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
vs.	)	
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.[2]	)	

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

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1 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.

2 Capitalized terms not defined herein have the meaning described in the Complaint.

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 to Stay, or in the Alternative, for Injunctive Relief Enjoining, Prosecution of Certain Pending Litigation Against Debtors' Directors and Non-Debtor Affiliates* (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 in accordance with the procedures and fees set forth therein.

Dated: March 11, 2015
Chicago, Illinois

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UNITED STATES BANKRUPTCY COURT
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In re:	Chapter 11
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CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	Chapter 11
Plaintiffs	Adversary Case. No. 15-00149
vs.	
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.[2]	

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

[1] 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.

[2] Capitalized terms not defined herein have the meaning described in the Complaint.

Pursuant to sections 362(a) and 105(a) of the Bankruptcy Code, the Debtors seek to stay or enjoin the continued prosecution of four lawsuits involving the Debtors' non-debtor affiliates asserted by certain of the Debtors' creditors. The Actions should be enjoined because they allege claims that belong to the Debtors, and they will directly and adversely affect estate property, frustrate the Bankruptcy Code's priority scheme, and diminish the Debtors' ability to reorganize.

PRELIMINARY STATEMENT

1. The Debtors seek to stay four lawsuits in two federal and state courts between holders of CEOC's second lien or unsecured debt (or trustees representing them) and the Debtors' affiliates (the "Actions"). The Actions are based on the same prepetition Disputed Transactions that—as this Court recognized only this week—"appear[] [to be] a central issue in this [bankruptcy] case" and that "will now be the subject of investigations [in the bankruptcy case] by not one but two official committees, as well as by an examiner who even [CEOC] agrees should be appointed." *Mem. Op.* at 8 (D.I. 633). Likewise, the petitioning creditors in the involuntary proceeding (whose affiliates are both parties in the litigations and members of the statutory committees here) have stated that "[t]here is no question that the legitimacy of [these] transactions will be *the single most important issue in this case*." *Petitioning Creditors' Motion to Appoint an Examiner* at 1 (No. 15-03193, D.I. 9) (emphasis added).

2. While the claims against the Debtors have been stayed under 11 U.S.C. § 362, the continuation of the Actions against the Debtors' affiliates directly affects the core issue in this bankruptcy: whether and on what terms the Debtors will reorganize. Many claims in the Actions are property of the Debtors' estate, and the remaining claims could deprive the Debtors of securing substantial contributions from CEC, whether through settlement or litigation, that are necessary to the Debtors' reorganization. The Actions therefore should be stayed.

3. The Debtors do *not* seek to deprive the plaintiffs in these lawsuits of a forum in which

to litigate their claims. The creditor plaintiffs in the Actions have also been actively involved in this bankruptcy case; indeed, all but one of them is a member of an official creditors' committee. They will have every opportunity to fully investigate their claims here. But—to preserve the assets of the estate and to maximize the likelihood of a successful reorganization—those claims should be litigated in a coordinated fashion in this forum where the interests of all relevant parties can be heard, rather than in multiple lawsuits in different courts, involving some but not all interested parties. And if at the end of these bankruptcy cases the plaintiffs' claims have not been resolved, they will be free to continue their lawsuits.

4. This motion should be granted for at least the following reasons. ***First***, many claims asserted in the Actions are property of the Debtors' estate, and any other claims arise out of the Disputed Transactions and seek recovery against the same defendants and the same pool of money as the estate claims. The plaintiff-creditors bring derivative claims on behalf of CEOC, including claims for fraudulent transfer, breach of fiduciary duty, aiding and abetting breach of fiduciary duty and corporate waste, as well as claims asserting that CEC is obligated under parent guarantees of second lien and unsecured notes issued by CEOC. All of the claims relate to the Disputed Transactions. The claims belong to, and are valuable assets of, the Debtors' estate, and they should be resolved in this case, not in piecemeal litigation in multiple courts.

5. ***Second***, a resolution of the creditors' claims outside of the bankruptcy court threatens to impede any reorganization of the Debtors. The resolution of plaintiffs' claims will have a direct and meaningful impact on the Debtors' ability to reorganize. If CEC's guarantees are reinstated, it would be nearly impossible for CEC to provide any substantial contribution to the Debtors' reorganization, including the $1.5 billion that it has agreed to contribute under the RSA. The arithmetic is straightforward. The CEC parent guarantees backstopped all of CEOC's

second lien and senior unsecured notes, totaling approximately $5.2 billion and $530 million, respectively, on the petition date. (D.I. 4 at 4.) As of September 30, 2014, CEC (exclusive of its interest in CEOC) had total assets of approximately $2.1 billion, and its current market capitalization is approximately $1.4 billion. In short, it is unlikely that CEC would be able to satisfy a guarantee of CEOC's second lien and senior unsecured notes *and* to make a substantial contribution to the Debtors' reorganization. Any consideration that CEC pays on account of the Disputed Transactions should be paid to the estate for distribution to all its creditors—not to particular creditors as a result of disparate lawsuits. Indeed, without a substantial contribution by CEC to drive creditors' recoveries in these cases, the Debtors' reorganization will be imperiled.

6. ***Third***, if allowed to continue, the Actions will deplete property of the Debtors' estate because the Debtors and Non-Debtor Affiliates have shared insurance which covers the Actions. Specifically, the Non-Debtor Affiliates will incur defense costs and may face judgments that would deplete these insurance policies.

7. ***Fourth***, the Debtors will face indemnification claims if the Actions continue. Debtor CEOC is obligated to indemnify current and former directors, officers and employees for expenses and losses incurred in the Actions, including for defense costs and any settlements or judgments. These indemnification claims will further deplete the Debtors' assets to the detriment of their stakeholders.

8. ***Fifth***, if the Actions continue against the Non-Debtor Affiliates, the Debtors will face burdensome discovery and individuals critical to any restructuring will be distracted from their bankruptcy-related obligations. Plaintiffs in several Actions have already served voluminous discovery requests relating to the Disputed Transactions and stated that the Debtors and their executives will be subject to that discovery. That discovery will consume significant time and

resources, distract the Debtors' management, and frustrate their ability to restructure.

9. For these reasons, the Debtors request that the Court stay or enjoin the continuation of the Actions against the Non-Debtor Affiliates pursuant to sections 362 and 105.

STATEMENT OF FACTS

I. THE DISPUTED TRANSACTIONS AND THE ACTIONS

10. Over the past several years, CEC initiated a series of asset transfers and capital markets transactions to restructure and manage CEOC's debt and provide CEOC with liquidity. These Disputed Transactions, which are described more fully in the Debtors' Complaint filed simultaneously with this motion, are the centerpiece of the four Actions pending in Delaware Chancery Court and the Southern District of New York, against the Non-Debtor Affiliates:

- In the *Wilmington Savings* Action, the indenture trustee for certain Second Lien Notes brings claims against CEOC and various Non-Debtor Affiliates, including CEC, CACQ, CGP, CERP, CES and their directors and officers. The complaint brings derivative claims, including fraudulent transfer, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and corporate waste, as well as claims for breach of contract and declaratory relief concerning CEC's guarantee of the notes.[3]

- In the *BOKF* Action, the successor indenture trustee for other Second Lien Notes brings breach of contract and similar claims against CEC related to its guarantee of the notes.

- In the *MeehanCombs* and *Danner* Actions, certain beneficial holders of Senior Unsecured Notes bring claims against CEOC and CEC seeking to enforce CEC's guarantee of the notes, which total approximately $530 million in outstanding debt.[4]

11. The same Disputed Transactions are central to these Chapter 11 proceedings. As the

[3] The four complaints are attached as Exhibits A-D to the Declaration of J. Brown filed in support of this motion. Copies of the other exhibits identified in this Motion are attached to that declaration.

[4] In another lawsuit, CEOC and CEC have brought claims against certain Second Lien Noteholders captioned *Caesars Entertainment Operating Co., Inc. et al. v. Appaloosa Investment Limited Partnership I, et al.*, Index No. 652392/2014 (N.Y. Sup., N.Y. Co., filed Aug. 5, 2014). The *Appaloosa* lawsuit concerns some of the same issues raised in the Actions. If this Court stays or enjoins the Actions, CEOC and CEC will promptly seek to discontinue the *Appaloosa* action without prejudice. There is another lawsuit brought by the indenture trustee for certain First Lien Notes against certain Non-Debtor Affiliates, captioned *UMB Bank v. Caesars Entertainment Corporation, et al.*, filed on November 25, 2014 in the Delaware Chancery Court. That lawsuit has been stayed by agreement of the parties, but if it becomes active again the Debtors reserve the right to seek an order staying or enjoining it.

Court noted earlier this week, these transactions "appear[] [to be] a central issue in this case" that will be the subject of multiple investigations in this bankruptcy. *Mem. Op.* at 8. In reaching this conclusion, the Court acknowledged the Second Lien Committee's allegation that the Disputed Transactions were "insider deals that 'denuded [the] chapter 11 estates of billions of dollars.'" *Id.* (quoting Second Lien Obj. at 1).

II. CEC'S CONTRIBUTION TO THE ESTATE

12. Since mid-2014, CEOC and its debtor affiliates have been engaged in extensive, arm's-length negotiations with certain creditors and CEC to achieve a framework for a consensual restructuring. On December 19, 2014, the Debtors, their Caesars affiliates, and certain creditors agreed on the terms of a comprehensive restructuring. *See* RSA, (D.I. 4-1). Pursuant to the RSA, CEC has agreed to make contributions to the Debtors with a value of at least $1.5 billion to resolve claims related to the Disputed Transactions detailed above. The contributions from CEC, whether pursuant to the current RSA or any alternative plan for the Debtors, are critical to the Debtors' restructuring efforts and necessary to enhance recoveries for all stakeholders. The claims and allegations made in the Actions are key to the Debtors' ability to secure meaningful contributions for the benefit of all its stakeholders.

ARGUMENT

13. The automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986). Section 362(a) "lies at the heart of the Code" and "provides one of the most fundamental protections afforded to debtors by preventing the piecemeal destruction of the debtor's property." *In re Kmart Corp.*, 285 B.R. 670, 688 (Bankr. N.D. Ill. 2002). Without the stay provided by section 362(a), "there would be a race to the courthouse to claim assets of the debtor, and a successful reorganization would be impossible." *Id.* As such, the stay "protects the debtor's

assets while giving the debtor breathing room so that it can reorganize." *Id.*

14. Courts routinely stay the prosecution of claims against non-debtors pursuant to Bankruptcy Code sections 362 and 105 where failure to do so would "interfere with, deplete or adversely affect property of a debtor's estate or which would frustrate the statutory scheme embodied in Chapter 11 or diminish a debtor's ability to formulate a plan of reorganization." *In re Gander Partners LLC*, 432 B.R. 781, 788 (Bankr. N.D. Ill. 2010); *accord Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998); *Kmart*, 285 B.R. at 688; *In re Northlake Bldg. Partners*, 41 B.R. 231, 233 (Bankr. N.D. Ill. 1984); *In re R&G Props.*, No. 09-37463 (Goldgar, J.), Hr'g Tr., Feb. 3, 2010 (extending stay to enjoin lawsuit pursuant to section 105(a)). This Court should too.

I. THE ACTIONS SHOULD BE STAYED PURSUANT TO SECTION 362(a) TO PROTECT THE DEBTORS' PROPERTY.

15. Section 362(a) protects estate assets by automatically staying any action "to recover a claim against the debtor" or "to exercise control over property of the estate." 11 U.S.C. § 362(a)(1), (3). Thus, section 362(a) expressly directs the stay of any action whether against the debtor or non-debtors that would have an adverse impact on the property of the bankruptcy estate. *See In re Gander*, 432 B.R. at 788; *see also In re A.H. Robins Co., Inc.*, 788 F.2d 994, 1002 (4th Cir. 1986) (section 362(a)(3) "directs stays of any action, *whether against the debtor or third*-parties, to obtain possession or to exercise control over property of the debtor") (emphasis in original). The Actions against the Non-Debtor Affiliates will adversely impact property of the Debtors' estate and thus should be stayed pursuant to section 362(a).

A. The Claims Asserted in the Actions Are Estate Claims.

1. The fraudulent transfer claims should be stayed under 362(a)(1).

16. Section 362(a)(1) provides that actions "against the debtor" *or* "to recover a claim against the debtor" are subject to the automatic stay. "[T]he latter category must encompass

cases in which the debtor is not a defendant; it would otherwise be totally duplicative of the former category and pure surplusage." *In re Colonial Realty Co.*, 980 F.2d 125, 131 (2d Cir. 1992). Because actions to recover property that was allegedly fraudulently transferred from the debtor seek to "recover a claim against the debtor," they are subject to the automatic stay even if against non-debtors. *Id.* at 131-32; *accord In re Tribune Co. Fraudulent Conveyance Litig.*, 499 B.R. 310, 320 (S.D.N.Y. 2013). Thus the fraudulent transfer claims in the Actions should be stayed under section 362(a)(1). *See In re Colonial*, 101 B.R. at 132.

2. The fraudulent transfer, fiduciary duty, and corporate waste claims are property of the estate that should be stayed under 362(a)(3).

17. All of the claims for fraudulent transfer, fiduciary duty, aiding and abetting breach of fiduciary duty and corporate waste are property of the estate. *See, e.g.*, *CDX Liquidating Trust v. Venrock Assocs*., 640 F.3d 209, 213 (7th Cir. 2011); *National Tax Credit Partners L.P. v. Havlik*, 20 F.3d 705, 708 (7th Cir. 1994); *In re J.S. II, L.L.C.*, 371 B.R. 311, 322 n.7 (Bankr. N.D. Ill. 2007) ("The court is cognizant of the fact that once the bankruptcy case was commenced, all pre-petition derivative actions filed on the Debtors' behalf became property of the bankruptcy estates."). The plaintiff in the *Wilmington Savings* Action even concedes that it is asserting derivative claims brought on behalf of CEOC as they "arise from harm done to the estate and seek relief against third parties that pushed the debtor into bankruptcy." *See In re Bernard L. Madoff Inv. Secs. LLC*, 740 F.3d 81, 89 (2d Cir. 2014) *quoting In re Bernard L. Madoff Inv. Sec. LLC*, 721 F.3d 54, 70 (2d Cir. 2013). Any recovery obtained from derivative claims must inure to the benefit of all creditors—not just the individual creditor bringing the suit. *See, e.g.*, 11 U.S.C. § 550(a). The plaintiffs should not be able to end run the automatic stay and attempt to obtain recoveries on estate claims that should benefit all stakeholders.

B. The Actions Jeopardize Any Contribution to the Estate from CEC.

18. Any contribution from CEC to the Debtors' estate—whether pursuant to the existing RSA which calls for CEC to provide contributions with a value of at least $1.5 billion, pursuant to a different settlement agreement, or pursuant to a litigated resolution—will fundamentally facilitate these chapter 11 cases and serve as a substantial source of recovery for all the Debtors' stakeholders. That contribution will be made to resolve claims related to the Disputed Transactions, including claims related to CEC's guarantee of debt issued by CEOC. The plaintiffs, however, seek to enforce CEC's guarantee of various debt and pursue other claims against CEC outside this bankruptcy. These lawsuits threaten to imperil CEC's ability to make a substantial contribution to the estate to facilitate a reorganization.

19. If the plaintiffs were successful in reinstating CEC's guarantee of the $5.24 billion in Second Lien Notes and $530 million in Senior Unsecured Notes outstanding as of the petition date, CEC likely will not have the funds to make the contribution contemplated by the RSA—or, indeed, any substantial contribution to the estate. As CEC's pro forma balance sheet (deconsolidating CEOC) as of September 30, 2014 makes clear, CEC has only $2.1 billion in total current assets, and it has a current market capitalization of approximately $1.4 billion.[5] As a result, piecemeal litigation over CEC's guarantees and other causes of action may result in one creditor group receiving a substantial recovery because it won the race to the courthouse while the rest of the Debtors' stakeholders recover significantly less than they should under the Bankruptcy Code's priority scheme. This is precisely what the automatic stay is intended to prevent. *See, e.g.*, *Fisher*, 155 F.3d at 883 (staying creditors' lawsuit against non-debtors because "the claims of the debtor ... and the claims of the creditors … against third parties … are so closely related that allowing the creditors to convert the bankruptcy proceeding into a race to

[5] Jan. 22, 2015 CEC Form 8-K/A, Ex. 99.2 at 3-4, 7 (attached as Ex. E).

the courthouse would derail the bankruptcy proceedings").

20. This Court is the only forum where all creditors are involved, and all creditors will have the opportunity to investigate and litigate the Disputed Transactions in these cases. These claims will and should be adjudicated or settled in this Court, and any contribution by CEC should be made for the benefit of all creditors in accordance with the Bankruptcy Code's priority scheme. *See Gander*, 432 B.R. at 785 ("The lawsuits against the Debtors' guarantors are related to these bankruptcy cases as their resolution could hinder this court's ability to to help the reorganization process by diverting funds necessary for a reorganization.").

C. CEOC and CEC Share Insurance That Is Property of the Debtors' Estate.

21. Debtor CEOC and non-debtor CEC share a common Management Liability Insurance Policy ("Policy") that provides coverage for the Actions. (*See* Policy, attached as Ex. F; AIG Letters, attached as Exs. G and H.) This shared Policy is property of the Debtors' estate pursuant to section 541(a)(1) of the Bankruptcy Code. *See Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 748 (7th Cir. 1989) (noting that a "policy of insurance is an asset of the estate"); *In re Gladwell*, 2009 WL 140098, at *2 (Bankr. C.D. Ill. 2009) (same); *In re Allied Prods. Corp.*, 288 B.R. 533, 535-36 (Bankr. N.D. Ill. 2003) (same); *In re Rose Investments, Inc.*, 1996 WL 596328 at *5 (Bankr. N.D. Ill. 1996) (same).

22. The proceeds of this shared Policy are similarly property of the Debtors' estate. *See* 11 U.S.C. § 541(a)(6) (defining estate property to include "proceeds … of or from property of the estate"). Courts in this jurisdiction have explained that the "overriding question when determining whether insurance proceeds are property of the estate is whether the debtor would have a right to receive and keep those proceeds when the insurer paid on a claim." *Gladwell*, 2009 WL 140098 at *2; *accord In re Feher*, 202 B.R. 966, 970 (Bankr. S.D. Ill. 1996). Where a policy provides benefits jointly to a debtor and non-debtor such that both have "a shared interest

in any proceeds paid under the policy, the proceeds constitute property of [the debtor]'s estate." *Feher*, 202 B.R. at 970; *accord In re Forty-Eight Insulations, Inc.*, 54 B.R. 905, 908 (Bankr. N.D. Ill. 1985) ("insurance policies and proceeds are property of the estate"). Here, the Policy provides coverage to CEC and its subsidiaries, including CEOC, and their directors. (*See* Policy, attached as Ex. F, defining "Insured" to include "Organization," which includes "each Subsidiary" of CEC, and "Executive," which includes directors of CEC and its subsidiaries). Because Debtor CEOC and the Non-Debtor Affiliates share jointly in the Policy's proceeds, they are property of the estate.

23. Allowing the Actions to continue against the Non-Debtor Affiliates will reduce the proceeds available to the Debtors. The shared insurance proceeds are paid on a first-billed, first-paid basis. Thus, payments on behalf of the Non-Debtor Affiliates for litigation costs or to satisfy a judgment or settlement will reduce the proceeds available to the Debtors, thereby depleting an asset of the Debtors' estate. *See In re IFC Credit Corp.*, 422 B.R. 659, 663 (Bankr. N.D. Ill. 2010). That alone warrants staying the Actions pursuant to section 362(a)(3). *See In re Quigley Co., Inc.*, 676 F.3d 45, 58 (2d Cir. 2012); *see also In re A.H. Robins Co., Inc.*, 788 F.2d 994, 1001–02 (4th Cir. 1986) (proceedings against non-debtors "who qualify as additional insureds under the [insurance] policy are to be stayed under section 362(a)(3)").

II. THE AUTOMATIC STAY SHOULD BE EXTENDED TO STAY THE ACTIONS PURSUANT TO SECTION 105.

24. Apart from section 362(a), the Court should also stay or enjoin the Actions pursuant to section 105 of the Bankruptcy Code. A section 105 injunction to stay creditors' lawsuits against non-debtors is necessary if those "actions would interfere with, deplete or adversely affect property of a debtor's estate or . . . would frustrate the statutory scheme embodied in Chapter 11 or diminish a debtor's ability to formulate a plan of reorganization." *Gander*, 432

B.R. at 788; *accord Fisher*, 155 F.3d at 882 ("The jurisdiction of the bankruptcy court to stay actions in other courts extends beyond claims by and against the debtor, to include suits to which the debtor need not be a party but which may affect the amount of property in the bankrupt estate or the allocation of property among creditors."); *Kmart*, 285 B.R. at 688. If a lawsuit against a non-debtor would have such an impact, courts then consider the other "traditional elements" for an injunction: the reasonable likelihood of a successful reorganization; the relative harm as between the debtor and the creditor who would be restrained; and the public interest. *See Fisher*, 155 F.3d at 882; *Gander*, 432 B.R. at 788; *see also Kmart*, 285 B.R. at 692; *Northlake*, 41 B.R. at 233. Here, each of these elements decisively favors an injunction.

A. The Actions Will Interfere with Property of the Estate And Frustrate the Bankruptcy Code's Priority Scheme and the Debtors' Effort to Reorganize.

25. Courts in this jurisdiction have consistently found that an injunction pursuant to section 105(a) is appropriate "where there is sufficient identity of interest between the debtor and nondebtor such that the litigation against the nondebtor threatens property of the estate" or "where the continuation of the proceedings against the nondebtor could cause irreparable harm to the debtor by diverting resources needed for its reorganization." *Kmart*, 285 B.R. at 688; *accord Fisher*, 155 F.3d at 882; *Gander*, 432 B.R. at 788; *Trimec, Inc. v. Zale Corp.*, 150 B.R. 685 (N.D. Ill. 1993) (citing *A.H. Robins*, 788 F.2d at 999); *see also In re R&G Properties*, No. 09-37463 (Goldgar, J.), Hr'g Tr. 4, Feb. 3, 2010 (enjoining lawsuit pursuant to section 105, where the lawsuit "would impair the court's jurisdiction" by "interfere[ing] with accomplishing [a] reorganization") (attached as Ex. I). Here, continued prosecution of the Actions will adversely affect the Debtors' property, frustrate chapter 11's statutory scheme, and threaten the Debtors' ability to reorganize.

26. *First*, as discussed above, the continuation of the Actions outside the bankruptcy will

adversely affect the Debtors' property, endanger CEC's ability to fund any contribution to the Debtors' estate and thus imperil their reorganization efforts, and frustrate the Bankruptcy Code's statutory priority scheme. The Seventh Circuit's decision in *Fisher v. Apostolou* is instructive. 155 F.3d at 879-83. There, creditors of the debtor, a defunct bucket shop, brought federal securities and related claims against the Debtors' accomplices. *Id.* at 878-80. The court found that, although the creditors' claims were not property of the estate, their claims "arose out of [the same] transactions" as estate claims and were "so closely related" to the estate's claims that the creditors' lawsuit must be stayed pursuant to section 105(a). *Id.* at 882-83. The court explained:

> [I]t is difficult to imagine how [the creditors'] claims could be more closely 'related to' [claims that were property of the estate]. They are claims to the same limited pool of money, in the possession of the same defendants, as a result of the same acts, performed by the same individuals . . .

Id. at 882. The same is true here regarding all of the claims asserted in the Actions. Further, courts in this jurisdiction routinely stay lawsuits against non-debtor guarantors pursuant to section 105(a) where, as here, the lawsuits threaten to imperil the debtors' reorganization efforts. *See, e.g.*, *Gander*, 432 B.R. at 788-89; *Northlake*, 41 B.R. at 233; *In re R&G Properties*, No. 09-37463 (Goldgar, J.), Hr'g Tr. 9, Feb. 3, 2010.

27. *Second*, the Debtors and CEC share an insurance policy that provides coverage for the Actions. As discussed above, that Policy and its proceeds are assets of the estate, and allowing the Actions to continue would deplete those assets. Therefore, the stay should be extended pursuant to section 105(a). *See In re IFC Credit Corp.*, 422 B.R. 659, 663 (Bankr. N.D. Ill. 2010) (staying litigation against non-debtors pursuant to section 105(a) because of risk to debtors' insurance policy proceeds); *In re marchFIRST, Inc.*, 288 B.R. 526, 532-33 (Bankr. N.D. Ill. 2002) (same) *aff'd sub nom. Megliola v. Maxwell*, 293 B.R. 443, 449-50 (N.D. Ill. 2003).

28. *Third*, the Actions will create indemnification obligations for the Debtors. CEOC's

bylaws provide its directors and officers with broad indemnification for claims against them. (*See* Bylaws, Article VI Section 2, attached as Ex. J.) The Actions assert claims against CEOC's directors, including claims for breach of fiduciary duty and waste of corporate assets, that give those directors direct indemnification claims against the Debtors' estate. That adverse impact on the Debtors' estate warrants extending the stay pursuant to section 105(a). *See Kmart*, 285 B.R. at 688 (noting section 105(a) has been used to stay litigation against non-debtors where "the debtor has an absolute duty to indemnify the nondebtor either by contract or operation of law"); *In re Eagle–Picher Indus., Inc.*, 963 F.2d 855, 860 (6th Cir. 1992) (affirming stay of litigation against non-debtor pursuant to 105(a) where debtor had to indemnify non-debtor).

29. *Finally*, if the Actions proceed, the Debtors will face significant discovery burdens that will distract personnel key to their restructuring. The plaintiffs in the *Wilmington Savings* Action have served more than 75 document requests to the corporate defendant entities including CEOC, and more than 50 documents requests to the individual defendants including the CEOC directors. Likewise, the plaintiffs in the *MeehanCombs* and *Danner* Actions have served sweeping demands concerning the same Disputed Transactions, as well as all of CEOC's plans concerning reorganization, restructuring, or a chapter 11 filing, including documents concerning negotiations with first and second lien noteholders. (MeehanCombs Document Requests Nos. 49-51, attached as Ex. K; Danner Document Requests Nos. 23-28, attached as Ex. L.) The *MeehanCombs* plaintiffs' initial disclosures identified the CEOC Board of Directors, CEOC CEO John Payne, and CEOC CFO Mary Higgins among the likely discovery targets. CEOC's directors and executives have the overriding responsibility to shepherd the Debtors through their restructuring, and will necessarily be distracted from this responsibility if they are obligated to devote time responding to discovery demands. The discovery burden that the Actions will

impose on the Debtors will harm their restructuring efforts and undermine the protections of the automatic stay. *See, e.g.*, *Kmart*, 285 B.R. at 688; *United Health Care*, 210 B.R. at 233; *In re Calpine*, 354 B.R. at 49; *Am. Film Techs.*, 175 B.R. at 850-51.

B. The Remaining Elements for an Injunction Are Readily Satisfied.

30. The additional elements necessary for an injunction—namely, the reasonable likelihood of a successful reorganization, the relative harm as between the debtor and the creditor who would be restrained, and the public interest—are readily satisfied here.

31. There is a reasonable likelihood a debtor will successfully restructure when, as here, there is a reasonable probability that a plan of reorganization will be confirmed. *See Gander*, 432 B.R. at 788; *see also Northlake*, 41 B.R. at 233 (finding reasonable likelihood of success on the merits where debtor had "filed plan of reorganization" and had demonstrated an "ability to earn a profit"); 2 Collier on Bankruptcy, ¶ 105.02. In *In re Gander Partners LLC*, the court found a reasonable likelihood of a successful reorganization where the "Debtors' principals have contributed their time, energy and money to the Debtors in the past and are capable of continuing to contribute their time, energy and money to the Debtors' future reorganization efforts." *Id.* at 788. Here too, the Debtors and their affiliates have agreed to commit significant time, energy, and money to the reorganization effort. The Debtors, CEC, and a substantial amount of First Lien Creditors have reached agreement on the terms of a comprehensive restructuring that, as set forth in the RSA, contemplates a value-maximizing REIT structure that has been thoughtfully developed. There is thus a reasonable likelihood the Debtors will successfully restructure according to that structure, whether under the current RSA framework or an alternative plan. *See, e.g.*, *Gander*, 432 B.R. at 788; *Northlake*, 41 B.R. at 233; *Lyondell*, 402 B.R. at 590.

32. Further, the balance of harms favors an injunction. In contrast to the substantial harm to the Debtors and their ability to restructure, the plaintiffs—who are creditors in these

bankruptcy cases and, with one exception, members of the statutory committees, *see* D.I. 266, 317—will suffer little to no harm from a stay of the Actions. They will have the full opportunity to investigate and litigate their claims in these bankruptcy cases. Moreover, the Actions are still in their early stages—no significant discovery has started, no summary judgment motions have been filed, and no trial dates have been set—so the plaintiffs will suffer no harm from an injunction of the Actions pending plan confirmation, particularly as they will be able to pursue discovery in this forum. *See Gander*, 432 B.R. at 788 ("The relatively limited harm to [plaintiff] of delaying, not terminating, the state court lawsuits is balanced by the significant harm to the Debtors," given "[plaintiff] will not lose its rights.").

33. *Finally*, "[p]romoting a successful reorganization is one of the most important public interests." *Gander*, 432 B.R. at 789 (quoting *In re Integrated Health Servs., Inc.*, 281 B.R. 231, 239 (Bankr. D. Del. 2002). Enjoining the Actions to allow the Debtors to res Feb. 3, 2010tructure is a far greater public interest than allowing the plaintiffs to continue pursuing claims against the Non-Debtor Affiliates that are in the early stages of litigation and that can and will be fully litigated in these bankruptcy cases.

CONCLUSION

34. For the foregoing reasons, the Debtors respectfully request that this Court enter an order staying or enjoining the continued prosecution of the Actions against the Non-Debtor Affiliates pursuant to sections 362 and 105 of the Bankruptcy Code, until the effective date of a restructuring plan in these Chapter 11 cases, and grant such other and further relief as this Court deems just and proper.

Dated: March 11, 2015
Chicago, Illinois

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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

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
vs.	
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.	

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") staying or enjoining the continued prosecution of four lawsuits in two federal and state courts between holders of the

[1] 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.

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

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 stayed in their entirety pursuant to sections 105(a) and 362 of the Bankruptcy Code pending further order of this Court.

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

Dated: _____, 2015
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge