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, FREDERICK BARTON DANNER, AND CAESARS ENTERTAINMENT CORPORATION,	**Hearing Date: June 3, 2015 10:30 a.m. (prevailing Central Time)**
Defendants.	

DEBTORS' PRETRIAL 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. This is a textbook case for a temporary stay of the guaranty litigation. The continued prosecution of guaranty claims against CEC by certain CEOC creditors is directly at odds with the reorganization objectives of the Bankruptcy Code and will impair the Court's jurisdiction over the Debtors' reorganization by (i) threatening the Debtors' ability to recover

[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.

estate property for the benefit of all creditors, and (ii) greatly diminishing the prospects of a successful reorganization. Apart from this, the guaranty litigation will deplete property of the estate because the Debtors share insurance with CEC that covers the litigation.[2]

2. The Debtors have substantial claims against CEC that represent one of the principal assets of their estates. Therefore, any reorganization of the Debtors will require a substantial contribution from CEC, either through a settlement or litigation. The Debtors are working towards a reorganization that maximizes value and creditor recoveries through substantial, near-term contributions from CEC. The value of these contributions would be distributed to all creditors in accordance with the statutory priority scheme under a plan in these chapter 11 cases. Instead of allowing this Court to oversee this process, certain of Debtors' creditors are pursuing competing judgments against CEC related to their CEOC debt. CEC, however, cannot pay large judgments in the guaranty litigation to certain of CEOC's creditors and also make substantial contributions to the Debtors' reorganization. CEC only has approximately $257 million in distributable cash and its market capitalization is only $1.4 billion. Under any reasonable valuation, the judgments sought against CEC in the existing guaranty litigation alone exceed CEC's value.

3. The Defendants here—indenture trustees and holders of CEOC's second lien and unsecured notes—seek to recover more than $4.5 billion from CEC on account of guaranties that they say were improperly released. Both the Debtors' estate claims and the pending guaranty claims are against the same defendant, seek to recover from the same limited pool of assets, and arise from the same course of conduct that the Examiner, the Debtors and other parties are investigating in these proceedings. But this is not just about the $4.5 billion in claims that

[2] Capitalized terms not defined herein are defined in the Debtors' Complaint [Adv. Proc. Dkt. 1] and Motion to Stay [Adv. Proc. Dkt. 4].

Defendants are currently pursuing against CEC. CEOC's first lien noteholders hold an additional $6.3 billion in allegedly guaranteed debt. These senior lenders currently support the RSA and prefer a settlement in bankruptcy to litigating their guaranty claims. But if the Defendants' guaranty claims are not stayed, the first lien noteholders undoubtedly will join the fray to avoid having junior creditors jump ahead of their claims, resulting in more than $10 billion in guaranty claims against CEC. As a result, litigation impacting one of the Debtors' principal assets (their claims against CEC) and two-thirds of their capital structure will be resolved outside of this bankruptcy proceeding.

4. Accordingly, the Debtors seek a temporary stay of the guaranty litigation until 60 days after the Examiner issues his final report. This represents a material shortening of the stay through confirmation that the Debtors originally sought. This temporary stay will give all parties time to digest the Examiner's report—including his evaluation of the guaranty litigation itself that Defendants seek to pursue—and, in light of its findings, attempt to reach a consensual or otherwise confirmable plan of reorganization. The Court can revisit the stay at that time based on the Examiner's conclusions and the reorganization's progress and prospects. Although temporary, the stay will provide the Debtors with a critically important window to pursue their efforts to reorganize and build consensus around a value-maximizing plan. The continued prosecution of the guaranty suits jeopardizes CEC's ability to make substantial contributions to the estate for the benefit of all creditors and threatens CEC's continued viability, which may lead to lower creditor recoveries. In contrast, a temporary stay will not harm Defendants as they will

be able to litigate issues related to their guaranty claims once the stay is lifted or at confirmation.[3]

ARGUMENT

5. 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. *Fisher v. Apostolou,* 155 F.3d 876, 882 (7th Cir. 1998) ("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."); *In re R&G Props.*, No. 09-37463, Feb. 3, 2010 Hr'g Tr. at 4 (Goldgar, J.) (for an injunction pursuant to section 105(a), a debtor "need only show that the proceedings to be enjoined would impair the court's jurisdiction and, of course, must show likelihood of success on the merits"); *see also In re Gander Partners LLC,* 432 B.R. 781, 788 (Bankr. N.D. Ill. 2010). The evidence at trial will show that these standards are met here.

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

6. An action against a non-debtor impairs the court's jurisdiction where it "may affect the amount of property in the bankrupt estate," *Fisher*, 155 F.3d at 882, "frustrate the statutory scheme embodied in Chapter 11 or diminish a debtor's ability to formulate a plan of reorganization," *In re Gander Partners,* 432 B.R. at 788; *accord In re R&G Props*., Feb. 3, 2010 Hr'g Tr. at 4 (enjoining lawsuit that would impair the court's jurisdiction by "interfer[ing] with

[3] Defendant WSFS originally was pursuing fraudulent transfer and other claims against CEC and fiduciary claims against the Debtors' directors. WSFS has since agreed that those claims are stayed, and it is only seeking to prosecute its guaranty claims against CEC. WSFS Obj., Adv. Proc. Dkt. 22, ¶ 25 ("WSFS is not challenging the Debtors' position that section 362 operates to stay the Non-Independent Claims."). Thus, the sole remaining issue before the Court is whether the Defendants should be allowed to continue their guaranty claims against CEC.

accomplishing [a] reorganization"); *In re Kmart Corp*., 285 B.R. 679, 688 (Bankr. N.D. Ill. 2002) (stay is appropriate to enjoin proceedings that would "divert[] resources need[ed] for [the debtor's] reorganization"). The continued prosecution of the guaranty litigation will impair this Court's jurisdiction in at least three ways.

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

7. First, the continuation of the guaranty litigation threatens the Debtors' ability to recover estate property. *See In re Gander Partners*, 432 B.R. at 778 (section 105 injunction appropriate where the actions sought to be enjoined "would interfere with, deplete or adversely affect property of a debtor's estate"); *Fisher*, 155 F.3d at 882 (jurisdiction to stay proceedings extends to actions that "may affect the amount of property in the bankrupt estate").

8. The Debtors have valuable claims against CEC to recover wrongfully transferred estate property and these claims belong exclusively to the Debtors. They negotiated an RSA that requires CEC to contribute at least $1.5 billion to the estate to settle those claims, and the amount of CEC's contribution is likely to increase as the Debtors continue to negotiate with additional creditor groups. The Defendants, however, seek more than $4.5 billion from the same entity (CEC), from the same pool of assets, and based on the same alleged "scheme" or course of conduct. *See, e.g.*, Debtors Ex. 2 (*MeehanCombs* Am. Compl.) ¶ 85 ("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."); *see also id.* ¶¶ 14, 62, 117; Debtors Ex. 4 (*BOKF, N.A.* Compl.) ¶ 70 ("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"); *see also id.* ¶ 3; Debtors Ex. 3 (*Frederick Barton Danner* Compl.) ¶ 12 ("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, including the Non-Preferred Legacy Noteholders."); *see also id.* ¶ 50; Debtors' Ex. 1 (*WSFS* Compl.) ¶ 1 ("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.").

9. CEC, however, has limited assets. It has only approximately $257 million in unrestricted cash and a $1.4 billion market capitalization. *See* Debtors Ex. 28 (Mar. 31, 2015 Cash Balances); *see also* Debtors Ex. 34 (CEC 10-Q, May 11, 2015) at 9. Under any reasonable valuation, CEC simply does not have the financial wherewithal to make a substantial contribution to the Debtors' estates, either through the RSA, another plan, or litigation, and also satisfy multi-billion dollar guaranty claims. And, every dollar the Defendants recover through their guaranty lawsuits against CEC is a dollar less that CEC has to satisfy the Debtors' claims and otherwise contribute to the Debtors' reorganization for the benefit of all creditors.

B. The Guaranty Litigation Will Diminish the Debtors' Ability to Formulate a Plan of Reorganization.

10. Second, the continued prosecution of the guaranty lawsuits will "diminish [the] debtor[s'] ability to formulate a plan of reorganization." *In re Gander Partners*, 432 B.R. at 788; *accord In re R&G Props.*, Feb. 3, 2010 Hr'g Tr. at 4 (enjoining lawsuit where it would impair the court's jurisdiction by "interfer[ing] with accomplishing [a] reorganization").

11. A lynchpin of any reorganization will be the Debtors' ability to secure substantial contributions from CEC, either voluntarily or through litigation. The guaranty litigation, however, poses a substantial obstacle on the path to a consensual plan as it threatens CEC's ability and incentive to make ***any*** contribution to the Debtors' estate, much less the $1.5 billion contribution called for by the RSA. Indeed, CEC has publicly announced that an adverse result in the guaranty litigation would "raise substantial doubt" about CEC's "ability to continue as a going concern." Debtors Ex. 34 (CEC 10-Q, May 11, 2015) at 8. The Debtors believe that CEC likely will file for bankruptcy if judgment is entered against CEC in the guaranty litigation. This will further diminish the Debtors' ability to reorganize by, among other things, eliminating two of the key elements of the Debtors' value-maximizing restructuring strategy: a substantial and immediate contribution by CEC to settle litigation claims and credit support from CEC for a REIT structure. Although these cases are already heavily litigious, a CEC bankruptcy will usher in a new level of extended, value-destructive litigation to the detriment of CEOC and its creditors, including litigation over the proper venue for a CEC bankruptcy, whether the CEC and the Debtors' cases should be separately administered, whether the automatic stay in a CEC case would impair the Debtors' ability to collect on their claims, and so on…. Continuation of the guaranty litigation likewise threatens CEC's intended merger with CAC through which CEC will gain access to the resources required to make its contribution under the RSA. Simply put, the

continued prosecution of the guaranty claims at this juncture will have very real and direct financial, business and litigation consequences for Debtors and their creditors.

12. Courts in this district have entered injunctions where the continued prosecution of actions against a non-debtor threatened a source of funding for the debtor's reorganization. For example, in *R&G Properties*, this Court enjoined two state court actions from proceeding against the debtor's partners where the partners' "ability to contribute time and money, particularly money, [would] be jeopardized if the state actions proceed[ed]" and where the partners contemplated bankruptcy absent a stay. Feb. 3, 2010 Hr'g Tr. at 9–10. Likewise, in *Gander*, the court enjoined actions against the debtor's guarantors where the actions threatened the guarantors' ability to contribute funds to the reorganization: "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." 432 B.R. at 788; *see also Fisher*, 155 F.3d at 879-883 (enjoining creditors' securities claims against non-debtors to prevent "a race to the courthouse" in pursuit of "the same limited pool of money, in the possession of the same defendants").[4]

[4] In *In re Teknek*, the Seventh Circuit affirmed its ruling in *Fisher* that a bankruptcy court is empowered to stay claims against nondebtors that "may affect the amount of property in the bankrupt estate, or the allocation of property among creditors." 563 F.3d 639, 648–49 (7th Cir. 2009) (citations omitted). The court affirmed the district court's denial of an injunction in that case, however, because the creditor at issue had secured a judgment "against both the debtor *and an independent non-debtor*, Electronics. It is Electronics' joint and several liability that makes [the judgment creditor's] claim special." *Id.* at 644 (emphasis in original). The underlying defendants had "looted both [the debtor] and [the non-debtor] Electronics. Those are separate acts, which caused separate injuries to two separate companies, only one of which is in bankruptcy." *Id.* at 649. The court reasoned that the creditor's claims were therefore not sufficiently related to the bankruptcy proceedings to warrant an injunction. *Id.* at 649-650. The court also deemed "relevant" that the judgment creditor was "the debtor's only major creditor" so allowing its case to proceed "will have no effect on a larger class of creditors" or "'derail the bankruptcy proceedings.'" *Id.* at 650 (quoting *Fisher*, 155 F.3d at 883). Here, like *Fisher* and unlike *Teknek*, the Defendants' guarantee claims arise from their creditor relationship with the

13. Not only do the guaranty claims jeopardize CEC's *ability* to contribute to the Debtors' reorganization, they also remove the *incentive* for CEC and the Debtors' other constituents to engage in plan negotiations while the litigations proceed. CEC has agreed to make substantial contributions to the Debtors in settlement of all claims against it, including the guaranty claims. CEC has little incentive to continue pursuing negotiations with the Debtors' creditors, or to make a substantial contribution to the restructuring, if it must simultaneously litigate the guaranty claims—and face the prospect of additional multi-billion dollar judgments—in other courts. The continued prosecution of the guaranty claims would therefore undercut CEC's proposed settlement and remove its incentive to work out a coordinated resolution of claims for the benefit of all creditors.

14. The guaranty litigation similarly risks diverting the efforts of other creditors away from negotiating a consensual reorganization. As of now, CEOC's first lien noteholders have agreed to settle their guaranty claims against CEC as part of the RSA. Indeed, as part of that agreement, the first lien noteholders have accepted a proposed restructuring that makes them less than whole in an effort to provide additional value to junior creditors to reach a consensual deal. But if the guaranty claims proceed, the first lien noteholders will likely decide to litigate their guaranty claims against CEC outside of the bankruptcy in order to prevent junior creditors from jumping ahead of their claims. The first lien bank lenders, which have been in stop and start negotiations over the RSA, likewise would have no incentive to continue negotiating once CEC and the first lien noteholders withdraw from the RSA negotiations in favor of litigation. In short, all eyes would turn to the guaranty litigation, which may take years to resolve as it involves a

---

Debtors, they allege a single scheme to loot the Debtor of assets and thereby thwart creditor recoveries, and the prosecution of their lawsuits outside of bankruptcy will adversely affect other creditors and threaten to derail the bankruptcy proceedings.

novel and controversial theory of liability under the Trust Indenture Act that is the subject of vigorous dispute among the parties, has never been considered by a federal circuit court and likely will lead to lengthy appeals. This reorganization would come to a grinding, value-destructive halt. This is true even if only one of the guaranty cases is allowed to go forward (as at least one Defendant apparently intends to argue). Given the overlapping legal and factual issues among the guaranty actions, permitting even one suit to proceed will remove creditors' incentive to pursue a restructuring in this Court, and impair this Court's jurisdiction, as issues central to their recoveries are being decided elsewhere.

C. Absent a Stay, Litigation Directly Impacting the Debtors' Principal Asset and Involving the Majority of Their Capital Structure Will Be Transferred to Another Court.

15. The Debtors' claims against CEC are one of the principal assets of their estates. Currently, the Defendants assert more than $4.5 billion in claims against the same pool of money that the Debtors' seek to recover, either through settlement or litigation. And, as noted, that is only the beginning of the guaranty claims. Absent a stay, the first lien noteholders will likely join the fray. Allowing the Defendants to continue pursuing their guaranty claims against CEC outside of this bankruptcy will thus trigger a race to the courthouse and unravel the Debtors' efforts to recover on these claims for the benefit of all creditors. *See, e.g. Fisher*, 155 F.3d at 883 (enjoining actions under section 105 where "allowing the creditors to convert the bankruptcy proceeding into a race to the courthouse would derail the bankruptcy proceedings"). The net result will be that litigation directly impacting one of the Debtors' largest assets and involving the majority of its capital structure will be transferred to another court. It is difficult to imagine a more direct threat to this Court's jurisdiction over this reorganization or the Debtors' efforts to reorganize.

II. THE GUARANTY LITIGATION WILL DEPLETE THE ESTATES' PROPERTY INTEREST IN SHARED INSURANCE WITH CEC.

16. Separately, the guaranty litigation also will deplete the proceeds of insurance policies that are property of the Debtors' estates. *See* 11 U.S.C. §§ 541(a)(1), 541(a)(6); *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) ("Insurance policies and debtor's rights under insurance policies have generally been held to constitute property of the bankruptcy estate."); *In re Allied Prods. Corp.*, 288 B.R. 533, 535-36 (Bankr. N.D. Ill. 2003) ("insurance policies are property of its estate in bankruptcy, under the broad definition of § 541(a) of the Bankruptcy Code"). Where a debtor and non-debtor have "a shared interest in any proceeds" of a policy, the proceeds are property of the estate. *See In re Feher*, 202 B.R. 966, 970 (Bankr. S.D. Ill. 1996) ("In view of the fact that [the debtor] has a shared interest in any proceeds paid under the policy, the proceeds constitute property of [the debtor]'s bankruptcy estate."); *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").

17. CEC and CEOC share a common Management Liability Insurance Policy ("Policy") that provides coverage to CEC for the guaranty claims, as well as coverage to CEOC, its subsidiaries and its directors. *See* Debtors Ex. 65 (AIG Insurance Policy) at 20, 22 (defining "Insured" to include "Organization," which in turn includes "each Subsidiary" of CEC, and "Executive," which includes directors of CEC and its subsidiaries). The insurance structure provides $155 million in coverage for CEC and its subsidiaries, including CEOC. *See* Debtors Ex. 66 (Chart of Insurance Tower). AIG, the primary carrier, has acknowledged that the *Danner* and *MeehanCombs* actions are covered by the Policy, and has reserved its rights with respect to the *WSFS* action. *See* Debtors Ex. 71 (Oct. 17, 2014 AIG Letter); Debtors Ex. 72 (Oct. 31, 2014

AIG Letter). The excess carriers have taken the same position as AIG. *See*, *e.g.*, Debtors Ex. 73 (Nov. 1, 2014 HCC Global Letter); Debtors Ex. 74 (Nov. 7, 2014 Axis Letter); Debtors Ex. 75 (Dec. 3, 2014 RSUI Group, Inc. Letter); Debtors Ex. 76 (Dec. 4, 2014 Endurance Letter); Debtors Ex. 77 (Dec. 29. 2014 Aspen Letter).

18. Allowing the guaranty litigation to proceed against CEC will reduce the proceeds available to the Debtors. The shared insurance covers defense costs in addition to settlements and judgments. *See* Debtors Ex. 65 (AIG Insurance Policy) at 9. The proceeds are paid on a first-billed, first-paid basis, such that payments on behalf of CEC will reduce the proceeds available to the Debtors, thereby depleting an asset of the Debtors' estates. *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 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. 526, 532-33 (Bankr. N.D. Ill. 2002) (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). Accordingly, the depletion of the Debtors' shared insurance through continuation of the guaranty litigation provides an independent basis for a temporary stay. 11 U.S. C. § 362(a)(3).

III. THE DEBTORS HAVE A REASONABLE LIKELIHOOD OF REORGANIZING SUCCESSFULLY.

19. "Likelihood of success on the merits, courts have said repeatedly, means reasonable likelihood of a successful reorganization." *In re R&G Props.*, Feb. 3, 2010 Hr'g Tr. at 4; *accord In re Gander Partners*, 432 B.R. at 788. "[L]ess evidence is necessary" where the

bankruptcy case is in its early stages, "and doubts … are to be resolved in favor of the debtor." *In re R&G Props.*, Feb. 3, 2010 Hr'g Tr. at 6.

20. There is no question the Debtors have a reasonable (indeed a high) likelihood of successful reorganization—at least if the guaranty litigation is stayed. The Debtors operate a strong and growing business. The Debtors have a national footprint of quality casinos, anchored by the iconic Caesars Palace in Las Vegas, a famous brand name and a proprietary customer rewards system that is the envy of the industry—all points the Defendants' concede. *See, e.g.*, G. Lyon Dep. at 114:14-115:4. The Debtors have generated nearly $1 billion of EBITDA historically, and their first quarter performance demonstrates they are on track to meet this target again this year. *See* Debtors Ex. 23 (Feb. 28, 2015 CEOC Long Term Financial Projections) at 1; Debtors Ex. 29 (April 13, 2015 Presentation to UCC and 2L Committee - Business Plan) at 7; Debtors Ex. 21 (CEOC February Monthly Creditor Advisory Reporting Package) at 4; Debtors Ex. 25 (CEOC March Monthly Creditor Advisory Reporting Package) at 4. The strength of the Debtors' business alone makes it likely they will reorganize successfully.

21. The Debtors are also likely to reorganize successfully given the nature of their restructuring. The Debtors' restructuring is principally focused on right-sizing their debt to a level they can adequately service, and converting to a REIT structure to maximize distributable value to creditors. Indeed, the Debtors generate positive cash flow on an unlevered basis and have significant real property holdings that make a REIT structure attractive. The Debtors' current plan seeks to reduce their debt by $10 billion to a level that the Debtors can support as a REIT structure. *See generally* Joint Defs. Ex. 73 (Debtors' Joint Plan of Reorganization). Apart from its sound business, "the Debtors have so far been successful in doing everything they've needed to do to date." *In re Lyondell Chem. Co.*, 402 B.R. 571, 590 (Bankr. S.D.N.Y. 2009). So

far, the Debtors, among other things, have reached agreement with the majority of CEOC's first lien noteholders and CEC on the economic terms of a restructuring as set forth in the RSA; established venue in the Northern District of Illinois; obtained first-day relief that was essential to the Debtors' operations; negotiated for the long-term use of cash collateral; moved for the appointment of an examiner who has commenced his investigation into certain prepetition transactions; announced a market test; and obtained a six-month extension of exclusivity.

22. In short, "the Debtors are proceeding on track, and there is no reason to believe or suspect that that their reorganization will fail—unless, of course, the actions sought to be enjoined *cause* it to fail." *In re Lyondell*, 402 B.R. at 590.

IV. THE PUBLIC INTEREST STRONGLY FAVORS A TEMPORARY INJUNCTION.

23. "Promoting a successful reorganization is one of the most important public interests." *In re Gander Partners*, 432 B.R. at 788 (quoting *In re Integrated Health Services, Inc*., 281 B.R. 231, 239 (Bankr. D. Del. 1992)). 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.").

24. Temporarily staying the guaranty claims will preserve assets necessary to fund the Debtors' reorganization, and provide a breathing spell for the Debtors to pursue a consensual plan that will maximize recovery for all parties.

25. Conversely, the Defendants will suffer no harm from a temporary stay of their claims until the Examiner issues his report. If the Debtors are able to achieve a consensual

restructuring that maximizes recovery for all parties, the Defendants will directly benefit. If the Debtors achieve a confirmable plan centered around a substantial contribution from CEC and the Court approves a release of the Defendants' guaranty claims in that context, judicial economy will also be served as multiple courts will not expend resources adjudicating these issues in the interim. The alternative—a likely CEC bankruptcy if found liable on the guaranty claims with the prospect for endless litigation—will be highly value destructive and likely will lead to lower recoveries for the Defendants and other creditors. And if the Debtors cannot achieve substantial progress towards a consensual restructuring during the stay period, the Court can revisit the stay in light of the Examiner's report and the reorganization's prospects and progress.

CONCLUSION

26. The evidence at trial will confirm that a stay of the guaranty litigation is necessary to avoid derailing the Debtors' reorganization efforts. The Debtors respectfully request that the Court grant the Debtors' motion to stay the guaranty litigation against CEC.

Dated: May 29, 2015
Chicago, Illinois

/s/ David J. Zott, P.C.

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

- and -

Paul M. Basta, P.C. (admitted *pro hac vice*)
Nicole L. Greenblatt (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Counsel to the Debtors