**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1] Debtors.	)	Chapter 11 Case No. 15-01145 (ABG) (Jointly Administered)
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*, *Plaintiffs* 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.*	)	Chapter 11 Adversary Case No. 15-00149 **Hearing Date: July 22, 2015 1:30 p.m. (prevailing Central Time)**

DEBTORS' POST TRIAL BRIEF IN SUPPORT OF THEIR MOTION TO STAY, OR IN THE ALTERNATIVE FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF, CERTAIN LITIGATION AGAINST CAESARS ENTERTAINMENT CORPORATION

[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.

1. This is a pivotal moment in this chapter 11 case. The Debtors have developed a framework for a plan of reorganization that is premised on substantial contributions by CEC, both directly and in the form of credit support for a value-maximizing REIT structure and securities that will be distributed to creditors under a plan. The Debtors' first lien noteholders support this framework and negotiations continue with other stakeholders to build further consensus. There is also no dispute that *any* reorganization of these Debtors will require a substantial financial contribution from CEC, either voluntarily or through litigation, because estate causes of action against CEC are one of the estate's primary assets. Certain CEOC creditors, however, are now 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 indenture trustee filed after trial seeking more than $6 billion. One indenture trustee already has filed an expedited motion for summary judgment and another is expected later today. Thus, the first of these judgments could be entered by August and will likely result in CEC filing for chapter 11—if it even waits that long—regardless of whether the judgment is a declaration of liability or a damages award as CEC lacks the wherewithal to bond an appeal. Dueling CEC and CEOC bankruptcies will destroy significant value, impair if not eliminate the Debtors' ability to secure substantial contributions from CEC, interfere with the Debtors' duty to marshal estate assets for the benefit of all of its creditors, and imperil Debtors' reorganization efforts.

2. This Court has the jurisdiction and authority to temporarily enjoin the guaranty litigation from proceeding because it will "affect the amount of property in the bankrupt estate or the allocation of property among creditors." *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998). The evidence at trial was largely undisputed and proved that the Debtors' request falls squarely within *Fisher*. As in *Fisher*, Defendants' claims arise from their relationship with

Debtor CEOC (the primary obligor on their notes) and Defendants stand in exactly the same position as creditors holding $11 billion in claims under CEOC-issued (and CEC guaranteed) indentures with very similar (and in some cases identical) guaranty language. The guaranty claims seek recourse against the same entity (CEC), for the same limited pool of assets and, according to Defendants themselves, arise from the same "aggregate plan or scheme" as the Debtors' estate claims. Accordingly, as in *Fisher*, the Debtors must have a chance to maximize value for all creditors; Defendants cannot cut to the front of the line and end run this Court's jurisdiction over this case.

3. *Teknek* does not compel a different result. 563 F.3d 639 (7th Cir. 2009). *Teknek* affirmed the guiding principles of *Fisher* but held that the claims sought to be enjoined were not sufficiently "related to" the debtor's bankruptcy. Unlike here, in *Teknek*, the debtor's only creditor sought to enforce a patent infringement judgment against non-debtor affiliates on a claim that was entirely independent of the debtor, not shared with other creditors, and did not implicate the Bankruptcy Court's power over estate property or creditor distributions.

4. To conclude that the Court's "related to" jurisdiction does not extend far enough to warrant an injunction under the facts and circumstances present here would eliminate section 105 from the Bankruptcy Code. The guaranty litigation threatens the substantial progress that the Debtors have made towards a consensual restructuring, including the RSA, their ongoing negotiations with other parties in interest, the Examiner investigation and Debtors' market test process. As set forth below, there is little to lose and nearly everything to gain by staying the guaranty litigation until 60 days after the Examiner issues his final report.

ARGUMENT

I. THE COURT HAS JURISDICTION TO ISSUE THE REQUESTED TEMPORARY INJUNCTION.

A. This Is a Core Proceeding

5. Only Defendant MeehanCombs argues that this Court lacks jurisdiction to issue a section 105 injunction. But the Debtors' request for a temporary injunction is a core proceeding that falls within both the Court's "arising under" and "arising in" jurisdiction. Courts have routinely held that "proceedings involving requests to enjoin litigation pursuant to 11 U.S.C. § 105 are core proceedings over which bankruptcy judges have authority to enter final orders." *In re Gander Partners LLC*, 432 B.R. 781, 785 (Bankr. N.D. Ill. 2010); *see also In re Paul R. Glenn Architects, Inc.*, 2013 WL 441602, at *3 (Bankr. N.D. Ill. Feb. 5, 2013) (same); *In re R&G Props.*, No. 09-37463, Feb. 3, 2010 Tr. 3:12–17 (Goldgar, J.) ("Section 105 … permits me to enjoin an action of the kind we have here"); *In re Lyondell Chem. Co.*, 402 B.R. 571, 586 (Bankr. S.D.N.Y. 2009) ("Debtors assert claims under Bankruptcy Code section 105(a) (thereby invoking my 'arising under' jurisdiction), to protect their ability to reorganize in their existing chapter 11 cases (thereby invoking my 'arising in' jurisdiction)."); *In re CEOC*, No. 15-01145 (ABG), Mar. 25, 2015 Tr. 119:11–14 ("[T]he circuit law here is very clear, that I have the power directly under Section 105 . . . to enter an injunction like this.").

6. Although the list of "core" proceedings in 28 U.S.C. § 157(b)(2) is non-exclusive, the Debtors' request directly implicates "matters concerning the administration of the estate." 28 U.S.C. § 157(b)(2)(A). Because the guaranty litigation threatens the Debtors' ability to recover on their avoidance claims against CEC, the stay litigation separately is core as it implicates the Debtors' ability to recover estate property. *Id.* §§ 157(b)(2)(H) ("proceedings to determine,

avoid, or recover fraudulent conveyances") and (O) ("other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor . . . relationship").[2]

B. The Court Also Has 'Related To' Jurisdiction

7. Even if this proceeding were not core, the Debtors' injunction request falls within the Court's "related to" jurisdiction. 28 U.S.C. §§ 157(c), 1334(b). As discussed below, the guaranty litigation the Debtors seek to stay will "affect the amount of property in the bankrupt estate," "the allocation of property among creditors," and the Debtors' ability to reorganize. *Fisher*, 155 F.3d at 882; *accord Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (7th Cir. 1989); *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987).

8. The Supreme Court's decision in *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995), is instructive. In a 7-2 decision, the Court found that a bankruptcy court had at least "related to" jurisdiction to enjoin proceedings in an Article III court to execute on a supersedeas bond. *Id.* at 309. The Court was persuaded by the bankruptcy court's reasoning that allowing judgment creditors "to execute immediately on the bonds would have a direct and substantial adverse effect on [debtor's] ability to undergo a successful reorganization." *Id.* at 310. Specifically, if judgment creditors executed on the bonds, it would undermine a settlement "with all of Debtors['] insurers [that] may well be the linchpin of Debtor's formulation of a feasible plan." *Id. Celotex* cited with approval the Third Circuit's expansive view of "related to" jurisdiction:

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[2] *See In re IFC Credit Corp.*, 422 B.R. 659, 663 (Bankr. N.D. Ill. 2010) (where third-party litigation "could diminish the amount of funds payable to the bankruptcy estate for pro rata distributions to all creditors," 105 proceeding core under §§ 157 (b)(2)(A) and (O)); *In re Fundamental Long Term Care, Inc.*, 500 B.R. 147, 153 n.41, 158 (Bankr. M.D. Fla. 2013) (where third-party litigation "would . . . detract from the Trustee's ability to administer th[e] estate," 105 proceeding core under §§ 157(b)(2)(A) and (O)); *In re Lyondell*, 402 B.R. at 587 (105 proceeding that would "protect the estate's ability to reorganize" was core under § 157(b)(2)(A)); *In re Lazarus Burman Assocs.*, 161 B.R. 891, 899 (Bankr. E.D.N.Y. 1993) (where third-party litigation would affect defendants' "ability to inject funds" into chapter 11 debtors' restructuring, 105 proceeding core under §§ 157(b)(2)(A) and (O)).

that "'Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.'" *Id.* at 308. The Court also cited with approval additional circuit decisions, emphasizing that in each one "related to" jurisdiction allowed courts to enjoin actions that "would interfere with debtors['] reorganization" or "might impede the reorganization process." *Id.* at 311. The Court characterized the Seventh Circuit's "related to" test as only "slightly different" from the expansive "any conceivable effect" test in the majority of the other circuits. *Id.* at 308 n.6.

C. The Court's Jurisdiction Extends to Enjoining Parties from Proceeding in State or Federal Court

9. There is no authority for Defendant MeehanCombs' argument that this Court lacks jurisdiction to enjoin parties from proceeding in Article III courts. There are myriad cases to the contrary. In *Celotex*, the seven-vote majority upheld the bankruptcy court's jurisdiction to enjoin such a proceeding. *Id.* at 309–10. It did so over the dissent's insistence that the bankruptcy court had no authority "to issue an injunction that prevents an Article III court from allowing a judgment creditor to collect on a supersedeas bond posted in that court by a nondebtor." *Id.* at 317. *Fisher* also affirmed entry of an order enjoining federal securities proceedings in a federal district court. 155 F.3d at 883. Other courts have done likewise. *See, e.g.*, *In re IFC Credit Corp.*, 422 B.R. 659, 662 (Bankr. N.D. Ill. 2010); *In re marchFIRST, Inc.*, 288 B.R. 526, 531 (Bankr. N.D. Ill. 2002); *In re Calpine Corp.*, 354 B.R. 45, 48 (Bankr. S.D.N.Y. 2006) *aff'd*, 365 B.R. 401 (S.D.N.Y. 2007).[3] This Court plainly has jurisdiction to enter the temporary injunction that the Debtors seek.

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[3] The case on which MeehanCombs principally relies, *In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litig.*, 140 B.R. 969 (N.D. Ill. 1992), predates both *Celotex* and *Fisher*. It is also wholly inapposite. Judge Easterbrook, sitting by designation, found that the debtor had obtained an ex parte TRO in the bankruptcy court through "an

II. *FISHER* AND *TEKNEK* AFFIRM THE COURT'S AUTHORITY TO ENJOIN LAWSUITS THAT THREATEN ITS JURISDICTION OVER THIS CASE.

10. This Court can enjoin proceedings in other courts upon a showing that (i) the proceedings will impair this Court's jurisdiction; (ii) the debtor has a reasonable likelihood of a successful reorganization; and (iii) an injunction is in the public interest. *See Fisher*, 155 F.3d at 882; *R&G Props.*, Feb. 3, 2010 Tr. 3:12–17; *Gander Partners*, 432 B.R. at 788. An action impairs the bankruptcy court's jurisdiction where it "may affect the amount of property in the bankrupt estate," "the allocation of property among creditors," or "a debtor's ability to formulate a plan of reorganization." *Fisher*, 155 F.3d at 882; *Paul R. Glenn Architects*, 2013 WL 441602 at *3; *Gander Partners*, 432 B.R. at 788. Clearly, an action that impairs a debtor's paramount duty to marshal estate property for the benefit of all creditors "may affect the amount of property in the bankrupt estate," and strikes at the heart of a chapter 11 proceeding. *Fisher*, 155 F.3d at 882; *see also Celotex,* 514 U.S. at 311.

11. In *Fisher*, the Seventh Circuit enjoined defendants' continued prosecution of securities and common law fraud claims against non-debtors. 155 F.3d at 883. It held that, although the securities and fraud claims against non-debtors did not involve estate property, the debtor's and non-debtors' claims were "so closely related that allowing the creditors to convert the bankruptcy proceeding into a race to the courthouse would derail the bankruptcy proceedings." *Id*. The court found it "difficult to imagine" how the enjoined claims could be more closely related to estate property when 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, as part of the same conspiracy." *Id.* at 882. It concluded the non-debtors "must wait

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unnecessary, incomplete, and deceptive" filing that constituted "an abuse of the judicial process." *Id.* at 974–75. Obviously, nothing like that is suggested here.

their turn behind the trustee, who has the responsibility to recover assets for the estate on behalf of the creditors as a whole." *Id.* at 881.

12. In *Teknek*, the Seventh Circuit affirmed its holding in *Fisher* that a bankruptcy court has jurisdiction to enjoin claims that may affect the amount or allocation of estate property but concluded under the very "distinct" facts in *Teknek* that the claim sought to be enjoined was not sufficiently "related to" the bankruptcy proceeding. 563 F.3d at 648–49. In *Teknek*, the party against whom the debtor sought an injunction, SDI, had obtained patent infringement judgments against the debtor (Teknek), its non-debtor affiliate (Electronics), and alter ego shareholders of both entities. *Id.* at 642–43. The narrow issue in *Teknek* was whether SDI could collect on a pre-existing judgment against non-debtor Electronics and its alter egos based on acts *completely independent of the debtor*. *Id.* at 649. The court found that SDI's claims against non-debtor Electronics and its alter egos were not sufficiently related to the debtor's case to support an injunction based on the following distinct factors—none of which is present here:

- *First*, SDI's ability to recover on its judgment against the non-debtors did not flow through or arise from the debtor. The court emphasized that "[w]hat is significant about SDI's patent infringement claim … lies in SDI's reduction of the claim to judgment against both the debtor *and an independent non-debtor*, Electronics. It is Electronics' joint and several liability that makes SDI's claim special." *Id.* at 644 (emphasis in original).

- *Second*, "though SDI's claims involve the same pool of money as the trustee's claims, and that money is in the possession of the same defendants (the alter egos), the claims are not based on the same acts" or "on the non-debtor's misconduct *with respect to the corporate debtor*." *Id.* at 649 (emphasis in original).

- *Third*, the court deemed "relevant" that SDI was "the debtor's only major creditor" so "[a]llowing SDI to settle its claim outside of bankruptcy therefore will have no effect on a larger class of creditors, and in this sense it will not 'derail the bankruptcy proceedings.'" As the sole creditor, SDI's claims would not interfere with "[t]he trustee's 'paramount duty' in Chapter 7 … to marshal the estate's assets for a pro rata distribution to all creditors." *Id.* at 650.

- *Finally*, "the district court found there was no indication the alter egos would not be able to satisfy both SDI's claim and any fraudulent transfer claims the trustee brought on behalf of the estate." *Id*. at 644.

13. As described below, under the clear—and largely undisputed—evidence, this case fits comfortably within *Fisher*'s holding. As in *Fisher*, allowing the Defendants to proceed with the guaranty litigation threatens the Debtors' ability and duty to recover estate assets for distribution to creditors in accordance with the Code's distribution scheme. Like the claims in *Fisher*, Defendants' alleged guaranty claims arise from their relationship as creditors of Debtor CEOC (the primary obligor on their notes), are against the same defendant (CEC), for the same limited pool of assets, and—according to Defendants' own complaints—arise from the same asserted "aggregate plan or scheme." *See, e.g.,* PX 1 (*WSFS* Compl.) ¶ 1; PX 2 (*MeehanCombs* Am. Compl.) ¶ 85; PX 3 (*Danner* Compl.) ¶ 12; PX 4 (*BOKF* Compl.) ¶ 70.

14. In contrast, the claims the trustee sought to enjoin in *Teknek* related to SDI's collection of a judgment that was entirely independent of the debtor and completely divorced from both SDI's status as a creditor and Electronics' actions with respect to the corporate debtor. There was also no threat of harm to distributions among the debtor's other creditors because there were no other creditors. Unlike *Teknek*, there is no suggestion here that CEC has the financial ability to satisfy both the guaranty claims and make a contribution to the estates. In fact, the evidence established precisely the opposite. Finally, unlike *Teknek*, this case involves a chapter 11 reorganization, where the public interest in favor of consensual reorganizations is more demanding of this Court's protection than a chapter 7 liquidation. In short, as in *Fisher*, Defendants must "wait their turn behind" the Debtors so the Debtors can fulfill their duty to maximize value for all creditors.

III. THE GUARANTY LITIGATION THREATENS THE COURT'S JURISDICTION OVER THIS REORGANIZATION.

A. The Guaranty Litigation Threatens the Debtors' Ability to Recover Estate Property

15. A section 105 injunction is appropriate where the actions sought to be enjoined "may affect the amount of property in the bankrupt estate." *Fisher* 155 F.3d at 882; *Teknek*, 563 F.3d at 648; *accord Gander Partners*, 432 B.R. at 788 (section 105 injunction appropriate where actions "would interfere with, deplete or adversely affect property of a debtor's estate").

16. The Debtors possess two principal assets around which to reorganize: an operating business and claims against CEC. June 3 Tr. 35:14–36:2, 43:20–45:3 (Millstein). To fulfill their duty to maximize the value of the estate, the Debtors must recover on estate claims that the Debtors' Special Governance Committee has concluded are worth at least $1.5 billion. "Defendants agree that CEC is liable to the bankruptcy estate for the billions of dollars of fraudulent conveyances it orchestrated through 'controversial' prepetition transactions now under investigation by the Examiner." Defs.' Joint Br. [Adv. Dkt No. 132] ¶ 37.

17. The testimony was likewise undisputed that both the Debtors' estate claims and the Defendants' guaranty claims seek to recover from a 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). Moreover, they are closely related and intertwined. In fact, Defendants' complaints allege that the guaranty claims and the estate avoidance claims are based on the same "aggregate plan or scheme" or "series of self-dealing transactions" designed to strip CEOC of its most valuable assets, and then make the denuded CEOC solely responsible for creditor claims:

- "In sum, the foregoing ***course of conduct***, including the Agreement at issue in this Complaint, constituted ***an aggregate plan or scheme*** by CEC and CEOC to restructure CEOC's $19.8 billion debt out of court to stack the deck against certain creditors, such as Plaintiffs and the Disenfranchised Noteholders, in advance of CEOC's recently-filed bankruptcy that will favor CEC and other stakeholders and

insiders and ***allow CEC to evade its irrevocable guarantee of the Notes***." PX 2 (*MeehanCombs* Am. Compl.) ¶ 85; *see also id.* ¶¶ 14, 62, 117 (emphasis added).

- "***After removing CEOC's most valuable assets*** and saddling it with debt and other liabilities, ***CEC concocted its final strategic maneuvers to*** preserve the value it created in 'Good Caesars' and ***ensure that creditors of CEOC or 'Bad Caesars' had no chance of recovery on the Parent Guarantee***." PX 4 (*BOKF* Compl.) ¶ 70 (emphasis added); *see also id.* ¶ 3.
- "Lastly, ***the [guaranty] Amendments are part of Caesars' larger plan to move CEOC's most valuable assets beyond the reach of creditors***, thus enriching CEC, its shareholders and its affiliates at the expense of CEOC's creditors…." PX 3 (*Danner* Compl.) ¶ 12 (emphasis added); *see also id.* ¶ 50.
- "***This action arises from a series of self-dealing transactions*** …. The purpose and effect of the transfers was to enrich CEC and its affiliates and shareholders at the expense of CEOC and ***to move CEOC's assets beyond the reach of CEOC's creditors***." PX 1 (*WSFS* Compl.) ¶ 1.

18. Additionally, despite Defendants' claim in their trial briefs and at trial that "the Examiner is not tasked with investigating or reporting on the Defendants' guarantee claims" (Defs.' Joint Br. ¶ 31; *see also* June 3 Tr. 148:22–25), this Court's examiner order requires the Examiner to investigate the May and August 2014 transactions at the heart of Defendants' guaranty claims. *See* DX 109 (Creditors' Examiner Mot.), DX 110 (Debtors' Examiner Mot.), DX 113 (Examiner Order); *see also* June 3 Tr. 156:20–157:4 (Millstein).

19. Defendants miss the point in arguing that, in the normal case, claims against guarantors are allowed to proceed "because they do not seek relief from the debtor." Defs.' Joint. Br. ¶ 20. Claims against guarantors, like any other claim, are routinely stayed where they may affect property of the estate or interfere with a debtor's reorganization. *Gander Partners*, 432 B.R. at 788; *R&G Props*, Feb. 3, 2010 Tr. 3:18–4:25, 12:5–8. Here, Defendants seek to recover their debts from CEC instead of through a CEOC plan by pursuing recourse to the very value that was transferred from the Debtors, and the very same property that the Debtors are attempting to recover and use to drive their reorganization. *See* June 3 Tr. 69:24–71:13, 128:25–

129:15, 143:24–144:4 (Millstein). This direct competition for property of the estate between the Debtors and a subset of creditors looking for alternative recourse is precisely the type of action that should be enjoined in deference to the paramount reorganization policy of the Bankruptcy Code.

20. It is likewise undisputed that CEC lacks the ability to both satisfy the guaranty claims and make any 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. Defense expert Grant Lyon studiously avoided offering any opinion as to whether CEC could satisfy all of Defendants' guaranty claims. June 4 Tr. 290:8–291:7.

21. Here, as in *Fisher*, it is hard to imagine how this case could be "closer to a 'property of [the estate]' case without converting it into one." 155 F.3d at 882. In short, the guaranty litigation poses a direct and immediate threat to the Debtors' ability to recover on a key estate asset, and thus threatens one of the building blocks of any reorganization plan. For this reason alone, the continuation of the guaranty litigation threatens the Court's jurisdiction and should be enjoined. *See id.* (a "bankruptcy court can enjoin proceedings in other courts when it is satisfied that such proceedings would defeat or impair its jurisdiction over the case before it"); *Gander Partners*, 432 B.R. at 788 (issuing injunction where "circumstances amount[ed] to impairment of th[e] court's jurisdiction"); *R&G Props*., Feb. 3, 2010 Tr. 4:15–18 (injunction may issue where "proceedings to be enjoined would impair the court's jurisdiction").

B. The Guaranty Litigation Seeks to Affect the Allocation of Property Among Creditors

22. A section 105 injunction is also warranted where the proceedings to be enjoined may "affect the allocation of property among creditors." *Fisher*, 155 F.3d at 882; *see also Teknek*, 563 F.3d at 648 (same); *Paul R. Glenn Architects*, 2013 WL 4416092 at *2 (same); *In re*

IFC Credit Corp., 422 B.R. at 662 (same); *Gander Partners*, 432 B.R. at 788 (section 105 injunction warranted where proceedings against non-debtors "would frustrate the statutory scheme embodied in Chapter 11").

23. There is no dispute on this record that continuation of the guaranty litigation will "affect the allocation of property among creditors." Indeed, Defendants' very objective is to jump to the front of the creditor line by pursuing their claims outside of the bankruptcy process against the same assets that Debtors concluded were wrongly removed from their estate as part of the same overall plan or scheme. *See* June 3 Tr. 69:24–71:13, 128:25–129:15 (Millstein). But it is the Debtors that should be accorded priority in recovering on estate claims—either consensually or through litigation—in order to distribute that value to all of their creditors in accordance with the Bankruptcy Code's priority scheme. *See Fisher*, 155 F.3d at 883 (enjoining creditors' claims to prevent "a race to the courthouse"); *Teknek*, 563 F.3d at 650 (finding absence of other creditors "relevant" given the trustee's duty to "marshal the estate's assets for a pro rata distribution to all creditors."); June 3 Tr. 43:20–44:15, 65:15–68:8 (Millstein).

C. The Guaranty Litigation Threatens the Debtors' Reorganization

24. Bankruptcy courts may issue a section 105 injunction to enjoin actions that threaten to "derail the bankruptcy proceedings." *Fisher*, 155 F.3d at 883; *Teknek*, 563 F.3d at 648 (same); *Gander Partners*, 432 B.R. at 788 (section 105 injunction appropriate where proceedings against non-debtors would "diminish a debtor's ability to formulate a plan of reorganization."); *see also Celotex*, 514 U.S. at 310 (finding "at least" related to jurisdiction to enjoin proceedings that threatened a settlement that "may well be the linchpin of [the] Debtor's formulation of a feasible plan.").

25. It is self-evident that litigation threatening the Debtors' ability to secure settlement contributions on one of their principal assets diminishes their ability to efficiently

reorganize and maximize creditor recoveries. The evidence is both compelling and largely undisputed. As part of the RSA, the Debtors have negotiated a substantial contribution from CEC on account of estate claims. June 3 Tr. 36:3–14, 40:10–14 (Millstein). CEC's financial advisor values that contribution at a minimum of $2.3 to $2.5 billion. *Id*. at 193:2–195:1 (Zelin). CEOC's former financial advisor, Perella Weinberg, valued it at $1.5 billion. *Id*. at 79:21–80:2, 97:5–8 (Millstein). CEOC's current financial advisor, Millstein & Co., is still in the process of valuing the contribution, but confirms it is "certainly substantial." *Id*. at 40:15–41:22.

26. And while the Debtors believe the RSA framework, which is predicated on settling estate causes of action and securing substantial contributions from CEC (including credit support for a REIT structure) 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 43:20–45:3. The Debtors are, as a matter of prudence, exploring other restructuring alternatives. *Id*. at 41:23–43:19. But even those alternatives contemplate that estate claims against CEC would be placed into a litigation trust and any proceeds distributed to creditors. *Id*. at 43:20–45:3. Obviously, the viability of such an alternative requires both that the claims have value and that the trust can collect on a successful judgment. *Id*.; *see also id.* at 58:5–59:6. The guaranty litigation, therefore, poses an immediate threat to the viability of a key funding source for any plan of reorganization for the Debtors.

27. CEC 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 (emphasis added). This disclosure language is shorthand that CEC 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). Indeed, CEC may well file before any judgment is entered against it. *Id.* at 138:21–139:11; June 4 Tr. 131:2–132:2 (Zelin).

28. The reason an adverse finding in "any" of the guaranty cases would have a materially adverse effect on CEC's business and raise substantial doubt about its ability to continue as a going concern is because the language of the guaranties is very similar (and in some cases identical). June 3 Tr. 53:9–55:24 (Millstein). Indeed, the first lien notes have identical guaranty language to the second lien notes. *Id.* at 46:20–23. Accordingly, a judgment in any one action would likely result in liability on all of the guaranties. *Id.* at 54:7–55:2 (Millstein), 204:17–205:13 (Zelin).

29. Since trial, Mr. Millstein's predictions about the consequences of allowing the guaranty litigation to continue have begun to play out. While the first lien noteholder parties to the RSA have so far stuck by their agreement, the indenture trustee for over $6 billion of first lien notes recently initiated its own guaranty lawsuit against CEC and will move for partial summary judgment. *See* Compl., *UMB Bank, N.A. v. Caesars Entm't Corp.*, No. 1:15-cv-04634-UA (S.D.N.Y. 2015).[4] Absent a stay, $11 billion of the Debtors' capital structure will be seeking to collect on their CEOC debt directly from CEC in different courts outside of this bankruptcy, rather than allowing the Debtors to secure contributions that can support a confirmable plan in these cases. June 3 Tr. 49:17–50:23 (Millstein), 207:2–208:2 (Zelin). It is difficult to imagine a more direct threat to this Court's jurisdiction over the reorganization.

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4 The Debtors have filed a motion asking the Court to take judicial notice of this post-trial filing. Debtors' Request for Judicial Notice [Adv. Dkt. No. 150].

30. The harm does not end there. Should the guaranty litigation continue, CEC will likely file for bankruptcy—perhaps even before any judgment—and any progress in this reorganization will come to a screeching halt. *Id*. at 49:17–51:22, 53:9–56:22, 115:12–116:7, 138:21–139:11 (Millstein); *see also id.* at 208:3–13, 209:10–23 (Zelin) (CEC could file "as late as early August, and possibly even sooner"); June 4 Tr. 131:2–132:2 (Zelin) ("the debate that the company is having internally is whether we should even file before the ruling is issued by the judge…").

31. Defendants seek solace in CEC's opinion in its Form 10-Q that "[a]t the present time, we believe it is not probable that a material loss will result from the outcome of these matters." PX 34 (CEC 10-Q, May 11, 2015) at 14. But this does not mitigate the threat the guaranty litigation poses to the Debtors' reorganization efforts for several reasons. *First*, as certified public accountant and Debtors' Chief Restructuring Officer Randall Eisenberg explained, CEC's statement is accounting terminology that means CEC does not believe it is "highly likely" it will lose the litigation. June 4 Tr. 215:8–216:3 (Eisenberg). Regardless of whether CEC believes a loss in the litigation is "highly likely," the threat to the Debtors' reorganization plan remains real and immediate.

32. *Second*, the guaranty actions are progressing at a pace that will increasingly destabilize the Debtors' reorganization. Both courts hearing the guaranty litigation already have denied motions to dismiss. *See* DX 69 (MeehanCombs Op.); DX 70 (WSFS Op.). The Southern District of New York found that "the Complaint's plausible allegations" stated a claim for relief. DX 69 (MeehanCombs Op.) at 4. More recently, the district court permitted Defendant BOKF (with $750 million in Second Lien notes) 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. The district court reasoned that "I will not limit BOKF from attempting to vindicate noteholders' rights under non-bankruptcy law." *Id.* The district court then permitted UMB (with $6.3 billion in First Lien notes) to file early summary judgment. Under the expedited briefing schedule, summary judgment briefing will be completed no later than August 7, and a judgment on over $7 billion in guaranty claims may issue any day thereafter. June 19, 2015 Order, Case No. 1:15-cv-01561-SAS, Dkt. No. 27 at 5.[5]

33. *Third*, both CEC's and the Debtors' financial advisors testified that CEC will likely file for bankruptcy if it suffers an adverse judgment in any of the guaranty actions. More importantly, both advisors testified that CEC may well file for bankruptcy before any adverse judgment, and it would make economic sense to do so. June 3 Tr. 49:17–51:22, 53:9–56:22, 115:12–116:7, 138:21–139:11 (Millstein); *see also id.* at 208:3–13, 209:10–23 (Zelin); June 4 Tr. 131:2–132:2 (Zelin). CEC lacks the financial wherewithal to post an appeal bond, meaning that any judgment entered against it—even with respect to a liability finding only—would be effectively final. June 3 Tr. 208:3–21 (Zelin). Moreover, CEC will have every incentive to file for bankruptcy in the face of an adverse judgment (if not sooner) to avoid or reverse a decision that would have such a profound impact on its enterprise value. This is especially true given the novel issues presented in the guaranty litigation. No appellate courts have addressed these issues directly. A district court in a separate case recently recognized that district court precedents under the Trust Indenture Act are in conflict, the statutory text "lends itself to multiple interpretations," and the liability theory has "potentially troubling implications" in discouraging

[5] On June 19, Judge Scheindlin issued an order with an updated briefing schedule, which is also included in the Debtors' Request for Judicial Notice. Debtors' Request for Judicial Notice [Adv. Dkt. No. 150].

out-of-court restructurings. *See Marblegate Asset Mgmt., LLC v. Educ. Mgmt. Corp.*, Case No. 1:14-cv-08584-KPF, slip op. at 8-9 (S.D.N.Y. June 23, 2015). Irrespective of when CEC files for bankruptcy, all paths lead to the same result for the Debtors: if the guaranty litigation proceeds, this bankruptcy case becomes a sideshow.

34. *Fourth*, it bears emphasis that in the Seventh Circuit, a debtor "does not need to demonstrate an inadequate remedy at law or irreparable harm" to secure a section 105 injunction. *Fisher*, 155 F.3d at 882. The principal inquiry—whether the actions sought to be enjoined would "impair [the bankruptcy court's] jurisdiction over the case before it"—is readily met here. *Id*.

35. Defendants cavalierly respond that CEC should simply go ahead and "file its own bankruptcy case." Defs.' Joint Br. ¶ 41. Although that may be a gamble that largely out-of-the-money creditors are willing to take, the Debtors have a fiduciary duty to maximize value for all creditors. And the Debtors' estate should not be required to suffer the economic risk of guessing wrong, especially where the testimony is undisputed that a CEC bankruptcy would be highly value-destructive for all parties. June 3 Tr. 56:23–57:21, 65:15–68:8 (Millstein). A CEC bankruptcy would, at a minimum, greatly disrupt the Debtors' reorganization efforts, delay and substantially impair CEC's ability to make any significant contribution to the Debtors' estate, and unleash years of value-destructive litigation. *Id.*; *see also id.* at 107:21–108:11 (Millstein), 212:4–214:4 (Zelin). In short, it would place on this Court's doorstep one of the great "messes of our time." *Id*. at 56:23–57:9, 59:8–14 (Millstein).

36. Instead, this Court should follow the holdings of *R&G Properties* and *Gander Partners*, where this Court and a sister court from this district enjoined litigation against non-debtor guarantors that were prepared to make substantial contributions toward the respective debtors' reorganization. Although the dollar amounts at issue in those cases were much less, the

principle that entitled the debtors to a temporary injunction is exactly the same here. *See R&G Props*., Feb. 3, 2010 Tr. 9:13–23 (issuing injunction where non-debtor guarantors' ability to contribute "time and money, particularly money, [would] be jeopardized if the state actions proceed[ed]"); *Gander Partners*, 432 B.R. at 788 ("If the lawsuits proceed, their outcome could impair this court's jurisdiction to help the Debtors to reorganize as the source of funds to assist the reorganization would no longer be available.").

D. Defendants' Arguments That the Stay Litigation Will Not Impair the Court's Jurisdiction are Contrary to Both the Record and the Law

37. Defendants hazard several arguments that the guaranty litigation will not impair the Court's jurisdiction over the Debtors' reorganization or diminish the Debtors' ability to restructure. Each of those arguments is contrary to the record evidence and unavailing.

1. The continuation of the guaranty litigation will not advance the Debtors' reorganization.

38. Defendants speculate that permitting the guaranty litigation to proceed may actually *advance* the reorganization by increasing pressure on CEC to engage in a comprehensive deal. Absent such pressure, "CEC will luxuriate in a pressure-free environment and be unlikely to engage." Defs.' Joint Br. ¶ 30. But CEC is hardly "luxuriating" in a "pressure-free environment." It is already under enormous pressure from the threat posed by the estate's multi-billion dollar claims, the guaranty claims, and the Examiner's investigation. *See* June 3 Tr. 71:15–72:14 (Millstein). CEC is, quite literally, in a fight for survival. *Id.* ("It's a life or death struggle for [CEC] at this point to resolve these cases consensually.") A temporary stay of the guaranty litigation will hardly relieve the pressure to achieve a consensual deal; it simply provides an opportunity for one to be negotiated. *Id*. at 212:4–214:4 (Zelin); *see also* June 4 Tr. 191:14–25 (Eisenberg).

2. Allowing a subset of guaranty litigation to go forward will not mitigate the estate's harm.

39. Defendants suggest that they should be permitted to go forward with some subset of their guaranty claims. At the Court's request, the Debtors have attached a chart that describes each guaranty-related claim asserted in the four actions, as well as the relief requested. *See* Ex. 1 attached hereto; June 4 Tr. 270:12–24. The guaranty suits assert claims for breach of contract, violation of the Trust Indenture Act, breach of good faith, and/or declaratory relief. What is most relevant about the claims is that they all pose the same threat to these estates: there is no way to allow some to go forward while staying others as Defendants suggest. All of the claims, with the possible exception of the declaratory judgment claims, seek monetary damages. And each complaint's ad damnum seeks monetary damages in the full amount of the outstanding debt. Even if the Court entered an injunction that allowed only the declaratory relief to go forward, this would do little to mitigate the guaranty litigation's adverse impact on the Debtors' reorganization for two reasons.

40. *First*, as discussed, the Debtors' and CEC's financial advisors both testified, without rebuttal, that CEC may file for bankruptcy ***before*** a judgment is entered, and that it would be economically rational to do so. June 3 Tr. 49:17–51:22, 53:9–56:22, 115:12–116:7, 138:21–139:11 (Millstein); 208:3-13, 209:10–23 (Zelin); June 4 Tr. 131:2–132:2 (Zelin).

41. *Second*, there is no meaningful distinction in these circumstances between a declaration that the guaranties remain in place or the indentures have been breached and a multi-billion dollar monetary judgment. The amounts at issue are not in dispute. If the guaranties are reinstated, a multi-billion dollar judgment against CEC is a pen stroke away. CEC is unlikely to ever let that happen. And, even if it does, CEC will be compelled to do everything in its power to reverse that decision to protect its own enterprise value. Its ability, and incentive, to make a

substantial contribution to the Debtors' reorganization will be a distant memory. Indeed, the testimony established that the guaranty litigation is already reducing the incentives of parties to negotiate a consensual resolution in the bankruptcy given the growing uncertainty of CEC's near-term viability. June 3 Tr. 209:24–211:2 (Zelin); June 4 Tr. 136:17–137:1 (Zelin).

3. A judgment in favor of Defendant MeehanCombs likely will result in liability on all of the guaranty claims.

42. For reasons previously discussed, there is no merit to MeehanCombs' argument that its guaranty claims should be allowed to go forward because CEC could afford to pay a judgment entered solely on those claims. A judgment on any of the guaranties likely will result in a cascading effect of liability across the guaranty claims and obligations far beyond CEC's ability to pay. *See* June 3 Tr. 54:7–55:2 (Millstein), 204:17–205:13 (Zelin). Indeed, that is precisely what CEC confirms in its Form 10-Q. *See* PX 34 (CEC 10-Q, May 11, 2015) at 7–8.

4. The absence of an express contingency in the RSA for the guaranty litigation is irrelevant.

43. Defendants argue it is significant that the RSA is not conditioned on a stay of the guaranty litigation. But as the testimony established, the purpose of the RSA was to provide a framework and foundation for further negotiations towards a fully consensual plan. *See* June 3 Tr. 39:19–40:3 (Millstein). The current RSA is not the final version the Debtors will ultimately submit for confirmation and it will undergo change. *Id.* As such, CEC always has had the practical ability to terminate the RSA simply by walking away from the negotiating table. An express stay contingency would add nothing. *Id.* at 204:17–205:13 (Zelin).

5. The Debtors have not abandoned their core arguments.

44. Finally, Defendants argue that the Debtors have dropped their purportedly core "discovery distraction" and "indemnification" arguments in favor of previously unalleged theories, and that this somehow "guts their case." Joint Defs. Br. ¶¶ 5, 28. But the Debtors' core

argument, set forth in both their original complaint and motion, always has been—and remains—that "[c]ontinuation of the [Guaranty] Actions outside of the bankruptcy cases . . . threatens to imperil the Debtors' ability to reorganize . . . . If CEC's guaranties are reinstated, it would be nearly impossible for CEC to provide any substantial contribution to reorganization …." DX 45 (Compl.) ¶ 4; DX 26 (Mot.) ¶ 5. The Debtors dropped discovery distraction and indemnification because Defendant WSFS voluntarily agreed to stay the claims to which those bases were relevant. *See* WSFS Obj. [Adv. Dkt. 22] ¶ 25.

IV. DEBTORS' SHARED INSURANCE PROVIDES AN INDEPENDENT BASIS FOR A STAY.

45. The proceeds of an insurance policy shared between a debtor and a non-debtor are property of the debtor's estate. *See* 11 U.S.C. §§ 541(a)(1), (a)(6); *Home Ins. Co.*, 889 F.2d at 748; *In re Gladwell*, 2009 WL 140098, at *2 (Bankr. C.D. Ill. 2009); *In re Allied Prods. Corp.*, 288 B.R. 533, 535-36 (Bankr. N.D. Ill. 2003); *In re Feher*, 202 B.R. 966, 970 (Bankr. S.D. Ill. 1996); *In re Forty-Eight Insulations, Inc.*, 54 B.R. 905, 908 (Bankr. N.D. Ill. 1985).

46. Because insurance proceeds are estate assets, courts routinely stay lawsuits that risk depleting insurance proceeds available to debtors. *See IFC Credit Corp.*, 422 B.R. at 663 (staying litigation against non-debtors pursuant to section 105(a) because of risk to debtors' insurance policy proceeds); *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)"); *In re marchFIRST, Inc.*, 288 B.R. at 532-33 (staying shareholder litigation against non-debtors pursuant to section 105(a) because of risk of depleting insurance proceeds available to debtor), *aff'd sub nom. Megliola v. Maxwell*, 293 B.R. 443, 449-50 (N.D. Ill. 2003).

47. Here, CEC and CEOC share primary and excess insurance policies. *See* PX 65 (Mgmt. Liab. Policy); *see also* MC Ex. 16 (Tower of Ins.). The shared insurance provides up to $155 million in coverage for CEC and CEOC, and up to $280 million for their directors and officers. June 4 Tr. 174:18–175:3 (Eisenberg). The primary policy provides coverage, including defense costs, for Securities Claims against CEC and CEOC on account of any Wrongful Acts, and for breach of duty and similar claims against the directors and officers. *Id.* at 168:19–172:18. The excess policies provide for multiple layers of coverage past the initial $15 million and are identical in other respects to the primary policy. *Id.* at 179:11–18.

48. The continuation of the lawsuits against CEC will deplete these insurance proceeds. The BOKF, MeehanCombs, and Danner suits all bring securities claims under the Trust Indenture Act. *Id.* at 248:13–251:13; PX 4 (BOKF Compl.) at 60; PX 2 (MeehanCombs Compl.) at 38; PX 3 (Danner Compl.) at 26. AIG acknowledged that the MeehanCombs and Danner complaints are "securities claims" covered by the insurance policy. *See* June 4 Tr. 183:10–17, 185:11–15 (Eisenberg); PX 67 (Aug. 18, 2014 AIG Letter); PX 69 (Sept. 15, 2014 AIG Letter). Defendants' guaranty actions already have resulted in claims for defense costs to CEC. June 4 Tr. 179:19–180:4 (Eisenberg). Those costs will continue. Payment of those costs, and any judgment or settlement, out of the shared insurance will deplete the proceeds available to the Debtors' estates. *Id.* at 168:7–18, 176:18–178:2. Instead of funding CEC's defense costs in the guaranty litigation, these assets could have significant value to the estates on account of CEOC's own causes of action against directors and officers for breach of fiduciary duty or other claims. *Id.* at 186:23–187:21.

49. Defendants argue that the guaranty suits cannot deprive the Debtors of insurance proceeds because "the estate gets paid first." Defs.' Joint Br. ¶ 9. But this priority scheme *only*

kicks in when there are simultaneous claims made against the policy. June 4 Tr. 177:23–178:8 (Eisenberg). If there are no competing claims, the insurance is paid on a first-billed, first-paid basis. *Id.* at 177:14–178:8. Defendants also argue that the Debtors are "not seeking to enjoin other pending lawsuits that may impact the insurance coverage." Defs.' Joint Br. ¶ 32. There are no other current lawsuits proceeding against CEC, however, that would impact the insurance proceeds. June 4 Tr. 180:5–181:13 (Eisenberg).

V. DEBTORS HAVE A REASONABLE LIKELIHOOD OF SUCCESSFULLY REORGANIZING.

50. As this Court recognized in *R&G Properties*, "[l]ikelihood of success on the merits, courts have said repeatedly, means reasonable likelihood of a successful reorganization." *R&G Props*., Feb. 3, 2010 Tr. 4:20–22; *accord Gander Partners,* 432 B.R. at 788; s*ee also In re Otero Mills, Inc.,* 21 B.R. 777, 779 (Bankr. D. N.M. 1982) ("Success on the merits has been defined as the probability of a successful plan of reorganization . . . ."); *In re Gathering Rest., Inc.,* 79 B.R. 992, 999 (Bankr. N.D. Ind. 1986) (same). Moreover, "less evidence is necessary" where the bankruptcy case is in its early stages "and doubts . . . are to be resolved in favor of the debtor." *R&G Props*., Feb. 3, 2010 Tr. 6:15–18. Here, the Debtors are well on their way to confirming a chapter 11 plan rather than liquidating under chapter 7. The Debtors' evidence regarding the status of their reorganization is essentially undisputed, and easily establishes a reasonable likelihood of successfully reorganizing assuming the guaranty lawsuits are stayed.

51. As defense expert Grant Lyon concedes, 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 that chapter 11 is well suited to solve. *Id.* at 322:14–19; June 3 Tr. 60:12–61:19 (Millstein).

52. Moreover, Debtors "have so far been successful in doing everything they've needed to do to date." *See In re Lyondell*, 402 B.R. at 590. Among other things, the Debtors have 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 has commenced his investigation, 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. The Debtors' progress shows they are on the path to a successful reorganization if the guaranty suits are stayed. There was no evidence to the contrary.

VI. THE PUBLIC INTEREST AND BALANCE OF HARMS STRONGLY FAVORS A TEMPORARY INJUNCTION.

53. "Promoting a successful reorganization is one of the most important public interests." *Gander Partners*, 432 B.R. at 789. Public policy also strongly favors the consensual resolution of disputes. *Air Line Stewards & Stewardesses Ass'n, Local 550 v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166 (7th Cir. 1980) ("Federal courts look with great favor upon the voluntary resolution of litigation through settlement."); *In re Beltran*, 2010 WL 3338533, at *3 (Bankr. N.D. Ill. Aug. 25, 2010) ("Consensual resolution of litigation has been favored in the law from time immemorial.").

54. A temporary injunction would provide a critical window 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. 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 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. June 3 Tr. 72:15–73:8 (Millstein). By avoiding a value-destructive race to the courthouse, a temporary stay will preserve the currency that will fund a plan. 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 both the estates' and the guaranty claims to the same assets.

55. Defendants will suffer no harm from a temporary stay. The threat of their guaranty claims will provide them with powerful leverage to negotiate a favorable consensual deal. If they can achieve a deal, they are better off. If not, the stay will lapse 60 days after the Examiner issues his report, and they will be no worse off. June 3 Tr. 103:6–105:2 (Millstein).

56. If Defendants instead are permitted to proceed to judgment, they will precipitate the very race to the courthouse that *Fisher* abhors. And everyone—including the guaranty claimants—likely will be worse off. Put simply, the guaranty claimants will never collect outside of bankruptcy on their guaranties by litigating with CEC. Instead, they will succeed only in bankrupting CEC.

CONCLUSION

Debtors fervently hope that the parties will avoid the litigation meltdown scenario, and value can be preserved and used to achieve a consensual plan. Through this motion, they ask only for a chance—a chance that could benefit everyone, and will hurt no one. Based on the largely undisputed record, the Debtors respectfully request that the Court grant the Debtors' motion to stay the guaranty litigation until 60 days after the Examiner issues his report.

Dated: June 26, 2015
Chicago, Illinois

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EXHIBIT 1: CLAIMS DEBTORS SEEK TO STAY

Plaintiff	**WSFS (PX 1)**	**MeehanCombs (PX 2)**	**Danner (PX 3)**	**BOKF (PX 4)**	**UMB Bank[1]**	**Reason for Temporary Stay[2]**
Court	Del. Chancery	S.D.N.Y.	S.D.N.Y.	S.D.N.Y.	S.D.N.Y.	
Debt	2nd Lien Notes	Unsecured Notes	Unsecured Notes	2nd Lien Notes	1st Lien Notes	
Claims						
TRUST INDENTURE ACT	N/A	Count 3: Violations of Trust Indenture Act	Count 2: Violations of Trust Indenture Act	Count 5: Violations of Trust Indenture Act	Count 2: Violations of Trust Indenture Act	Seek substantial damages; CEC likely to file for bankruptcy if judgment entered if not before
BREACH OF CONTRACT	Count 2: Breach of Contract (2009 Indenture § 6.01(h))	Count 4: Breach of Contract (2017 Indenture, § 6.8, 2016 Indenture § 508)	Count 3: Breach of Contract (2016 Indenture §§ 508, 902)	Count 3: Breach of Contract (2010 Indenture §§ 6.01(h), (e))	Count 3: Breach of Contract (Disavowal of Guaranty)	Seek substantial damages; CEC likely to file for bankruptcy if judgment entered if not before
		Count 5: Breach of Contract (2017 Indenture Article III, 2016 Indenture IX)	Count 4: Breach of Contract (2016 Indenture §§ 1103)	Count 4: Breach of Contract (2010 Indenture §§ 6.07)	Count 4: Breach of Contract (Failure to Pay Upon Event of Default)	
		Count 6: Breach of Contract (Guaranty)	Count 6: Breach of Contract (2016 Indenture §§ 501(5)(a) and 502)	Count 1: Breach of Contract (Guaranty)	Count 5: Breach of Contract (Payment on Guarantee)	
		Count 7: Breach of Contract (2017 Indenture § 6.7, 2016 Indenture § 507)				
		Count 9: Breach of Contract (2017 Indenture Article §§ 6.1(c) and 6.2 2016 Indenture §§ 501(5)(a) and 502)				
DUTY OF GOOD FAITH AND FAIR DEALING	N/A	Count 8: Breach of Duty of Good Faith and Fair Dealing	Count 5: Breach of Duty of Good Faith and Fair Dealing	Count 7: Breach of Duty of Good Faith and Fair Dealing	Count 6: Breach of Duty of Good Faith and Fair Dealing	Seek substantial damages; CEC likely to file for bankruptcy if judgment entered if not before

[1] A copy of the UMB complaint is attached to Debtors' Request for Judicial Notice [Adv. Dkt. No. 150].

[2] June 3 Tr. 45:18–46:14, 49:17–51:22, 53:9–56:22, 115:12–116:7, 138:21–139:11 (Millstein); *id.* at 208:3–13, 209:10–23 (Zelin); June 4 Tr. 131:2–132:2 (Zelin); PX 78.

OTHER CLAIMS	Stayed[3]	N/A	N/A	Count 6: Intentional Intereference with Contract	Count 7: Payment of Costs and Expenses (separate count)	Seek damages and costs that will be covered by insurance otherwise available to Debtors; CEC likely to file for bankruptcy if judgment entered if not before.
DECLARATORY JUDGMENT	Count 3: Declaratory Judgment (Guaranty Valid)	Counts 1 and 2: Declaratory Judgment (Guaranty and Covenants valid, Supplemental Indentures Invalid and *Void Ab Initio*)	Count 1: Declaratory Judgment (Supplemental 2016 Indenture Invalid, Guaranty Valid)	Count 2: Declaratory Judgment (Guaranty Valid)	Count 1: Declaratory Judgment (Guaranty Valid)	CEC likely to file for bankruptcy if judgment entered if not before
Relief Sought	Money damages in an amount to be determined; Declaration that CEC remains liabile under guaranty; costs and fees.	Damages in the full amount of the notes' value; pre- and post-judgment interest; fees and costs; declaration that that guaranty is in full force and effect; declaration that supplemental guarantees are invalid.	Class damages no less than the value of the principal and interest on the notes ; declaration that the action is a proper class action; declaration that the guaranty is valid and the supplemental indenture is invalid; costs and fees.	Damages no less than the value of the principal and interest on the notes; pre- and post-judgment interest; enforcement of the parent guaranty; declaration that the guaranty is in full force and effect; costs and fees.	Damages no less than the value of the principal and interest on the notes; damages in any additional amounts determined at trial; declaration that the guaranty is in full force and effect; costs and fees.	

[3] WSFS has agreed that certain additional claims in its complaint are stayed, including fraudulent transfer, breach of fiduciary duty, and corporate waste. WSFS Obj., Adv. Proc. Dkt. 22, ¶ 25 ("WSFS is not challenging the Debtors' position that section 362 operates to stay the Non-Independent Claims.").