

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., <u>et al.</u> , <sup>1</sup>	)	
	)	
Debtors.	)	(Jointly Administered)

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**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) ENFORCING THE AUTOMATIC STAY, (II) VOIDING ACTIONS TAKEN IN VIOLATION OF THE AUTOMATIC STAY, (III) FOR CONTEMPT AND SANCTIONS AGAINST THE NRF AND THE NRF TRUSTEES, AND (IV) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on the **25th day of March, 2015, at 1:30 p.m. (prevailing Central Time)** or as soon thereafter as counsel may be heard, the Debtors shall appear before the Honorable A. Benjamin Goldgar or any other judge who may be sitting in his place and stead, in the Ceremonial Courtroom (Room No. 2525) in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, and present the attached *Debtors' Motion for Entry of an Order (I) Enforcing the Automatic Stay, (II) Voiding Actions Taken in Violation of the Automatic Stay, (III) for Contempt and Sanctions Against the NRF and the NRF Trustees, and (IV) Granting Related Relief* (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that any objection to the Motion must be filed with the Court by **March 18, 2015, at 4:00 p.m. (prevailing Central Time)** and served so as to be actually received by such time by: (a) proposed counsel to the Debtors; (b) the Office of the United States Trustee for the Northern District of Illinois; and (c) any party that has requested notice pursuant to rule 2002 of the Federal Rules of Bankruptcy Procedure, a schedule of such parties may be found at <https://cases.primeclerk.com/CEOC>.

**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 [www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov) in accordance with the procedures and fees set forth therein.

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

Dated: March 6, 2015  
Chicago, Illinois

*/s/ Stephen C. Hackney*

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*Proposed Counsel to the Debtors  
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UNITED STATES BANKRUPTCY COURT  
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CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) ENFORCING THE  
AUTOMATIC STAY, (II) VOIDING ACTIONS TAKEN IN VIOLATION OF THE  
AUTOMATIC STAY, (III) FOR CONTEMPT AND SANCTIONS AGAINST THE NRF  
AND THE NRF TRUSTEES, AND (IV) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) enforcing the automatic stay with respect to the decision of the trustees of the National Retirement Fund (“NRF”), a multiemployer pension plan, to expel all contributing subsidiaries of Debtor Caesars Entertainment Operating Company, Inc. (“CEOC”) and Caesars Entertainment Corporation (“CEC”) from the NRF, (b) voiding such expulsion, (c) holding the NRF and the trustees of the NRF (the “NRF Trustees”) in contempt of court and imposing sanctions for willful violations of the automatic stay, and (d) granting related relief. In support of this Motion, the Debtors respectfully state as follows:<sup>2</sup>

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

<sup>2</sup> The United States Bankruptcy Court for the Northern District of Illinois (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein is section 362 of title 11 of the United State Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”).

### Preliminary Statement

1. The NRF and the NRF Trustees willfully and knowingly violated the automatic stay when they purportedly expelled the Employers (as defined herein) from the NRF after an involuntary bankruptcy proceeding was commenced against CEOC. The NRF and the NRF Trustees did this even though they had actual notice of the involuntary bankruptcy proceeding before the purported expulsion.

2. On January 12, 2015, certain petitioning creditors filed an involuntary petition against CEOC in the United States Bankruptcy Court for the District of Delaware.<sup>3</sup> Counsel for CEC promptly sent counsel for the NRF an email advising them of this involuntary bankruptcy filing.<sup>4</sup> That same day, and after receiving this actual notice of the involuntary proceedings, the NRF sent a notice to certain of CEOC's affiliates and subsidiaries asserting that such entities were being expelled (the "Expulsion") from the NRF (the "First Expulsion Notice").<sup>5</sup> The very next day, on January 13, 2015, the NRF sent another notice to the same Employers, which allegedly "corrects and supersedes" the First Expulsion Notice (the "Second Expulsion Notice"),<sup>6</sup> and which asserts that the Employers were being expelled only from the NRF Legacy Plan. The Expulsion was a clear violation of the automatic stay as an action both against CEOC

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<sup>3</sup> CEOC anticipates that it will later challenge the filing of the involuntary petition on various grounds. It reserves all rights in this regard.

<sup>4</sup> See Email from E. Field to R. Richman, Ex. A to the *Declaration of Stephen C. Hackney in support of Debtors' Motion for Entry of an Order (I) Enforcing the Automatic stay, (II) Voiding Actions Taken in Violation of the Automatic stay, (III) For Contempt and Sanctions Against the NRF and the NRF Trustees, and (IV) Granting Related Relief* (the "Hackney Decl.").

<sup>5</sup> See Letter dated Jan. 12, 2015, Ex. B to Hackney Decl. Specifically, the NRF expelled (a) Bally's Park Place, Inc. d/b/a Bally's Hotel and Casino ("Bally's AC"), (b) Boardwalk Regency Corporation d/b/a Caesars Atlantic City ("Caesars AC"), (c) Parball Corporation ("Las Vegas Laundry"), (d) Chester Downs Marina LLC d/b/a Harrah's Philadelphia ("Harrah's Chester"), and (e) Harrah's Operating Company, Inc. d/b/a Harrah's Atlantic City Casino and Hotel ("Harrah's AC," and, collectively, the "Employers").

<sup>6</sup> See Letter dated Jan. 13, 2015, Ex. C to Hackney Decl.

and to exercise control over CEOC's property interests. The Expulsion must therefore be stayed and declared void ab initio in all respects.

### **Background**

3. Certain of CEOC's subsidiaries and affiliates have for decades had obligations under collective bargaining agreements (each, a "CBA") with certain of their unions to make contributions to the NRF on behalf of certain of their employees. Because CEOC and CEC own more than 80 percent of the Employers in question, CEOC, CEC, and their subsidiaries operate as a "controlled group" as that term is defined by the Internal Revenue Code, as amended, and the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001–1191(c) ("ERISA") (the "Caesars Controlled Group").<sup>7</sup> Therefore, CEOC, CEC, and certain of their subsidiaries are a "single" employer for purposes of Title IV of ERISA, 29 U.S.C. § 1301(b)(1). Collectively, the Caesars Controlled Group employ approximately 4,380 people for which contributions are made to the NRF and have approximately 3,000 retired workers receiving pensions from the NRF. The Caesars Controlled Group, which is the largest contributor to the NRF, currently contributes more than \$13 million per year on behalf of active employees who rely on their pension benefits for their financial future. It is the intention of CEOC (and each other member of the Caesars Controlled Group) to cause the Employers to keep their promises to these employees and continue to make regular payments to the NRF on their behalf. Indeed, each Employer has made its pension contributions to the NRF or its predecessors without incident for decades in accordance with the requirements set forth in all CBAs to which each of

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<sup>7</sup> CEOC owns 100 percent of the following three entities that are required by a CBA to make contributions to the NRF, which are also Debtors in these chapter 11 cases: (a) Bally's AC, (b) Caesars AC, and (c) Las Vegas Laundry. CEOC also owns 99.5 percent of Harrah's Chester, which is also required under a CBA to make contributions to the NRF; Harrah's Chester is not a Debtor in these chapter 11 cases. Finally, CEC owns Caesars Entertainment Resort Properties, LLC ("CERP"), which in turns owns 100 percent of Harrah's AC, another entity that is required to make contributions to the NRF under a CBA; CERP and Harrah's AC are not Debtors in these chapter 11 cases.

them is a party as well as the terms of the NRF Trust Agreement, and, as discussed further below, none has ever expressed a desire to withdraw from the NRF.

4. As explained more fully in the *Memorandum in Support of Chapter 11 Petitions* [Docket No. 4], CEOC and its subsidiaries have been working through financial distress since they were taken private in a leveraged buyout in January 2008. Recognizing a need for a comprehensive balance sheet solution, the Debtors commenced negotiations with their senior creditor constituents and their ultimate parent CEC in Summer 2014, ultimately reaching agreement on the terms of a comprehensive restructuring on December 19, 2014, when they entered into a restructuring support agreement with, among others, certain of their first lien creditors and CEC (the “RSA”). Importantly, the transaction envisioned by the RSA would not break up the Caesars Controlled Group with respect to the NRF—nor does it contemplate that CEOC, CEC, or any of their affiliates will disavow any of their CBAs. In short, the RSA is entirely uncontroversial when viewed from the standpoint of CEOC’s and the Employers’ labor relations. Just as they have done for years, the Employers intend to continue their contributions to the NRF on a go-forward basis.

5. Also in December 2014, and apparently recognizing that CEOC was in financial distress due to its overlevered balance sheet, the NRF Trustees threatened CEOC and the other members of the Caesars Controlled Group with expulsion. Such an expulsion would have been unprecedented and unlawful, and the Caesars Controlled Group disputed the threatened expulsion for multiple reasons, including, without limitation, the following points. First, unlike single employer plans, multiemployer trustees are not vested with the power to unilaterally expel employers. Second, CEOC and its subsidiaries and affiliates have no intention to exit the NRF. As far as CEOC can tell, the NRF Trustee’s unilateral expulsion threat represented the first time

a group of employers had been threatened with expulsion from a multiemployer plan to which they were ready, willing, and able to continue funding. Third, the threatened expulsion has significant real world implications for the affected employees. An employee only receives benefits from the NRF if he or she ultimately vests in those benefits; this vesting requires the employee to have worked for at least five years for an employer participating in the NRF. As a result, employees may decide to end their employment with their respective Employers (including the Debtor Employers) to work for a employer participating in the NRF so as to continue receiving service credit for vesting purposes with the NRF.

6. Rather than engage in litigation, the NRF, CEC, CEOC, and CERP entered into a Standstill Agreement on December 21, 2014.<sup>8</sup> Notably, none of the Employers was a signatory to the Standstill Agreement. At the core of the Standstill Agreement was the following bargain: the NRF would not to attempt to expel any member of the Caesars Controlled Group, and the Caesars Controlled Group would not incur an Insolvency Event (as defined in the Standstill Agreement) without first giving the NRF and the NRF Trustees five days' notice. The term "Insolvency Event" included "the commencement of a voluntary case under any applicable Insolvency Law." And, by virtue of regulatory filings and press releases, everyone was on notice on and before entry into the Standstill Agreement that CEOC and numerous of its subsidiaries were going to commence voluntary chapter 11 cases on or after January 15, 2015.

7. On Thursday, January 8, 2015, the Caesars Controlled Group gave notice that they were terminating the Standstill Agreement due to CEOC's and its subsidiaries' impending voluntary chapter 11 cases, which they expected to commence on or after January 15, 2015. The same day, CEC filed a lawsuit in the United States District Court for the Southern District of

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<sup>8</sup> See Standstill Agreement, Ex. D to Hackney Decl.

New York contending that the NRF Trustees lacked the statutory or contractual power to unilaterally expel the Caesars Controlled Group from the NRF.

8. On the morning of Monday, January 12, 2015, three of CEOC's second lien noteholders filed an involuntary petition against CEOC under section 303 in the United States Bankruptcy Court for the District of Delaware. The legitimacy of this filing is hotly contested, and CEOC intends to argue that the petitioning creditors failed to satisfy the requirements of section 303. Nonetheless, rightly or wrongly, it is a fact that the involuntary petition was filed, thus triggering the automatic stay provisions of section 362(a).<sup>9</sup> During the so-called "gap period" after the filing of an involuntary petition, an alleged debtor may enforce the automatic stay even though it may continue to operate its business.<sup>10</sup>

9. That same day, the NRF Trustees engaged in what many of them have described as an "irregular, hastily-convened telephonic conference call."<sup>11</sup> During this call, a majority of the NRF Trustees voted to expel the Employers from the NRF. They did so having been fully informed of the involuntary petition filed against CEOC: At 11:34 a.m. on January 12, 2015, counsel to CEC informed the NRF Trustees' counsel that an involuntary bankruptcy petition had been filed that same morning against CEOC.<sup>12</sup> The NRF sent the expelled members the First Expulsion Notice later that same day to inform them of the purported Expulsion.<sup>13</sup>

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<sup>9</sup> See 11 U.S.C. § 362(a) ("[A] petition filed under section . . . 303 of this title . . . operates as a stay, applicable to all entities.").

<sup>10</sup> See In re Sweports, Ltd., 476 B.R. 540, 545 (Bankr. N.D. Ill. 2012) (finding that the filing of an involuntary petition created a stay and that the alleged debtor can continue to "operate its business . . . during the gap period.").

<sup>11</sup> (See Compl. in Wilhelm, et al. v. Beasley, et al., Case No. 15-cv-00245, United States District Court for the District of Nevada, Ex. E to Hackney Decl. ¶ 21.). This complaint was filed by a group of NRF Trustees for breach of fiduciary duty against those NRF Trustees voting to expel the Caesars Controlled Group.

<sup>12</sup> See Ex. A to Hackney Decl.

<sup>13</sup> See Ex. B to Hackney Decl.



10. Significantly, the First Expulsion Notice admitted the NRF Trustees' awareness of the involuntary petition filed against CEOC and the automatic stay. The last sentence of such notice reads: "Notwithstanding anything to the contrary set forth herein, nothing in this notice shall, or shall be deemed to, constitute an action that would be a violation of the automatic stay applicable in the case entitled In re Caesars Entertainment Operating Company, Inc., Case No. 15-10047 (KG) (Bankr. D. Del. 2015)." Despite this language, and as the NRF Trustees were aware, the Expulsion of the Employers, if valid, operated as de jure expulsion of CEOC and the other members of the Caesars Controlled Group from the NRF, as ERISA does not permit the NRF to expel only some of the members of a controlled group and trigger withdrawal liability for the entire controlled group.

11. On the following day, January 13, 2015, the NRF Trustees (or, more likely, their counsel) abruptly changed their minds about the scope of the purported Expulsion. They therefore sent the Second Expulsion Notice—the day after the involuntary was filed and with full knowledge thereof—which purported to correct and supersede the First Expulsion Notice, and to expel the Employers from only part of the NRF (the Legacy Plan). Upon information and belief, the NRF Trustees never discussed or authorized the Second Expulsion Notice.

12. The Expulsion created substantial withdrawal liability against each member of the Caesars Controlled Group—including CEOC. Specifically, under ERISA, as amended by the Multiemployer Pension Plan Amendment Act of 1980, as amended, withdrawal liability triggers the obligation to make interim payments, even where a withdrawn employer disputes the fund's calculation of the assessment of its liability.<sup>14</sup> If interim payments are not made, a fund

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<sup>14</sup> See Cent. States, Se. & Sw. Areas Pension Fund v. Rogers, 843 F. Supp. 1135, 1140 (E.D. Mich. 1992), aff'd sub nom. Cent. States, Se. & Sw. Areas Pension Fund v. Rogers, 14 F.3d 600 (6th Cir. 1993) ("Under the principles of joint and several liability, plan sponsors can sue one or more of the members of a common control group, and can collect the entire judgment from one or more of them.").

can sue any one or more members of the controlled group.<sup>15</sup> And, importantly, to trigger immediate withdrawal liability for CEOC, the NRF Trustees knew that under ERISA they are required to expel each member of the Caesars Controlled Group, and not just some of them. For that reason, all members of the Caesars Controlled Group were covered by the Expulsion.

13. On February 13, 2015, the NRF Trustees sent certain members of the Caesars Controlled Group a letter informing them of the NRF's determination and assessment of their withdrawal liability—which letter is treated under ERISA as notice to all members of a controlled group.<sup>16</sup> The letter estimated the withdrawal liability in a total amount of \$462,012,305 payable in 80 quarterly installments of \$5,981,493.64 (collectively, the “Quarterly Payments”). Under ERISA, any controlled group member wishing to challenge the assessment of withdrawal liability must initiate arbitration—but must nonetheless make the interim withdrawal liability payments (the Quarterly Payments that come due before the completion of the arbitration process) even as that arbitration proceeds.<sup>17</sup> Failure to both challenge the assessed amount and pay the interim payments during the pendency of the arbitration results in waiver of the right to challenge those amounts. The NRF contends that the first such Quarterly Payment is due March 15, 2015. In February 2015, the Employers (including CEOC's Debtor subsidiaries) sent the NRF contribution checks representing the monthly payments pursuant to their respective CBAs; these contributions have not been accepted by the NRF as of the date hereof.

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<sup>15</sup> Id.

<sup>16</sup> See Trustees v. Central Transport, Inc., 888 F.2d 1161, 1163 (7th Cir. 1989).

<sup>17</sup> To be clear, this Motion is not seeking to ask the Court to rule on otherwise arbitrable matters pursuant to ERISA. Instead, this Motion seeks a ruling from this Court on a non-arbitrable issue that is properly before it, specifically whether the NRF's purported unilateral expulsion of the Caesars Controlled Group was a violation of the automatic stay created by section 362 of the Bankruptcy Code.

14. On December 22, 2014, CEC and Caesars Acquisition Company (“CAC”) entered into an agreement to merge in an all-stock transaction. Among other things, this merger will provide CEC with sufficient cash to fund its obligations to the Debtors as contemplated by the RSA “without the need for any significant outside financing.”<sup>18</sup> Because of the hundreds of millions of dollars in withdrawal liability that the NRF is attempting to impose unlawfully by the purported Expulsion, CEC will have significantly less cash to fund its obligations to CEOC and the other Debtors under the RSA or any other potential restructuring proposal—putting the Debtors’ ability to reorganize at risk. Similarly, the merger between CEC and CAC could be negatively impacted by these increased costs to CEC, which could also adversely affect the ultimate success of the Debtors’ restructuring.

#### Argument

15. Because the NRF and the NRF Trustees expelled CEOC (as well as four of its subsidiaries) after the commencement of the involuntary bankruptcy proceeding against CEOC and with full knowledge thereof and of the automatic stay, it is crystal clear that the NRF and its Trustees have taken action against the debtor (CEOC) and, therefore, such action (the Expulsion) violated the automatic stay. The automatic stay is one of the “fundamental protections” (for both debtors and creditors) provided by the Bankruptcy Code.<sup>19</sup> Indeed, one of the primary purposes of the automatic stay is to prevent “the piecemeal destruction of the debtor’s property.”<sup>20</sup> The automatic stay therefore applies to any action—whether against the debtor or a non-debtor—that is actually an action against the debtor or that would have an adverse impact on the property of

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<sup>18</sup> See Press Release, Caesars Entertainment, Caesars Acquisition Co. Agree to Merge (Dec. 22, 2014), Ex. F to Hackney Decl.

<sup>19</sup> In re Kmart Corp., 285 B.R. 679, 688 (Bankr. N.D. Ill. 2002).

<sup>20</sup> Id.

the bankruptcy estate, as broadly defined under section 541(a).<sup>21</sup> There can be no doubt that NRF's actions are stayed here, and that such actions (including the Expulsion) must therefore be found to be void ab initio.<sup>22</sup>

**I. The NRF Violated the Automatic Stay Because CEOC Was the Real Party in Interest With Respect to the Purported Expulsion.**

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16. The automatic stay enjoins “the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.”<sup>23</sup> Importantly, the scope of section 362(a)(1) is not limited solely to the parties actually named in an action or proceeding, but rather automatically stays any action against the “real party in interest in the matter.”<sup>24</sup>

17. Although the purported Expulsion nominally applied only to the Employers (four of which are CEOC subsidiaries), it is abundantly clear that the real party in interest in the Expulsion was CEOC. As evidenced by the inclusion of CEOC as a party to the Standstill Agreement—which did not include any of CEOC's subsidiaries—it is clear that the NRF has understood all along that CEOC had a direct economic interest in any action that the NRF might take and also that CEOC controlled the actions of its subsidiaries vis-à-vis the NRF. Through

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<sup>21</sup> See In re Klarchek, 508 B.R. 386, 394 (Bankr. N.D. Ill. 2014) (holding that actions are stayed even where the debtor is not named where the debtor is “the real party in interest in the matter”); see also In re Yonikus, 996 F.2d 866, 869 (7th Cir. 1993) (noting that section 541 defines “property of the estate” in the broadest possible terms).

<sup>22</sup> See Richard v. City of Chicago, 80 B.R. 451, 453 (N.D. Ill. 1987) (“Actions taken in violation of an automatic stay are void.”).

<sup>23</sup> 11 U.S.C. § 362(a)(1).

<sup>24</sup> Klarchek, 508 B.R. at 394.

the notion that it was not acting against CEOC, the NRF Trustees styled their actions in such a way as to attempt to avoid the most blatant of violations of the automatic stay. And it is clear that the NRF Trustees recognized this fact by cagily stating that the Expulsion Notices should not be construed as violating the automatic stay. But ignoring the practical reality that the NRF Trustees were in fact taking action directly against CEOC would be to “elevat[e] form over substance.”<sup>25</sup> Thus, the purported Expulsion constituted a violation of the automatic stay under section 362(a)(1).

## **II. The NRF Violated the Automatic Stay Because the Purported Expulsion Exercised Control of Property of the Bankruptcy Estate.**

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18. The automatic stay also applies to “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.”<sup>26</sup> The purpose of the automatic stay is to channel competing claims for a debtor’s assets into a single forum to provide a platform for the debtor’s reorganization.<sup>27</sup> In order to do so, the automatic stay works in conjunction with section 541(a)—which broadly defines property of the estate—to stay all actions or proceedings against the debtor’s property interests that are taken outside of the bankruptcy court.<sup>28</sup> Importantly, as with section 362(a)(1), courts have not restricted

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<sup>25</sup> Klarchek 508 B.R. at 394 (“The protection of the automatic stay extends to any action or proceeding against an interest of the debtor. The scope of this protection is not determined solely by whom a party chose to name in the proceeding, but rather, by who is the party with a real interest.”) (quoting Kaiser Grp. Int’l v. Kaiser Aluminum & Chem. Corp. (In re Kaiser Aluminum Corp., Inc.), 315 B.R. 655, 658 (D. Del. 2004)).

<sup>26</sup> 11 U.S.C. § 362(a)(3).

<sup>27</sup> See Nat’l Tax Credit Partners, L.P. v. Havlik, 20 F.3d 705, 708 (7th Cir. 1994) (holding that the automatic stay “concentrate[s], in a single forum, disputes affecting a debtor’s solvency and continuing operations”); see also Kimbrell v. Brown, 651 F.3d 752, 755 (7th Cir. 2011); SEC v. Brennan, 230 F.3d 65, 71 (2d Cir. 2000) (the automatic stay “centralizes all disputes concerning property of the debtor’s estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas” (internal citations omitted)).

<sup>28</sup> See 11 U.S.C. § 541(a)(1); see also United States v. Whiting Pools, Inc., 462 U.S. 198 204 (1983) (“[T]o facilitate the rehabilitation of the debtor’s business, all the debtor’s property must be included in the reorganization estate.”); In re Yonikus, 996 F.2d 866, 869 (7th Cir. 1993).

section 362(a)(3) “solely to actions against the debtor,” holding that the provision “bars actions against even third-parties that would have an adverse impact on the property of the estate.”<sup>29</sup>

19. Indeed, it is well-established that when a third party takes an action against a non-debtor, that action violates the automatic stay where the non-debtor’s interests are intertwined with those of the debtor.<sup>30</sup> For example, in In re 48th St. Steakhouse, the Second Circuit held that a lease-termination notice send by a landlord to a non-debtor prime tenant, which subleased the premises to the debtor, violated the automatic stay under section 362(a)(3) and was therefore void.<sup>31</sup> The court arrived at this holding after finding, as is the case here, that the non-debtor’s interest was “intertwined” with that of the debtor and the action seeking to terminate the non-debtor’s interest “would inevitably have an adverse impact on the property of the bankruptcy estate.”<sup>32</sup>

20. Similarly, in Adelphia, the bankruptcy court faced a situation in which a third party brought an action against entities that had agreed to purchase debtor assets, which action would have prevented the transaction from closing.<sup>33</sup> The underlying agreement among the debtors and the purchasers had “been years in the making and [was] essential to the maximization of creditor recoveries.”<sup>34</sup> The court ultimately held that the third party’s actions

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<sup>29</sup> Kagan v. Saint Vincents Catholic Med. Ctrs. of N.Y. (In re Saint Vincents Catholic Med. Ctrs. of N.Y.), 449 B.R. 209, 217–18 (S.D.N.Y. 2011).

<sup>30</sup> See In re 48th St. Steakhouse, Inc., 835 F.2d 427 (2d Cir. 1987); Greate Bay Casino Corp. v. Greate Bay Hotel & Casino, Inc., No. CIV. A. 99-1499 (JEI), 1999 WL 378758, at \*5 (D.N.J. June 10, 1999).

<sup>31</sup> 48th St. Steakhouse, Inc., 835 F.2d at 428, 431.

<sup>32</sup> Id. at 431.

<sup>33</sup> In re Adelphia, 345 B.R. at 75.

<sup>34</sup> Id. (emphasis added).

violated section 362(a)(3), which “protected against acts to exercise control over property of the estate ‘without distinction as to the form such interference takes.’”<sup>35</sup>

21. Here, the purported Expulsion by the NRF exercised value-destroying control over property of CEOC’s bankruptcy estate because CEOC’s interests as a participant in the NRF rise and fall with the interests of every other member of the Caesars Controlled Group.<sup>36</sup> The purported Expulsion exposes all 172 of CEOC’s Debtor subsidiaries and numerous other non-Debtor subsidiaries, as well as multiple CEOC and CEC affiliates, to potential liability for withdrawal as members of the Caesars Controlled Group.<sup>37</sup> Moreover, the purported Expulsion, followed by a \$460 million demand also puts at risk CEC’s ability to fund contributions to any plan of reorganization, including one based on the RSA. Much like in Adelphia, the purported Expulsion threatens CEC’s ability to consummate the RSA, and thus directly impacts the property rights of CEOC.

### **III. The Decision of the NRF Trustees to Expel Certain Members of the Caesars Controlled Group In Violation of the Stay Is Void.**

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22. Any “actions taken in violation of the automatic stay are void ab initio.”<sup>38</sup> And although the Seventh Circuit has not definitively followed this rule, “courts in this district generally find that stay violations are void.”<sup>39</sup> Courts have explained that treating actions

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<sup>35</sup> Id. at 87 (quoting In re MCEG Prods., Inc., 133 B.R. 232, 235 (Bankr. C.D. Cal. 1991); see also In re Flabeg Solar US Corp., 499 B.R. 475, 481 (Bankr. W.D. Pa. 2013).

<sup>36</sup> Similar to a party failing to comply with a contract, see In re Broadstripe, LLC, 402 B.R. 646, 656 (Bankr. D. Del. 2009), the action of the NRF Trustees violates the expansive scope of the automatic stay by failing to provide to CEOC the benefit of the bargains the Employers (many directly controlled by CEOC) have with their unions and the NRF, and causing hundreds of millions of dollars of liabilities to CEOC’s estate, therefore diminishing the amount of cash available to CEOC’s stakeholders.

<sup>37</sup> See ERISA § 4001(b).

<sup>38</sup> See Raymark Indus. v. Lai, 973 F.2d 1125, 1132 (3d Cir. 1992).

<sup>39</sup> Klarchek, 508 B.R. at 397–98 (agreeing with recent precedent that “actions taken in violation of the stay are ‘invalid’”) (citing In re Richardson, 497 B.R. 546, 550–51 (Bankr. S.D. Ind. 2013)); see also, e.g., Garcia v.

violating the automatic stay as merely voidable “would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law.”<sup>40</sup> Treating such violations as only voidable would place “the burden of validating the action after the fact squarely on the shoulders of . . . the offended debtor.”<sup>41</sup>

23. A finding that the decision of the NRF Trustees to expel certain members of the Caesars Controlled Group is void is a crucial component of the relief requested herein. Although concurrently herewith the Debtors have also commenced a declaratory action seeking a finding that the Caesars Controlled Group is not currently liable for the Quarterly Payments and moved to enjoin the necessity to make Quarterly Payments by their non-Debtor affiliates, the Expulsion has created the potential for substantial joint and several liability for each member of the Caesars Controlled Group. It has also created a real risk of employee attrition to other unaffiliated and competitor employers that remain contributing members to the NRF. Such actions would be severely detrimental to the Debtors’ estates, and the Debtors therefore respectfully request that the Court also find that the actions of the NRF Trustees are void in their entirety.<sup>42</sup>

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Phoenix Bond & Indem. Co. (In re Garcia), 109 B.R. 335, 340 (N.D. Ill. 1989) (concluding “that the fundamental importance of the automatic stay to the purposes sought to be accomplished by the Bankruptcy Code requires that acts in violation of the automatic stay be void, rather than voidable”).

<sup>40</sup> Garcia, 109 B.R. at 340 (finding that Congress intended actions in violation of the automatic stay to be void rather than merely voidable).

<sup>41</sup> In re Soares, 107 F.3d 969, 976 (1st Cir. 1997); see also In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992) (“If violations of the stay are merely voidable, debtors must spend a considerable amount of time and money policing and litigating creditor actions. If violations are void, however, debtors are afforded better protection and can focus their attention on reorganization.”).

<sup>42</sup> And although CEOC contends that petitioning creditors failed to satisfy the requirements of section 303 of the Bankruptcy Code and that the involuntary case should be dismissed in its entirety, the dismissal of such case will not retroactively remove the applicability of the automatic stay at that time. See 11 U.S.C. § 362(c) (“[T]he stay of any act under [section 362(a)] continues until the . . . time the case is dismissed.”).



#### **IV. The NRF Trustees Willfully Violated the Automatic Stay and Are in Contempt of the Court**

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24. Bankruptcy Rule 9014 permits a party in interest to file a motion for an order of contempt. A willful violation of the automatic stay occurs if the creditor has knowledge of the bankruptcy petition and commits a deliberate act in violation of the stay.<sup>43</sup> Creditors do not need to specifically intend to violate the stay.<sup>44</sup> Willfulness can be found even where a party believes that the actions taken were justified or rightful.<sup>45</sup> Willful violations of the automatic stay may be punished pursuant to the court's civil contempt powers pursuant to section 105(a).<sup>46</sup>

25. As discussed above, the NRF Trustees were aware of the involuntary proceeding and the concomitant automatic stay resulting from it. This is evidenced both by the email sent directly to the NRF Trustees' counsel by CEC's counsel regarding the involuntary proceeding as well as by the NRF Trustees' own mention of the automatic stay in the First Expulsion Notice and the Second Expulsion Notice. Thus, the purported Expulsion was a knowing and willful act intended to affect CEOC's estate.

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<sup>43</sup> Price v. United States (In re Price), 42 F.3d 1068, 1071 (7th Cir. 1994) (finding that the government willfully violated the automatic stay when it declined to intervene to halt automated collection notices).

<sup>44</sup> In re Radcliffe, 563 F.3d 627, 631 (7th Cir. 2009) (“[I]t is sufficient that the creditor takes questionable action despite the awareness of a pending bankruptcy proceeding.”).

<sup>45</sup> In re Sumpter, 171 B.R. 835, 843 (Bankr. N.D. Ill. 1994) (“A violation is willful even if the creditor believed himself justified in taking the actions found violative of the stay.”).

<sup>46</sup> See Paloian v. Grupo Serla S.A. de C.V., 433 B.R. 19, 41 (N.D. Ill. 2010) (“[A] bankruptcy court may punish a violation of the automatic stay pursuant to its civil contempt powers codified in § 105(a.)”; In re Morris Senior Living, LLC, No. 13 C 2064, 2013 WL 5753834, at \*11 (N.D. Ill. Oct. 22, 2013) (noting that a bankruptcy court may use its civil contempt powers under section 105(a) even if no order was issued, as in the case of the automatic stay).

March 6, 2015  
Chicago, Illinois

/s/ Stephen C. Hackney

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

**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., <u>et al.</u> , <sup>1</sup>	)	
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. ___</b>

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**ORDER (I) ENFORCING THE AUTOMATIC  
STAY, (II) VOIDING ACTIONS TAKEN IN VIOLATION OF THE  
AUTOMATIC STAY, (III) FOR CONTEMPT AND SANCTIONS AGAINST THE  
NRF AND THE NRF TRUSTEES, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (a) enforcing the automatic stay with respect to the decision of the NRF Trustees to expel certain entities from the NRF, (b) voiding the Expulsion, (c) holding the NRF and the NRF Trustees in contempt of court and imposing sanctions for willful violations of the automatic stay, and (d) granting related relief, 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. The automatic stay arising under section 362 of the Bankruptcy Code applies to the purported Expulsion, and the purported Expulsion is therefore found to be void ab initio in its entirety.

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein will have the meanings ascribed to them in the Motion.

3. The NRF's assessment and calculation of liability arising out of or relating to the First Expulsion Notice and/or the Second Expulsion Notice hereby is found to be void ab initio.

4. The time to challenge the Quarterly Payment demands or to any other of the Debtors' or any other member of the Caesars Controlled Group's rights under ERISA and the Multiemployer Pension Plan Amendment Act of 1980, as amended, hereby is stayed.

5. The NRF and the NRF Trustees are in civil contempt of the Court.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

Dated: \_\_\_\_\_, 2015  
Chicago, Illinois

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The Honorable A. Benjamin Goldgar  
United States Bankruptcy Judge