NO. 15-3259

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Debtors-Plaintiffs-Appellants,
v.
BOKF, N.A., ET AL., *Defendants-Appellees*.

On Appeal from the United States District Court for the
Northern District of Illinois, Case No. 1:15-cv-06504

DEFENDANTS-APPELLEES' JOINT RESPONSE TO MOTION FOR EXPEDITED ISSUANCE OF THE MANDATE

JONES DAY
Brian J. Murray
Morgan R. Hirst
Michael A. Zuckerman
77 West Wacker Drive
Chicago, IL 60601
(312) 782-3939

James O. Johnston
Counsel of Record
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 489-3939

KELLEY DRYE & WARREN LLP
Eric R. Wilson
David I. Zalman
101 Park Avenue
New York, NY 10178
(212) 808-7800

Counsel for Appellee Wilmington Savings Fund Society, FSB

FOLEY & LARDNER LLP
Mark F. Hebbeln
321 North Clark Street, Suite 2800
Chicago, IL 60654-5313
(312) 832-4500

ARENT FOX LLP
Andrew I. Silfen
Counsel of Record
Mark B. Joachim
1675 Broadway
New York, NY 10019
(212) 484-3900

Jackson D. Toof
1717 K Street, NW
Washington, DC 20006
(202) 857-6000

Counsel for Appellee BOKF, N.A.

(continued)

GRANT & EISENHOFER P.A.
Edmund S. Aronowitz
30 North LaSalle Street, Suite 2350
Chicago, IL 60602
(312) 214-0000

Jay Eisenhofer
Gordon Z. Novod
Counsel of Record
485 Lexington Avenue, 29th Floor
New York, NY 10017
(646) 722-8500

GARDY & NOTIS, LLP
Meagan Farmer
126 East 56th Street, 8th Floor
New York, NY 10022
(212) 905-0509

Counsel for Appellee
Frederick Barton Danner

DRINKER BIDDLE & REATH LLP
James H. Millar
Counsel of Record
Kristin K. Going
Frank F. Velocci
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714
(212) 248-3140

Timothy R. Casey
191 North Wacker Drive, Suite 3700
Chicago, IL 60606
(312) 569-1000

Counsel for Appellees MeehanCombs Global Credit Opportunities Master Fund, LP, Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, and Trilogy Portfolio Company, LLC

The Appellees jointly oppose the motion of the Debtors-Appellants (the "Debtors") for expedited issuance of the mandate.

I. BACKGROUND

The Court issued its Opinion on December 23 and its Final Judgment on December 28. The Opinion and Judgment order a remand to the Bankruptcy Court for reconsideration of whether the injunction requested by the Debtors should issue. Although the Debtors asked the Court to do so, the Opinion and Judgment do not direct the Bankruptcy Court to issue that injunction. "We don't say that the stay sought by CEOC must be granted – that's an issue for the bankruptcy judge to resolve in the first instance." Slip Op. at 9.

The Debtors observe that, "[p]ursuant to the Federal Rules of Appellate Procedure, the mandate currently is scheduled to issue no sooner than January 19, 2016." Mot. ¶ 2 (emphasis added). "Until the mandate issues, the case is 'in' the court of appeals, and any action by the district court is a nullity." *Kusay v. United States*, 62 F.3d 192, (7th Cir. 1995); *see In re Teknek, LLC*, 563 F.3d 639, 650 (7th Cir. 2009) (noting "the ancient stricture that, when a case is on appeal, all lower courts lose jurisdiction over it and related matters"). Accordingly, the case is not now before the Bankruptcy Court, which currently has no jurisdiction to reconsider the Debtors' injunction request.

The Debtors disregarded that fundamental jurisdictional rule by filing an "Emergency Motion" with the Bankruptcy Court, just *seventeen minutes* after the Court issued the Final Judgment, requesting that the Bankruptcy Court

schedule a hearing for January 4, 2016, to "promptly rule on and grant the Debtors' motion for an injunction." *See* Ex. A, at 2.

The Bankruptcy Court denied that request, correctly concluding that, "[u]ntil the mandate issues and is docketed with the bankruptcy court, this court lacks jurisdiction to address the preliminary injunction motion on remand." Mot., Ex. B. Within hours, the Debtors returned to this Court, requesting that the mandate be issued immediately.

II. THERE IS NO CAUSE TO EXPEDITE THE MANDATE

Rule 41(b) of the Federal Rules of Appellate Procedure provides that "[t]he court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, rehearing en banc, or motion for stay of mandate, whichever is later." Fed. R. App. P. 41(b).

The reason for the delay between the judgment and mandate is to give parties the opportunity to seek rehearing. *Western Power Trading Forum v. Federal Energy Regulatory Comm'n*, 245 F.3d 798, 801 (D.C. Cir. 2001) (noting "the normal delays of this court's mandate (for purposes of allowing petitions for rehearing)"). Otherwise, "[h]ow is a district judge to know, when acting in advance of the mandate, whether the court of appeals will modify its judgment on rehearing?" *Kusay*, 62 F.3d at 194.

The bar for an expedited mandate is a high one. *See United States v. Pleau*, 680 F.3d 1, 22 (1st Cir. 2012) (denying request to expedite mandate even where "the government has legitimate reasons for its motion" and "[a]

petition for rehearing would plainly be fruitless"). Indeed, because Rule 41(b) is designed to preserve the ability to seek rehearing, courts typically expedite the mandate only on request of an aggrieved party that surrenders its right to petition for further review of a panel opinion. *See Kusay*, 62 F.3d at 194-95 ("If the *losing* party does not seek rehearing and wants the case to proceed with dispatch, it may ask the court of appeals to issue the mandate before its scheduled date.") (emphasis added).

The Debtors have shown no reason to deviate from the normal course here. One or more of the Appellees currently intend to petition the Court for rehearing *en banc*. Among other things, the Appellees respectfully submit that the panel's Opinion cannot be reconciled with the Court's prior decision in *Teknek*, which the Bankruptcy and District Courts applied to prohibit the injunctive relief the Debtors requested. Rehearing is necessary to secure and maintain uniformity of the Court's decisions.

Moreover, the Debtors already have argued that the Opinion effectively jettisoned traditional standards for injunctive relief in federal courts and created a brand-new, bankruptcy-specific rule that, they claim, dispenses with any balancing of harms, any consideration of prejudice to the potentially-enjoined defendant, and any assessment of prospects for success on the merits of the underlying action. Ex. A, at ¶¶ 2-3, 18; *see* Mot. ¶¶ 4-5. If the Debtors' interpretation is correct (the Appellees do not believe that it is), the Opinion would put the Court at odds with all of the other circuits and create a circuit-split where none existed previously.

By requesting an expedited mandate, the Debtors seek to deprive the Appellees of the opportunity to address these issues with the Court. At the same time, the Debtors identify no legitimate countervailing harm that would be ameliorated by an expedited mandate. The *only* "harm" the Debtors cite is the fact that their controlling corporate parent, CEC, "faces imminent potentially case-dispositive summary judgment rulings in the guaranty lawsuits." Mot. ¶ 6.

But a finding that CEC is liable on contractual guarantees it executed in favor of the Appellees poses no threat to the Debtors' reorganization. As District Judge Scheindlin previously recognized, "the possible entry of judgment of liability[] would not be detrimental to the bankruptcy case. One reason this is true is that permitting a litigant to proceed to a judgment of liability is not the same thing as permitting that litigant to collect on a judgment." *See* Ex. B., at 4 n.4. Indeed, a determination of whether CEC is liable on its guarantees (distinguished from CEC's satisfaction of such liability) is a critical component of the "information [parties] need to have a clear shot at negotiating an overall settlement of what amounts to a three-cornered battle among CEC, its direct creditors via CEC's guaranties to them, and CEOC's creditors." Slip Op. at 5. So long as CEC disclaims liability on the guarantees, the "overall settlement" the Debtors say they want will remain out of reach.

As the Court noted in the Opinion, the only plausible harm the Debtors might suffer will occur if, but only if, "CEC is drained of capital by the lenders' suits to enforce the guarantees that CEC had given to them," resulting in "that

much less money for CEOC's creditors in the bankruptcy proceeding." *Id.* However, even if, as the Debtors fear, summary judgment against CEC is entered "imminently," CEC will retain *all* of its assets and *none* of its capital will be drained in the near term. And if, as the Debtors assert, CEC is insolvent and "likely will file for bankruptcy if it suffers an adverse judgment in any of the guaranty actions," the automatic stay under section 362 of the Bankruptcy Code would prevent the Appellees from collecting on their judgments outside of the bankruptcy process or from rendering the judgments against CEC "effectively final," as the Debtors claim. Mot. ¶ 12.

In any event, CEC already has notified District Judge Scheindlin of the Court's Opinion and has requested that the District Court "defer issuing any decision on the pending motions for summary judgment until the Bankruptcy Court acts on a request by the Debtors for an injunction temporarily enjoining plaintiffs here from proceedings with these litigations." *See* Ex. C, at 1, 3.

Accordingly, there is no valid emergency that would warrant depriving the Appellees of the opportunity to seek rehearing of the Opinion. This is particularly true given that three of the four guarantee actions at issue here have been pending for more than a year, the Debtors' bankruptcy cases have been pending for nearly a year, and the Debtors did not seek an injunction until more than two months after the bankruptcy petition date. In fact, the Debtors declined the Bankruptcy Court's offer to hold an immediate trial and opted instead to wait over two more months to have their purportedly-urgent request for an injunction adjudicated. *See* ECF 22 at 3-5.

III. CONCLUSION

There is no cause to expedite issuance of the mandate. The Appellees respectfully request that the Court deny the Motion.

Respectfully submitted,

December 29, 2015

JONES DAY

By: /s/ James O. Johnston
Brian J. Murray
Morgan R. Hirst
Michael A. Zuckerman
77 West Wacker Drive
Chicago, IL 60601
(312) 782-3939

James O. Johnston
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 489-3939

KELLEY DRYE & WARREN LLP
Eric R. Wilson
David I. Zalman
101 Park Avenue
New York, NY 10178
(212) 808-7800

Counsel for Appellee Wilmington Savings Fund Society, FSB

FOLEY & LARDNER LLP

By: /s/ Mark F. Hebbeln
Mark F. Hebbeln
321 North Clark Street, Suite 2800
Chicago, IL 60654-5313
(312) 832-4500

ARENT FOX LLP
Andrew I. Silfen
Mark B. Joachim
1675 Broadway
New York, NY 10019
(212) 484-3900

Jackson D. Toof
1717 K Street, NW
Washington, DC 20006
(202) 857-6000

Counsel for Appellee BOKF, N.A.

(continued)

GRANT & EISENHOFER P.A.

By: /s/ Gordon Z. Novod
Edmund S. Aronowitz
30 North LaSalle Street, Suite 2350
Chicago, IL 60602
(312) 214-0000

Jay Eisenhofer
Gordon Z. Novod
485 Lexington Avenue, 29th Floor
New York, NY 10017
(646) 722-8500

GARDY & NOTIS, LLP
Meagan Farmer
126 East 56th Street, 8th Fl.
New York, NY 10022
(212) 905-0509

Counsel for Appellee Frederick Barton Danner

DRINKER BIDDLE & REATH LLP

By: /s/ James H. Millar
James H. Millar
Kristin K. Going
Frank F. Velocci
1177 Avenue of the Americas, 41st Fl.
New York, NY 10036-2714
(212) 248-3140

Timothy R. Casey
191 North Wacker Drive, Suite 3700
Chicago, IL 60606

Counsel for Appellees MeehanCombs Global Credit Opportunities Master Fund, LP, Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, and Trilogy Portfolio Company, LLC

EXHIBIT A

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
v.	**Hearing Date: _____**
BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, MEEHANCOMBS GLOBAL CREDIT OPPORTUNITIES MASTER FUND, LP, RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA MASTER FUND, LTD., TRILOGY PORTFOLIO COMPANY, LLC, and FREDERICK BARTON DANNER,	
Defendants.	

DEBTORS' NOTICE OF OPINION FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND MOTION FOR EMERGENCY REQUEST FOR RULING

[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 Local Rule 9013-1(I), the Debtors hereby respectfully request that the Court promptly rule on and grant the Debtors' motion for an injunction temporarily enjoining Defendants from prosecuting their guaranty claims against the Debtors' ultimate parent Caesars Entertainment Corporation ("CEC"). In support thereof, the Debtors respectfully state as follows:

1. On December 23, the United States Court of Appeals for the Seventh Circuit issued an opinion vacating the denial of the injunction requested by the Debtors in the above-captioned adversary proceeding and remanding the case to this Court to determine whether to issue the injunction under the appropriate legal standard. *See CEOC v. BOKF, N.A.*, Case No. 15-3259 [Dkt. 46] ("Slip Op.") at 9.[2]

2. The Seventh Circuit concluded that this Court and the District Court read Bankruptcy Code section 105(a) too narrowly in holding that only a lawsuit arising from the "same acts" of the non-debtor that gave rise to the disputes in the bankruptcy proceeding may be enjoined under the statute. *Id.* at 4, 9. Instead, section 105(a) grants "broad" and "extensive equitable powers that bankruptcy courts need in order to be able to perform their statutory duties." *Id.* at 3, 4. Thus, the proper statutory inquiry under section 105(a) is whether the requested injunction is "likely to enhance the prospects for a successful resolution of the disputes" related to the bankruptcy and whether "its denial will thus endanger the success of the bankruptcy proceedings." *Id.* at 4. If the answer to these questions is yes, "the grant of the injunction would, in the language of section 105(a), be 'appropriate to carry out the provisions' of the Bankruptcy Code, since successful resolution of disputes arising in bankruptcy proceedings is one of the Code's central objectives." *Id.* at 4–5.

[2] A copy of the Slip Opinion is attached as Exhibit B for the Court's convenience.

3. While reserving any factual questions for this Court, the Seventh Circuit recognized that the interests of CEOC's creditors in the chapter 11 cases "would be furthered by a temporary injunction staying the lenders' lawsuits against CEC." *Id.* at 5. If guarantor liability were imposed on CEC, "CEC's ability to satisfy CEOC's fraudulent-conveyance claims against it—and thus pay other creditors—would be impaired." *Id.* at 8–9. The Seventh Circuit further recognized that "the issuance of a temporary injunction against a class of creditors could well facilitate a prompt and orderly wind-up of" what Judge Posner described as "an immense, and immensely complicated, bankruptcy proceeding." *Id.* at 1, 7. If freezing the guaranty litigation for 60 days following the issuance of the Examiner report would give the Debtors' stakeholders a "clear shot at negotiating an overall settlement of what amounts to a three-cornered battle" among CEC, the guaranty plaintiffs (which are the Defendants here), and CEOC's other creditors, the Seventh Circuit concluded "there is nothing in section 105(a) to bar the order sought by CEOC." *Id.* at 5–6.

4. Given the Seventh Circuit's opinion and the fact that CEC faces imminent potentially case-dispositive summary judgment rulings in the guaranty lawsuits, the Debtors respectfully request that the Court immediately rule on the Debtors' motion and enter the requested injunction. The Court already recognized that the Debtors' motion presented a "familiar"—indeed, "textbook"—pattern for which section 105(a) relief is frequently granted. Mem. Op. [Dkt. 158] ("Op.") at 28. The Court likewise acknowledged that "courts have often issued section 105(a) injunctions to halt actions of the kind and under the circumstances the debtors describe," and "[i]n some cases, the mere possibility that the action could impair the non-debtor's financial support of the debtor's reorganization was enough to warrant relief." *Id.*

at 27–28 (citing cases). But the Court held that no relief was possible because the Seventh Circuit imposed a "same acts" requirement that the Debtors could not satisfy here. *Id.* at 28.

5. The Seventh Circuit has now confirmed that there is no "same acts" requirement. Slip. Op. at 4. It also found that this Court's "exercise of jurisdiction over the [guaranty suits] would have been constitutional." *Id.* at 3. Thus, the only questions remaining for this Court on remand are "whether the injunction sought by CEOC is likely to enhance the prospects for a successful resolution of the disputes attending to its bankruptcy" and whether denying the requested relief "will thus endanger the success of the bankruptcy proceedings." *Id.* at 4. The answers to these questions—based on a mountain of undisputed evidence that the Debtors presented at trial—are yes.

6. Nothing has changed since the Debtors established at trial that an injunction is necessary to provide the Debtors with an opportunity to resolve the numerous, complex disputes plaguing the Debtors' restructuring and to avoid endangering the success of the restructuring process. Given the extensive evidence presented on these issues, the Court can now render a decision on remand based on the trial record.

7. As established at trial, the Debtors have two principal assets around which to reorganize: an operating business and estate claims against CEC. June 3 Tr. 35:14–36:2, 43:20–45:3 (Millstein). CEC has agreed to make substantial contributions, both direct financial contributions and credit support for a value-maximizing REIT structure and securities that will be distributed to creditors under a plan, to the Debtors' restructuring to settle the estate's claims against CEC. *Id.* at 36:3–14, 40:10–14 (Millstein). CEC's financial advisor valued CEC's contribution at a minimum of $2.3 to $2.5 billion. *Id.* at 193:2–195:1 (Zelin). The Debtors' former financial advisor, Perella Weinberg, valued it at a minimum of $1.5 billion. *Id.* at 79:21–

80:2, 97:5–8 (Millstein). CEOC's current financial advisor, Millstein & Co., was still in the process of valuing the contributions at the time of trial but confirmed they were "substantial." *Id.* at 40:15–41:22.

8. A subset of CEOC's creditors, however, has been aggressively seeking judgments against CEC in lawsuits outside of this bankruptcy case to recover $11 billion in alleged guaranty claims, including a lawsuit that the first lien trustee filed after trial seeking more than $6 billion. *Id.* at 49:17–50:23 (Millstein), 207:2–208:2 (Zelin); *see also* Compl., *UMB Bank, N.A. v. Caesars Entm't Corp.*, No. 1:15-cv-04634-SAS (S.D.N.Y. 2015).[3] These lawsuits threaten to render CEC insolvent and prevent the Debtors from recovering *any* assets from CEC. Indeed, it is undisputed that both the Debtors' estate claims and these creditors' guaranty claims seek to recover from the same limited pool of assets from the same entity (CEC). *See* June 3 Tr. 69:24–70:7, 128:25–129:15, 143:24–144:4 (Millstein); June 4 Tr. 308:9–13 (Lyon). It is likewise undisputed that CEC lacks the ability to both satisfy the guaranty claims and make any meaningful contribution to the estate on account of the estate's claims. *See* June 3 Tr. 49:17–51:22 (Millstein), 207:11–208:2 (Zelin); DX 78.

9. Nor can there be a dispute that the guaranty litigation threatens the Debtors' reorganization. Litigation that could eliminate the Debtors' ability to recover on one of their principal estate assets diminishes their ability to efficiently reorganize and maximize creditor recoveries. As part of a Restructuring Support Agreement ("RSA"), the Debtors have negotiated substantial contributions from CEC on account of estate claims. June 3 Tr. 36:3–14, 40:10–14

[3] The Debtors previously asked the Court to take judicial notice of this post-trial complaint. *See* Dkt. 150. The Court found that it can take judicial notice of the records of other courts in related matters. Op. at 13 n.11, citing *Bank of Commerce & Trust Co. v. Strauss (In re Strauss)*, 523 B.R. 614, 623 n.7 (Bankr. N.D. Ill. 2014). A copy of the UMB complaint is attached as Exhibit C.

(Millstein). Although the Debtors believe the RSA framework is the right blueprint for a value maximizing plan, the Debtors' ability to formulate *any* plan of reorganization heavily depends on their ability to recover against CEC on account of estate claims. *Id.* at 44:16–45:3 (Millstein). CEC, however, has publicly disclosed that "were a court to find in favor of the claimants in any of these Noteholder Disputes, such determination could have a material adverse effect on our business, financial condition, results of operations, and cash flows. Accordingly, we have concluded that the material uncertainty related to certain of the Litigation proceeding against CEC raises substantial doubt about the Company's ability to continue as a going concern…." PX 34 (CEC 10-Q, May 11, 2015) at 8. This language is shorthand that CEC itself will file for bankruptcy if a court finds in favor of the guaranty claimants in any of their cases. June 3 Tr. 53:9–55:24 (Millstein). Simply put, an adverse decision in the guaranty litigation would materially diminish CEC's ability to fund and otherwise support the Debtors' restructuring, rendering moot the Debtors' chapter 11 plan (predicated on the RSA) currently on file and putting the Debtors back at square one in their efforts to reorganize.

10. Consistent with the evidence at trial, the guaranty actions are on a trajectory that continues to directly threaten the Debtors' reorganization. At the time of trial, both courts hearing the guaranty litigation had denied CEC's motions to dismiss. *See* DX 69 (MeehanCombs Op.) at *5 ("[T]he Complaint's plausible allegations that the August 2014 Transaction stripped plaintiffs of the valuable CEC Guarantees leaving them with an empty right to assert a payment default from an insolvent issuer are sufficient to state a claim under section 316(b)."); *see also* DX 70 (WSFS Op.). Judge Scheindlin also had permitted Defendant BOKF to seek early summary judgment on an expedited schedule, even before discovery concluded and over CEC's objection that material factual disputes precluded summary judgment. *See* DX 136

(May 28, 2015 Order) at 3. She reasoned that "I will not limit BOKF from attempting to vindicate noteholders' rights under non-bankruptcy law." *Id.* Shortly after trial, the District Court also permitted UMB to file early summary judgment. June 19, 2015 Order, Case No. 1:15-cv-01561-SAS [Dkt. 27] at 5.[4]

11. On August 27, Judge Scheindlin denied the expedited motions for summary judgment filed by BOKF and UMB. Op. and Order, Case No. 1:15-cv-01561-SAS [Dkt. 54].[5] She found that there were disputed factual issues as to whether CEC violated the Trust Indenture Act by stripping the guaranties as part of an out-of-court restructuring without the consent of the noteholders. *Id.* at 32–33.

12. On November 20, BOKF and UMB filed another motion for summary judgment on the grounds that CEC's sale of five percent of CEOC's stock in May 2014 and CEOC's grant of six percent of its stock in June 2014 to certain directors and officers was not sufficient to release the guaranties as a matter of law under the plain language of the indentures. *See* Mem. in Supp. of Mot. for Summ. J., Case No. 1:15-cv-04634-SAS [Dkt. 69] at 1, 3.[6] BOKF and UMB argue the word "and" between the subparts of the guaranty release provision requires that all three subparts must occur for the guaranty to be released. They assert that because CEC admits two of the subparts have not been satisfied, the guaranty remains in place. *Id.* at 2–3. Judge Scheindlin previously indicated that the contractual interpretation issue raised by BOKF's and UMB's latest summary judgment motion may be dispositive. Op. and Order, Case No. 1:15-cv-

---

[4] As it previously held, this Court can take judicial notice of the records of other courts in related matters. Op. at 13 n.11. A copy of the June 19 order is attached as Exhibit D.

[5] A copy of Judge Scheindlin's August 27 opinion is attached as Exhibit E.

[6] A copy of UMB's and BOKF's joint Memorandum in Support of Summary Judgment is attached as Exhibit F.

04634-SAS [Dkt. 54] at 38 ("It may be that the contract interpretation issue related to the release provision—which the parties have not briefed for this motion—will be dispositive."). The motion has been fully briefed since December 11 and Judge Scheindlin may rule any day. If CEC survives summary judgment, the case is set for a two-week jury trial beginning March 14, 2016. 11/10/15 Status Conference Tr. at 20.[7]

13. MeehanCombs and Danner likewise have moved for summary judgment on certain of their claims. They argue that because the Senior Unsecured Notes Transaction in August 2014 (*see* Op. at 10–11) removed CEC's guaranty without their consent, it violated the Trust Indenture Act, and breached the indentures as a matter of law. MeehanCombs Mem. in Supp. of Mot. for Summ. J., Case No. 1:14-CV-07091-SAS [Dkt. 67] at 9–10;[8] Danner Mem. in Supp. of Mot. for Summ. J., Case No. 1:14-cv-07973-SAS [Dkt. 61] at 1.[9] These motions have been fully briefed since December 2. If CEC survives summary judgment, trial on these claims is set for May 9, 2016. 11/10/15 Status Conference Tr. at 34.

14. Given the imminent rulings on the potentially case-dispositive summary judgment motions and upcoming trial settings, the first of the guaranty claims can be decided any day, and will be decided no later than late March 2016. Both CEC's and the Debtors' financial advisors testified at trial that, because the language of the guaranties is very similar (and in some cases identical), CEC likely will file for bankruptcy if it suffers an adverse judgment in any of the guaranty actions. CEC lacks the financial wherewithal to post an appeal bond on a multi-billion

[7] A copy of the transcript from Judge Scheindlin's November 10 status conference, during which she set trial dates for both of the guaranty actions, is attached as Exhibit G.

[8] A copy of MeehanComb's Memorandum in Support of Summary Judgment is attached as Exhibit H.

[9] A copy of the Danner Plaintiff's Memorandum in Support of Summary Judgment is attached as Exhibit I.

dollar judgment, meaning that any such judgment entered against it—even with respect to a liability finding only—would be effectively final. June 3 Tr. 49:17–51:22, 53:9–56:22, 115:12–116:7, 138:21–139:11 (Millstein); *see also id.* at 204:17–205:13, 208:3–21, 209:10–17 (Zelin); June 4 Tr. 131:2–132:2 (Zelin).

15. The requested injunction would preserve, at least in the interim, CEC's ability to participate in the Debtors' restructuring and provide a path forward to a consensual resolution of these bankruptcy cases in the first half of 2016. The injunction would provide a brief—yet critical—60-day window following the issuance of the Examiner report for the Debtors and other parties in interest to try to reach a consensual, value-maximizing plan that contains significant funding contributions and credit support from CEC. June 3 Tr. 71:15–72:14 (Millstein), 212:4–214:4 (Zelin), 191:14–21 (Eisenberg). To accomplish this, the Debtors need to ensure that the entity from which they seek to extract these contributions (CEC) has the resources and value to fund them. A temporary stay will funnel to the reorganization process all of the claims that relate to the estate, providing the parties with a strong incentive to reach a consensual resolution in the chapter 11 case. *Id.* at 72:15–73:8 (Millstein). And extending that stay until 60 days after the Examiner issues his final report will allow the parties to attempt to complete those negotiations armed with important and objective reference points about the estate's and guaranty claims to the same assets. The alternative—a potential CEC chapter 11 filing—would at a minimum substantially delay any hope for a prompt resolution of the numerous disputes related to the chapter 11 cases, dramatically change total creditor and inter-class recoveries, increase professional costs, and leave this Court to sort out one of the great "messes of our time." *Id.* at 56:23–57:9, 59:8–14 (Millstein). In short, there is little to lose and nearly everything to gain by

enjoining Defendants from proceeding in the guaranty litigation until 60 days after the Examiner issues his final report.

16. At a minimum, the Court should enter a temporary injunction staying the guaranty litigation pending resolution of the Debtors' motion for injunctive relief. As set forth above, no additional evidence is necessary for this Court to decide the motion for an injunction (other than the limited undisputed procedural facts about the status of the guaranty litigation, of which the Court can take judicial notice). If for whatever reason the Court determines it cannot resolve the motion on the existing record, however, the Court should grant temporary injunctive relief until it conducts whatever additional proceedings it deems necessary. *See, e.g.*, *Interstate Commerce Comm'n v. Cardinale Trucking Corp.*, 308 F.2d 435, 438 (3d Cir. 1962) (vacating denial of plaintiff's request for injunctive relief and directing district court to issue a temporary restraining order pending disposition of the issues on remand); *Doctor's Assocs., Inc. v. Distajo*, 944 F. Supp. 1007, 1008, 1010 (D. Conn. 1996) (enjoining 16 franchisee state court lawsuits until federal court decided issues on remand regarding franchisor's motion to compel arbitration under franchise agreements).

17. Here, the Debtors' evidence regarding the status of their reorganization at the time of trial easily establishes a reasonable likelihood of successfully reorganizing assuming the guaranty lawsuits are stayed. As defense expert Grant Lyons conceded, the Debtors have a strong operating company. June 4 Tr. 320:17–321:20. In fact, the Debtors have approximately $1 billion of EBITDA and substantial free cash flow after capital expenditures. June 3 Tr. 60:12–61:19 (Millstein); *see also* PX 84. The Debtors also have a "diversified footprint of casinos across a number of states," a strong brand name, and an iconic presence in Las Vegas. June 4 Tr. 321:3–10 (Lyon). The Debtors' principal problem is a highly-levered balance sheet—

a problem chapter 11 is well suited to solve. *Id.* at 322:14–19; June 3 Tr. 60:12–61:19 (Millstein). At the time of the trial, the Debtors had made significant progress in these chapter 11 cases. Among other things, the Debtors at the time of trial had reached agreement with a large majority of CEOC's first lien noteholders and CEC on the economic terms of a restructuring as set forth in the RSA, obtained essential first-day relief, negotiated for the long-term use of cash collateral, moved for the appointment of an examiner who is investigating a series of disputed transactions, announced a market test, and obtained a six-month extension of exclusivity. June 3 Tr. 48:6–9, 63:1–12, 98:19–25 (Millstein); PX 84; Dkt. Nos. 988, 992, 1690.

18. And, although not necessary for injunctive relief under section 105, the irreparable harm to the Debtors is clear. Should the guaranty litigation result in an adverse decision forcing CEC to file for chapter 11 while this Court is deciding the issues on remand from the Seventh Circuit, it will severely impair the Debtors' ability to reorganize in the near term. Given the Seventh Circuit's opinion, as well as the existing evidentiary record, the Debtors' motion should ultimately be granted; allowing the very harm an injunction was intended to prevent to occur while the Debtors' motion is on remand would be unjust. By contrast, Defendants will lose nothing if the Court issues a temporary injunction while resolving the Debtors' request, other than their ability to prosecute the guaranty litigation for the brief amount of time it will take the Court to decide the issues on remand.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: December 28, 2015
Chicago, Illinois

/s/ Jeffrey J. Zeiger, P.C.

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

- and -

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

Counsel to the Debtors and Debtors in Possession

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
v.	
BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, MEEHANCOMBS GLOBAL CREDIT OPPORTUNITIES MASTER FUND, LP, RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA MASTER FUND, LTD., TRILOGY PORTFOLIO COMPANY, LLC, and FREDERICK BARTON DANNER,	
Defendants.	**Re: Docket No. ___**

ORDER GRANTING DEBTORS' MOTION TO STAY, OR IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF ENJOINING, PROSECUTION OF CERTAIN PENDING LITIGATION AGAINST DEBTORS' DIRECTORS AND NON-DEBTOR AFFILIATES

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

[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.

continued prosecution of four lawsuits in two federal and state courts between holders of the Debtors' second lien or unsecured debt or trustees representing them and the Debtors' affiliates (the "Actions"), 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 Actions are hereby enjoined in their entirety pursuant to section 105(a) of the Bankruptcy Code until further order of this Court.

Dated: _____, 2016
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOKF, N.A. ***solely in its capacity as successor Indenture Trustee for the 12.75% Second-Priority Senior Secured Notes due 2018,***

Plaintiff,

-against-

CAESARS ENTERTAINMENT CORPORATION,

Defendant.

ORDER

15-cv-1561(SAS)

UMB BANK, N.A. ***solely in its capacity as Indenture Trustee under those certain indentures, dated as of June 10, 2009, governing Caesars Entertainment Operating Company, Inc.'s 11.25% Notes due 2017; dated as of February 14, 2012, governing Caesars Entertainment Operating Company, Inc.'s 8.5% Senior Secured Notes due 2020; dated August 22, 2012, governing Caesars Entertainment Operating Company, Inc.'s 9% Senior Secured Notes due 2020; dated February 15, 2013, governing Caesars Entertainment Operating Company, Inc.'s 9% Senior Secured Notes due 2020,***

Plaintiff,

-against-

CAESARS ENTERTAINMENT CORPORATION,

Defendant.

ORDER

15-cv-4634(SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

In these related actions, two Indenture Trustees under different Indentures, BOKF, N.A. ("BOKF") and UMB Bank, N.A. ("UMB"), seek to enforce guarantees made by non-debtor Caesars Entertainment Corporation's ("CEC") for notes issued by Caesars Entertainment Operating Company ("CEOC"), which is now a debtor in a chapter 11 case pending in the Northern District of Illinois Bankruptcy Court (the "Bankruptcy Court").

BOKF filed its action on March 3, 2015, and fact discovery closes on August 31, 2015. On May 29, pursuant to Part IV.A. of my Individual Rules and Procedures, BOKF sought a pre-motion conference on a motion for partial summary judgment for a declaratory judgment that CEC's elimination of the guarantee violated section 316(b) of the Trust Indenture Act. A pre-motion conference was held on May 26, 2015, at which CEC argued that there were genuine disputes of material fact precluding summary judgment,[1] and, moreover, requested that I defer consideration of BOKF's application based on an adversary proceeding in the Bankruptcy Court seeking to enjoin all actions against CEC (the "Adversary Proceeding").

---

[1] CEC also noted that plaintiffs in two related cases pending before this Court have opted to wait until the close of discovery before making dispositive motions. *See MeehanCombs Global Credit Opportunities Master Fund, LP et al. v. Caesars Entertainment Corporation*, No. 14-cv-07091 and *Danner v. Caesars Entertainment Corporation*, No. 14-cv-07973.

While district courts generally cannot prevent a litigant from making a motion allowed by the Federal Rules of Civil Procedure,[2] they do have the inherent power to control the timing of the motion or its disposition.[3] Thus, pre-motion conferences are useful tools to narrow the issues and to determine the appropriate time for the motion, and in those instances where it appears clear from the record that a motion is without merit, to attempt to persuade parties not to make the motion.

On May 28, I entered an order (the "Scheduling Order") in which I noted that "[i]t may well be that genuine issues of material fact preclude the relief BOKF seeks or that it would be better served by waiting until the conclusion of fact discovery to make its motion. The Court will be in a better position to make that determination after reviewing the parties' submissions." However, I did not see a reason to *defer consideration* of the application to make the motion on the possibility that at some future time the Bankruptcy Court might issue some form of

---

[2] *See* Fed. R. Civ. P. 56(b) ("[A] party may file a motion for summary judgment at any time until 30 days after the close of all discovery.").

[3] *See, e.g.*, *In re Zyprexa Prods. Liab. Litig.*, 594 F.3d 113, 127 (2d Cir. 2010 (explaining that "district courts have broad scope to manage their own dockets in light of considerations of 'economy of time and effort for itself, for counsel, and for litigants'" (quoting *Landis v. North America Co.*, 299 U.S. 248, 57 (1936)).

injunction.[4] Accordingly, I set the following schedule: BOKF had until today, June 19, to file its motion, CEC had three weeks to respond, and BOKF had two weeks to reply. On June 4, the Bankruptcy Court concluded hearings in the Adversary Proceeding, directed that post-trial briefs be filed by June 26, and stated that a ruling would be issued on or before July 22.

On June 15, 2015, UMB commenced its action against CEC. The next day, it requested permission to file a motion for partial summary judgment on the same legal grounds asserted by BOKF, indicating it could do so one week after BOKF filed its motion. On June 17, CEC responded that while it maintains its prior objections, in the interests of judicial economy it, proposed the following schedule: both motions by June 26, 2015, responsive papers by July 24, and replies by August 7. On June 18, BOKF filed a letter "opposing any change . . . that would delay resolution of the legal issue involved in BOKF's motion."

On consideration of the foregoing, the schedule proposed by CEC is

---

[4] I explained in the Scheduling Order that "enjoining actions against non-debtors occurs only rarely, in unusual or extraordinary circumstances, and after consideration of both equitable and non-equitable factors," and that in my view the BOKF "case raises significant issues under a federal statute which necessarily impact the relationship between issuers and noteholders *outside of* the bankruptcy context." I also suggested that continuing with the BOKF litigation, and even the possible entry of judgment of liability, would not be detrimental to the bankruptcy case. One reason this is true is that permitting a litigant to proceed to a judgment of liability is not the same thing as permitting that litigant to collect on a judgment.

acceptable to the Court.[5] Both motions are due on June 26, 2015, responsive papers are due by July 24, and replies are due by August 7. BOKF and UMB can also opt not to make the proposed motions and instead wait until the close of discovery.[6]

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
June 19, 2015

---

[5] While the parties may be racing against a possible stay of this action, this Court is not. The Bankruptcy Court did not set its ruling date until after I issued the Scheduling Order, and thus whether or not BOKF files its motion today (and UMB files later), the Bankruptcy Court will almost certainly be issuing its ruling prior to any ruling on the motions for partial summary judgment.

[6] Because UMB's case was filed on Monday June 15, a Rule 16(b) conference has not been held and a scheduling order setting a discovery cutoff has not been entered. The parties in these related cases should confer and inform the Court whether UMB will be proceeding in accordance with the scheduling order that is currently in place for these cases.

- Appearances -

For Plaintiff BOKF, N.A.:

Mark Joachim, Esq.
Andrew Silfen, Esq.
Jackson Toof, Esq.
Arent Fox LLP (New York)
1675 Broadway
New York, NY 10019
(212) 484-3929

For Plaintiff UMB Bank, N.A.:

David Andrew Crichlow, Sr., Esq.
Rebecca Kinburn, Esq.
Karen B. Dine, Esq.
Katten Muchin Rosenman, LLP
575 Madison Avenue
New York, NY 10022
(212) 940-8800

For Defendant Caesars Entertainment Corporation:

Lewis R. Clayton, Esq.
Ankush Khardori, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

Eric Seiler, Esq.
Jason Rubinstein, Esq.
Friedman Kaplan Seiler & Adelman LLP
7 Times Square
New York, NY 10036
(212) 833-1100

EXHIBIT C

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1946-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

UNIT 3601, OFFICE TOWER A, BEIJING FORTUNE PLAZA
NO. 7 DONGSANHUAN ZHONGLU
CHAOYANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER
212-373-3215

WRITER'S DIRECT FACSIMILE
212-492-0215

WRITER'S DIRECT E-MAIL ADDRESS
lclayton@paulweiss.com

December 28, 2015

By ECF and Hand Delivery

The Honorable Shira A. Scheindlin
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

MeehanCombs Global Credit Opportunities Master Fund, LP, et al., v. *Caesars Entm't Corp., et al.*, No. 14 Civ. 7091 (SAS)

Danner v. *Caesars Entm't Corp., et al.*, No. 14 Civ. 7973 (SAS)

BOKF, N.A. v. *Caesars Entm't Corp.*, No. 15 Civ. 1561 (SAS)

UMB Bank, N.A. v. *Caesars Entm't Corp.*, No. 15 Civ. 04634 (SAS)

Dear Judge Scheindlin:

I write on behalf of defendant Caesars Entertainment Corp. ("CEC") to advise the Court of two recent developments in the bankruptcy proceedings involving Caesars Entertainment Operating Co., Inc. and certain of its subsidiaries ("Debtors") relevant to the matters pending before this Court, and respectfully to request that the Court defer issuing any decision on the pending motions for summary judgment until the Bankruptcy Court acts on a request by the Debtors for an injunction temporarily enjoining plaintiffs here from proceeding with these litigations.

First, on December 23, 2015, the U.S. Court of Appeals for the Seventh Circuit issued an opinion vacating the Bankruptcy Court's order denying the Debtors' motion for a temporary injunction enjoining plaintiffs here from prosecuting the guarantee claims asserted in these matters, and remanded the case to the Bankruptcy Court for further proceedings. *CEOC* v. *BOKF, N.A.*, Case No. 15-3259 (Ex. A hereto). The Seventh Circuit, in an opinion by Judge Posner, concluded that the Bankruptcy Court read Bankruptcy Code section 105(a) too narrowly in holding that only a lawsuit arising from the "same acts" of the non-debtor that gave rise to the disputes in the bankruptcy proceeding may be enjoined under the statute. *Id.* at 4, 9. Instead, the court held, section 105(a) grants bankruptcy courts "extensive equitable powers" to enter injunctions where doing so is "likely to enhance the prospects for a successful resolution of the

disputes" in bankruptcy and where denial will "endanger the success of the bankruptcy proceedings." *Id.* at 4.

While reserving any factual questions for the Bankruptcy Court, the Court of Appeals recognized that the interests of the creditors in what it characterized as "an immense, and immensely complicated" bankruptcy case "would be furthered by a temporary injunction staying the lenders' lawsuits against CEC." *Id.* at 1, 5. The court reasoned:

> If before CEOC's bankruptcy is wound up CEC is drained of capital by the lenders' suits to enforce the guaranties that CEC had given them, there will be that much less money for CEOC's creditors to recover in the bankruptcy proceeding. … The less capital CEC has for CEOC to recapture through prosecution or settlement of its fraudulent-transfer claims, the less money its creditors will receive in the bankruptcy proceeding. Those creditors, and CEOC as their debtor, thus have a direct and substantial interest in the litigation between CEC and the firms to which it has issued guaranties. That interest would be furthered by a temporary injunction staying the lenders' lawsuits against CEC. …. [¶] CEOC contends that if the guaranty litigation against CEC can be frozen for a time by an order issued by the bankruptcy judge, the bankruptcy examiner's report analyzing the disputed transactions will provide the parties with information they need to have a clear shot at negotiating an overall settlement …. [¶] If this analysis is correct, there is nothing in section 105(a) to bar the order sought by CEOC ….

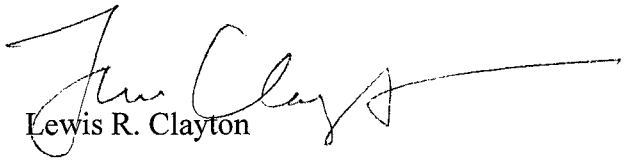
Id. at 5-6. The court further noted that "the issuance of a temporary injunction against a class of creditors could well facilitate a prompt and orderly wind-up of the bankruptcy." *Id.* at 7.

Second, earlier today the Debtors filed an application with the Bankruptcy Court for an emergency hearing on a renewed motion to enjoin plaintiffs here from prosecuting these matters for a period until 60 days after the issuance of the report by the Bankruptcy Examiner. (Ex. B hereto.) In the accompanying proposed motion, the Debtors argue that these actions "threaten to render CEC insolvent and prevent the Debtors from recovering any assets from CEC," *id.* Ex. B, ¶ 8, and note in particular the potential impact of a ruling by this Court on the pending motions for summary judgment, *id.* Ex. B, ¶¶ 12-14. They argue that to reach a "consensual, value-maximizing plan that contains significant funding contributions and credit support from CEC," the Debtors need to ensure that CEC has the resources to fund them, and that "[a] temporary stay will funnel to the reorganization process all of the claims that relate to the estate, providing the parties with a strong incentive to reach a consensual resolution in the chapter 11 case." *Id.* Ex. B, ¶ 15. This afternoon, the Bankruptcy Court denied the Debtors' application without prejudice on the ground that the Court of Appeals has not yet issued its mandate and that accordingly it lacked jurisdiction to address the preliminary injunction motion on remand. (Ex. C hereto.) The Debtors are filing a motion with the Seventh Circuit later today to expedite the issuance of the mandate. CEC understands that the Debtors intend to renew their request as soon as the court of appeals issues its mandate.

In light of these developments, CEC respectfully requests that the Court defer any decision on the pending summary judgment motions until the Debtors have had an opportunity to renew their request and the Bankruptcy Court has ruled on the Debtors' motion. A deferral by this Court will give the Bankruptcy Court an opportunity to determine whether the injunction the Debtors seek will enhance the prospects of a successful resolution of the CEOC bankruptcy, and whether permitting these matters to go forward will endanger the success of the bankruptcy proceedings. Such a deferral will not affect the scheduled trial dates or the expert discovery and trial preparation in which the parties are now engaged.

Separately, as the Court is aware, on December 22, 2015, the Court of Appeals for the Second Circuit denied CEC's petition under 28 U.S.C. § 1292(b) for leave to take an interlocutory appeal from this Court's ruling on the prior summary judgment ruling in BOKF and UMB. In light of the uncertainties that the Circuit's ruling creates in the governing legal standards, should the Bankruptcy Court deny the Debtors' motion, we intend to ask this Court to stay all proceedings in these matters pending resolution of the appeal in *Marblegate Asset Management, LLC* v. *Education Management Corp.*, Nos. 15-2124 and 15-2141 (2d Cir.), in which briefing was completed on December 23, 2015.

Respectfully submitted,



Lewis R. Clayton

cc: All Counsel of Record (via ECF)

☑

CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on December 29, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Michael A. Zuckerman

☐

CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:	address:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

s/_____