist, none maximizes value like the Plan. Even when opposing the then-requested section 105 injunction, the Noteholder Committee's expert, David Hilty, acknowledged at prior hearings that it is value-maximizing to keep the Caesars enterprise together as part of a restructuring. (6/13/16 Tr. 123:11–16; 8/25/16 Tr. 95:12–20) The Debtors could put forth a standalone plan with a litigation trust but that would result in at least a $1.5 billion decrease in value to the Debtors and their stakeholders. (No. 15-01145, Dkt. 4220-1 at 1069) That is one reason why all of the Defendants except Trilogy are now supporting this Plan. And it remains quite "plausible" that if the global deal falls apart, this case becomes "one of the great messes of our time." (June 105 Order at 4)

31. As the Seventh Circuit previously found, section 105 is a "broad grant of power." *BOKF*, 808 F.3d at 1188. It is not limited to scenarios where no other reorganization structure is theoretically available. In fact, although the Court found last June that the Debtors had other ways to restructure if the guaranty litigation went forward, it concluded nonetheless that there was sufficient progress to merit an injunction. (June 105 Order at 4) The same reasoning applies here. The Debtors have now reached a global deal with all of their major stakeholders and with every creditor class. Now the Debtors simply need an injunction to preserve the status quo while they seek to confirm a Plan that they expect will be overwhelmingly supported by every creditor class.

III. AN INJUNCTION WOULD SERVE THE PUBLIC INTEREST.

32. The requested injunctive relief also serves the public interest. As this Court and the Seventh Circuit have both recognized, 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) This Court previously found that 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 the settlement on which it is based. (*Id.*; *see also BOKF*, 808 F.3d at 1189) The need for injunctive relief is especially acute now that the Debtors have a global deal with their major stakeholders that paves the way for a successful reorganization and provides for substantial and enhanced creditor recoveries.

33. The other compelling public interest is in promoting settlements. (*See* Feb. 105 Order at 14, citing cases; *see also BOKF*, 808 F.3d at 1189 ("successful resolution of disputes arising in bankruptcy proceedings is one of the Code's central objectives")) The global deal resolves complex and contentious disputes with each creditor class across the Debtors' $18 billion capital structure. And given that these cases are costing the Debtors' estates approximately $3.5 million per day in additional administrative expenses and accumulating interest, the global deal will also preserve significant value by expediting the timeline for the Debtors to emerge from chapter 11.

34. This Court previously recognized there are times when "'the needs and concerns of other creditors simply trump commercial predictability'" of enforcing guaranties. (Feb. 105 Order at 15, citing *In re Lyondell Chem. Co.*, 402 B.R. 571, 594 (Bankr. S.D.N.Y. 2009)) "This is one of those times." (*Id.*) Indeed, creditors with nearly identical interests to Trilogy have agreed to support the Plan in exchange for enhanced recoveries that are based on multi-billion dollar contributions from CEC, the Sponsors and others. Now that creditors holding $11 billion in guaranty claims support the Plan and the only holdout has a $9.4 million guaranty claim, it is clearer than ever that an injunction would serve the public interest.

IV. THE BALANCE OF THE EQUITIES FAVORS THE DEBTORS.

35. Even when the Court denied the Debtors' motion to extend the injunction, it concluded that the balance of equities was a close call. (8/26/16 Tr. 21:18-20) Since then, the parties have addressed the Court's key concerns, the scales have tipped, and the equities now strongly favor the Debtors.

36. The Debtors and all of their stakeholders other than Trilogy face a greater risk from the guaranty litigation than ever before. The Debtors now have deals with their entire capital structure and expect each creditor class to overwhelmingly vote in favor of the Plan. The end of what the Seventh Circuit described as an "immense, and immensely complicated, bankruptcy proceeding" is finally in sight. *BOKF*, 808 F.3d at 1187. And the Noteholder Committee's support speaks volumes regarding the fairness of creditor recoveries under the Plan.

37. The contributions that enable these recoveries, however, are at risk due to a single creditor holding a $9.4 million claim—which represents approximately .005% of the Debtors' $18 billion capital structure. As noted, if Trilogy is allowed to proceed with its guaranty claim, it creates substantial risk to the fragile deal that the Debtors and their stakeholders have struck regardless of how Judge Rakoff rules.

38. In contrast, there is no prejudice to Trilogy from entering the injunction. As this Court previously recognized, there would be no "particularized harm" to guaranty creditors from an injunction in any traditional sense given the nature of their claims. (*See* 8/26/16 Tr. at 19:16-20, citation omitted) Although the Court previously found that CEC's lobbying efforts did not present "much of a risk" (*id.* at 20:19–21:4), CEC has agreed to stand down on its lobbying activities while the Debtors seek to confirm the Plan. The Court's concern regarding the length of any injunction through its confirmation decision also has been substantially mitigated given that the Noteholder Committee, the major antagonist to the prior plan, now supports the Debtors' restructuring.

39. Indeed, Trilogy's efforts to extract a holdout premium at the risk of blowing apart a Plan that will be overwhelmingly approved by the Debtors' creditors if it survives that long are wholly inequitable. Under these circumstances, courts issue section 105 injunctions to stop actions that are "being undertaken for the purposes of harassment to attempt to obtain favored treatment in a plan of reorganization." *See, e.g., Matter of Rustic Mfg., Inc.*, 55 B.R. 25, 27 (Bankr. W.D. Wis. 1985). Consistent with the goals of the Bankruptcy Code, this ensures that a single creditor cannot "hijack" a debtor's reorganization simply to opportunistically improve its own recovery. *See Bank of Am. Nat. Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 461–62 (1999) (Thomas, J., concurring) ("[T]he Code created a system of creditor class approval of reorganization plans, unlike early pre-Code practice where plan confirmation depended on unanimous creditor approval and could be hijacked by a single holdout"); *see also* E. Warren, *A Theory of Absolute Priority*, 1991 Ann. Surv. Am. L. 9, 31-32 (1992) (sections 1126 and 1129 of the Bankruptcy Code "prevent[] a creditor class from demanding a premium to consent to the plan."). The equities strongly favor the Debtors.

CONCLUSION

As this Court observed, both uncertainty and deadlines are necessary to reach a settlement. These twin elixirs have worked their magic—but risks remain. To protect the fragile consensus that has been achieved, the Court needs to preserve uncertainty over the outcome of the guaranty actions to allow the Debtors and their stakeholders to confirm a Plan based on this global consensus. A creditor holding a $9.4 million claim should not be allowed to unravel a deal that creditors across an $18 billion capital structure have concluded is an eminently fair and equitable resolution to a massively complicated and contentious case. The Court should enjoin the guaranty actions until the first omnibus hearing after the Court renders its decision on confirmation of the Debtors' Plan.

Dated: October 3, 2016
Chicago, Illinois

/s/ David R. Seligman, P.C.

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Exhibit A

Proposed 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
Plaintiffs	Adversary Case. No. 15-00149 (ABG)
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,	
Defendants.	**Re: Docket No. ___**

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 earlier of (a) 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), (b) ten business days from the date of the termination of any restructuring support agreement with the Official Committee of Second Priority Noteholders, or (c) 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