IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*, *Debtors*.	Chapter 11 Case No. 15-01145 (ABG) (Jointly Administered)
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*, *Plaintiffs*, *v.* BOKF, N.A., *et al*. *Defendants.*	Chapter 11 Adversary Case No. 15-00149

OBJECTION OF WSFS, BOKF, AND DANNER TO
DEBTORS' EMERGENCY MOTION FOR CERTIFICATION OF DIRECT APPEAL

Defendants Wilmington Saving Fund Society, FSB, BOKF, N.A., and Frederick Barton Danner (collectively, the "Defendants") object to the *Debtors' Emergency Motion For Certification Of Direct Appeal To The United States Court Of Appeals For The Seventh Circuit Pursuant To 28 U.S.C. § 158(d)* (ECF 164) (the "Motion") as follows:

I. PRELIMINARY STATEMENT

1. In denying the Debtors' request for an injunction of the Defendants' pending actions against non-debtor Caesars Entertainment Corp. ("CEC"), the Court correctly applied not one, but *two* decisions in which the Seventh Circuit has defined and set forth the relevant law. The Debtors now brush off the Court's thorough analysis and the Circuit's controlling opinions in *Fisher* and *Teknek*. Disregarding the work already performed by the Circuit and the Court, they seek certification of a direct appeal so that the Circuit can consider the issue of third-party injunctions yet again.

2. There is no basis for imposing this burden upon the Circuit. Certification of a direct appeal is rarely appropriate, and the Debtors cannot satisfy any of the three criteria established by 28 U.S.C. § 158(d)(2)(A), the governing statute. First, the Debtors' appeal presents neither "a question of law as to which there is no controlling decision" nor "a question of law requiring resolution of conflicting decisions." 28 U.S.C. § 158(d)(2)(A)(i)-(ii). As is clear from the Court's Opinion ("Op."), the Seventh Circuit's published decisions in *Fisher* and *Teknek* answer the question presented by the Debtors and are dispositive controlling authority. Moreover, notwithstanding the Debtors' unsupported insinuations, *Fisher* and *Teknek* do not conflict with the law of other circuits. Even if they did, a direct appeal is warranted only in the case of conflicts within a particular circuit, not to address an alleged inter-circuit conflict.

3. Second, the appeal does not involve "a matter of public importance." 28 U.S.C. § 158(d)(2)(A)(i). The Seventh Circuit already has decided the issue presented. Another decision covering issues addressed at length in *Fisher* and *Teknek* will not advance development of the law to an unusual degree. Nor are the Debtors' assertions regarding the "practical ramifications" of the Court's Opinion sufficient to warrant a direct appeal.

4. Finally, a direct appeal will not "materially advance the progress of the case." 28 U.S.C. § 158(d)(2)(A)(iii). Even if the Debtors were authorized to appeal to the Seventh Circuit, the best possible result they could achieve would be a ruling that the Court has *authority* to issue an injunction, coupled with a remand to determine whether an injunction is warranted in light of the facts established at trial. As the Debtors note, "[r]ulings on summary judgment in certain of the Prepetition Litigation could occur any day after briefing concludes on August 7, 2015," *Application To Set Hearing On Emergency Motion* (ECF 162) ("Application") ¶ 8, and trial is likely to follow soon thereafter. A direct appeal will not prevent the "severely negative impact"

that the Debtors say they want to avoid. *Id*. In any event, CEC's liability on its guarantees will have to be determined at some point. The Court must know the answer to that critical question if the Debtors seek to avoid their parent's liability and confirm a plan that releases CEC from the guarantees. A direct appeal with the purported objective of delaying such a determination would only postpone the day of reckoning and ultimately set this case back by months or years.

5. Accordingly, there is no legal basis for or practical benefit of a direct appeal, which would consume still more time and estate resources in pursuit of the goal of protecting non-debtor CEC from the legitimate claims of its own creditors. If the Debtors truly desired "[t]o fulfill their duty to maximize the value of the estate," Mot. ¶ 3, they would focus on a consensual restructuring with all stakeholders rather than continuing to make the protection of their controlling shareholder the top priority. The Motion should be denied.

II. ARGUMENT

6. A bankruptcy court may certify a direct appeal only if it is convinced that "(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision . . . or involves a matter of public importance; (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or (iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken[.]" 28 U.S.C. § 158(d)(2)(A).

7. The statutory criteria are construed narrowly and certification is rarely appropriate. *See, e.g.*, *In re Motors Liquidation Co.*, 486 B.R. 596, 646 (Bankr. S.D.N.Y. 2013) (direct appeal appropriate only "[o]n rare occasions"), *rev'd on other grounds*, 777 F.3d 100, 101 (2d Cir. 2015). Certification is limited to pure questions of law and, even then, may not be granted "to decide a question of law which is heavily dependent on the particular facts of a case." *In re Brannan*, No. 04-01037, 2013 WL 1352350, *3 (Bankr. S.D. Ala. Apr. 3, 2013); *see, e.g.*,

In re Tribune Co., 477 B.R. 465, 472 (Bankr. D. Del. 2012) (if an issue "is not a pure legal issue[,] it is not appropriate for direct appeal"); *see also WestLB AG v. Kelley*, 514 B.R. 287, 294 (D. Minn. 2014) (cases that depend on layers of factual findings are not suitable for direct appeal); *In re American Home Mortgage Investment Corp*., 408 B.R. 42, 44 (D. Del 2009) (no certification for "mixed questions that implicate particular circumstances of this case").

8. Bankruptcy courts are reluctant to deviate from the normal appellate course because, among other things, "[c]ourts of appeals benefit immensely from reviewing the efforts of the district court to resolve" bankruptcy appeals, and "Congress was aware of the dangers of leapfrogging the district court in the appeals process." *Weber v. United States Trustee*, 484 F.3d 154, 160 (2d Cir. 2007) ("Initially divided over whether to make direct appeals mandatory in certain circumstances, or to grant discretion to the courts of appeals to accept or decline such direct appeals, Congress wisely adopted the latter path, probably in recognition of the salutary effects of allowing some cases to percolate through the normal channels.").

9. Because the Court's Order denying the Debtors' requested injunction does not meet any of the applicable criteria for a direct appeal, and because the relief the Debtors seek involves issues that, at a minimum, are heavily dependent on the facts of the case as developed at trial, certification is not warranted here.

A. The Appeal Does Not Involve "A Question Of Law Requiring Resolution Of Conflicting Decisions."

10. The Debtors do not argue that the Order "involves a question of law as to which there is no controlling decision." 28 U.S.C. § 158(d)(2)(A)(i). Nor could they. "Courts have . . . interpreted the 'controlling precedent' prong of 28 U.S.C. § 158(d)(2)(A)(i) to require that there be no governing law on the issue before the court." *In re Nortel Networks Corp.*, No. 09-10138(KG), 2010 WL 1172642, *2 (Bankr. D. Del. Mar. 18, 2010) (quotations omitted); *cf. In re*

Wright, 492 F.3d 829, 831 (7th Cir. 2007) (certification appropriate where "[n]o court of appeals has addressed the subject, and few district judges have done so"). Here, of course, the Order on appeal follows directly from the controlling decisions of *Fisher v. Apostolou*, 155 F.3d 876, 883 (7th Cir. 1998), and *In re Teknek, LLC*, 563 F.3d 639, 649 (7th Cir. 2009). *See* Op. 19-33.

11. The Debtors argue instead that the Court's application of *Fisher* and *Teknek* presents a "pure question of law" requiring resolution of conflicting decisions, asserting that the Court recognized "a circuit conflict." Mot. ¶¶ 11, 13. There is no such conflict. The Debtors suggest that *Fisher* and *Teknek* conflict with decisions of other courts of appeals, but they conspicuously cite no such conflicting authority. They instead point to a passage of the Opinion in which the Court cited opinions from bankruptcy and district courts outside of the Seventh Circuit. *Id.* ¶ 12 (citing Op. at 27-28.). That is not the stuff of which "circuit splits" are made. *Cf. Wright*, 492 F.3d at 831-32 (certification appropriate in the absence of circuit-level authority where "the issue not only has divided the bankruptcy courts but also arises in a large fraction of all consumer bankruptcy proceedings," meaning that "[l]ower litigation costs for thousands of debtors and creditors may be achieved by expediting appellate consideration of this case").

12. The Debtors next assert that there is a "division of interpretations" of *Fisher* and *Teknek* within the Seventh Circuit, but cite only one opinion that was vacated while a motion for rehearing was pending. Mot. ¶ 12 n.3 (citing *Harris, N.A. v. Gander Partners LLC*, 442 B.R. 883 (N.D. Ill.), *vacated by* No. 10-C-5495, 2011 U.S. Dist. LEXIS 157304, *1 (N.D. Ill. Feb. 9, 2011)). In published opinions within the Circuit, there simply is no "division of interpretations." *See, e.g.*, *In re Pierport Dev. & Realty, Inc.*, 502 B.R. 819, 828 (Bankr. N.D. Ill. 2013) (applying *Teknek*); *In re IFC Credit Corp.*, 422 B.R. 659, 664 (Bankr. N.D. Ill. 2010) (same).[1] As the

[1] *Fisher* and *Teknek* have been applied in other circuits as well. *See, e.g.*, *In re Living Hope Southwest Med. Servs.*, No. 4:11-CV-04059, 2012 WL 79661, *4 (W.D. Ark. Jan. 11, 2012)

Court has demonstrated, bankruptcy and district courts within the Circuit are capable of faithfully interpreting and applying the law as established in *Fisher* and *Teknek*. *See Nortel*, 2010 WL 1172642, at *1 (denying certification where appellant "disputes the application of existing controlling law to specific facts").

13. More importantly, neither a circuit split nor an intra-circuit "division of interpretation" would be ground for a direct appeal. As the Debtors acknowledge, the purpose of certification is "to generate binding appellate precedent in bankruptcy." *Id.* ¶ 11 (quoting *In re Pacific Lumber Co.*, 584 F.3d 229, 241 (5th Cir. 2009)). *Fisher* and *Teknek* are binding appellate precedent in the Seventh Circuit on the precise question at issue in this adversary proceeding. Certification is not needed to "generate binding appellate precedent." It already exists. And certification is not appropriate to address the inter-circuit split alleged by the Debtors, which only the Supreme Court could resolve. *See, e.g., In re GMC*, 409 B.R. 24, 28 (Bankr. S.D.N.Y. 2009) ("While a circuit split might be an appropriate matter for consideration for the Supreme Court, in deciding whether or not it wishes to grant certiorari, it doesn't satisfy §158(d)(2)."); *In re Goody's Family Clothing, Inc.*, No. 09-409 (RMB), 2009 WL 2355705, *2 (D. Del. July 30, 2009) (certification to address an inter-circuit split not warranted because a circuit court "is not empowered to resol[ve] . . conflicting decisions between circuits") (quotation omitted); 1 COLLIER ON BANKRUPTCY ¶ 5.06[4][c] (16th ed. rev. 2015) (alleged conflicting decisions must be within a particular circuit for purposes of certification).

14. Finally, the Debtors' appeal does not raise a "pure issue of law." As the Seventh Circuit explained in *Teknek*, the propriety of injunction like that sought by the Debtors turns on

("though Pinewood's claims involve the same pool of money as the trustee's claims, and that money is in the possession of the same alter-ego defendant . . . , the claims do not appear to be based wholly on the same acts") (citing *Teknek*).

the facts of each case. *Teknek*, 563 F.3d at 647 ("In making this distinction it is helpful to compare the facts of the leading cases."). The Court's Opinion involved a detailed factual analysis of whether the Defendants' claims were to the same assets, in the possession of the same defendants, arising from the same acts, performed by the same individuals, and as part of the same conspiracy as the claims that the Debtors say they want to assert (but have not yet done so). Op. 25-32. The propriety of the Debtors' requested injunction depended on those facts, which were developed through more than 200 admitted trial exhibits and the testimony of four witnesses over two days of trial. (As the Court observed, the Debtors ignored that evidence in their presentation of the case, with the result that "[i]t is fair to infer that the debtors have not explained how the estates' claims and the defendants' claims arise out of the same acts because they do not." Op. at 27 n.17.) Consequently, this is not a case for direct appeal. *See Weber*, 484 F.3d at 158 ("Congress believed direct appeal would be most appropriate where we are called upon to resolve a question of law not heavily dependent on the particular facts of a case, because such questions can often be decided based on an incomplete record.").

B. The Appeal Does Not Involve "A Matter Of Public Importance."

15. The Debtors also have not established that the issues here involve "a matter of public importance." 28 U.S.C. § 158(d)(2)(A)(i). Courts interpret the "public importance" prong narrowly. *Nortel*, 2010 WL 1172642 at *2. "To constitute an issue of 'public importance,' the issue on appeal must transcend the litigants and involve a legal question, the resolution of which will advance the cause of jurisprudence to a degree that is usually not the case." *Tribune*, 477 B.R. at 472 (quotations and citations omitted) (no "public importance" associated with a

question of unfair discrimination where the bankruptcy court's ruling followed controlling law within the circuit and the appeal involved application of that law to the facts of the case).[2]

16. The appeal here does not meet that standard. *Fisher* and *Teknek* are binding authorities that have governed bankruptcy cases within the Seventh Circuit for years. Although the Debtors claim that the issue is of "tremendous importance" and "goes to the heart of the bankruptcy system," Mot. ¶ 15, there is nothing new to decide. An appeal foreclosed by existing precedent does not raise a matter of public importance. *See Mark IV Indus. v. New Mexico Environment Dep't*, 452 B.R. 385, 390 (S.D.N.Y. 2011) (no certification where an appeal regarding the debtor's ability to discharge environmental liability under controlling Second Circuit precedent would not advance development of the law to an unusual degree).

17. The Debtors alternatively argue that their appeal is a matter of public interest because of the "practical ramifications" on their bankruptcy, asserting that an injunction would "promot[e] a successful reorganization." *Id.* ¶¶ 17, 18. This is just a rehash of arguments made at trial. It is wrong for all the reasons summarized in the Defendants' post-trial briefs. *See* ECF 152 ("Trustee Br.") ¶¶ 27-63; ECF 153 at 7-9, 18-20. A few facts are worth highlighting in this

[2] As *Tribune* makes clear, the Debtors are wrong in suggesting that the appeal is a matter of public importance simply due to the size of their case or the number of employees or creditors involved. Mot. ¶¶ 15-18. The cases cited by the Debtors do not support their argument in this regard. *Turner*, for example, involved an issue of first impression within the Seventh Circuit – whether, in light of a recent amendment to section 1325 of the Bankruptcy Code, mortgage payments for an abandoned residence should be included in a calculation of the debtor's ability to pay creditors – that was of keen importance "[i]n the wake of the bursting of the housing bubble." *In re Turner*, 574 F.3d 349, 351 (7th Cir. 2009). Similarly, certification was appropriate in *Pacific Lumber* because the appeal directly implicated "the citizens of California, of Humboldt County, and of the town of Scotia and . . . one of the nation's most ecologically diverse forests." *Pacific Lumber*, 584 F.3d at 242.

Unlike in *Turner*, the Debtors' request for an injunction here did not involve a new statute that might have far reaching consequences in light of prevailing economic conditions. Unlike in *Pacific Lumber*, nothing in the Debtors' appeal distinguishes it from appeals in other large corporate reorganizations, much less implicates the interests of an entire state or threatens an irreplaceable environmental resource.

regard as they demonstrate that the injunction the Debtors seek (and hence the direct appeal they now want to pursue) has nothing to do with facilitating a successful reorganization and everything to do with advancing the interests of their non-debtor parent.

18. First, the Debtors state that they possess only two major assets around which they will reorganize – "an operating business and estate claims against Caesars Entertainment Corp." – and assert that the putative estate claims against CEC are threatened by the Defendants' guarantee claims against CEC. Mot. ¶ 3. That is a false dichotomy. CEC is not the sole source of recovery on claims available to the estate, which include fraudulent conveyance, breach of fiduciary duty, and other causes of action against CEC affiliates that received fraudulent conveyances (such as Caesars Growth Partners, LLC, Caesars Acquisition Company, Caesars Entertainment Resort Properties, LLC, Caesars Enterprise Services, LLC) and some of the wealthiest individuals in the nation (including David Bonderman, Marc Rowan and David Sambur). Tr. 6/3 82:3-89:2, 95:13-96:21, 144:8-145:24 (Millstein). That the Debtors currently propose to release all claims against those defendants for no "contribution" whatsoever does not mean that the estate claims against them are not valuable. The Debtors' failure to even mention such claims raises grave concerns about their ability and willingness to advance the interests of the bankruptcy estate (rather than the interests of CEC).

19. Second, the RSA (which the Debtors assert to be imperiled by the guarantee actions) provides no legitimate framework or path toward a successful restructuring. Because CEC controls the Debtors, the RSA largely was "negotiated" by CEC with itself, and basically is a device for moving money from one of CEC's pockets to another. *See* Trustee Br. ¶¶ 57-63. The evidence revealed that CEC's purported "contribution" to the bankruptcy estate is worth a fraction of what it was said to be, and the Debtors introduced no evidence that the consideration

offered by CEC is valuable, much less worth the $1.5 billion purportedly demanded by the Debtors. Astoundingly, the Debtors' own expert (Mr. Millstein) has not yet valued CEC's "contribution," 6/3 Tr. 40:15-24, 79:21-80:5 (Millstein), and CEC's advisor (Mr. Zelin) – retained by an entity interested in putting the highest possible value on the settlement consideration – was forced to admit that CEC's promised consideration, less the benefits to be provided to CEC under the Debtors' plan, was impossible to measure and much smaller than the values previously touted by the Debtors. *See* Trustee Br. at 22 (citing Zelin testimony).

20. Third, the announcement that the Debtors "recently entered into another restructuring support agreement with a substantial amount of second lien noteholder support," Mot. ¶ 23, changes nothing. That purported new agreement is not in evidence or part of the trial record before the Court, and the Debtors cite only CEC's self-serving, post-trial public statements regarding it. If the Court were to open the record and take evidence on the point (after appropriate discovery), it would learn that the new agreement is not currently effective (and hence not an "agreement" at all) because it requires the assent of more than 50% of all second priority noteholders. That level of support has not been achieved. Moreover, the second priority noteholders who have agreed to the alleged new agreement are reported to be among the ten largest shareholders of CEC. It is telling that the Debtors and CEC chose to "negotiate" only with seemingly conflicted stakeholders and not with the Noteholder Committee, which is the only disinterested fiduciary representing the interests of *all* second priority noteholders (including the majority who do not also own CEC equity).

21. The alleged new agreement is particularly troubling in the context of the Debtors' requested injunction. The recently-disclosed terms contemplate that CEC will make payments – from the very same CEC assets that the Debtors claim are needed for their own reorganization –

to some, but not all, second priority noteholders. Those payments would be made outside of bankruptcy and not through a plan of reorganization. In exchange, non-debtor CEC would have a forbearance that benefits CEC but has no relevance to the Debtors (who already benefit from the automatic stay). From the perspective of the bankruptcy estate, the Debtors receive no greater benefit from those payments than they would if CEC lost the money in a bad investment. If anything, the payments contemplated by the new agreement will lead to the very "harm" the Debtors say they want to avoid – payment of "*certain creditors*" to the detriment of "equitable distribution to *all* the Debtors' creditors." Mot. ¶ 1 (emphasis in original).[3]

22. In any event, the alleged new agreement – achieved during the pendency of active and contested litigation – proves that the Debtors and CEC can continue to negotiate with stakeholders in the absence of an injunction.

23. For all of these reasons, a direct appeal would do nothing to facilitate a successful reorganization and is not relevant to any matter of public importance.

C. A Direct Appeal Will Not Materially Advance The Progress Of The Case.

24. Finally, a direct appeal will not "materially advance the progress of the case," 28 U.S.C. § 158(d)(2)(A)(iii), whether the "case" is considered to be this adversary proceeding or the bankruptcy case at large.

[3] Such payments would be improper in any event. The alleged new agreement provides for CEC to pay some (but not all) second priority noteholders in exchange for their commitment to vote in favor of the Debtors' plan. The Bankruptcy Code prohibits such a vote-buying scheme. If it is implemented, all votes cast by second priority noteholders who receive payment from CEC will have to be designated and disqualified. *E.g.*, *In re Quigley Co.*, 437 B.R. 102, 126 (Bankr. S.D.N.Y. 2007) (votes designated where debtor's parent "wrongfully manipulate[ed] the voting process" by paying cash to certain claimants outside of the debtor's proposed plan); *In re Featherworks Corp.*, 25 B.R. 634, 641 (Bankr. E.D.N.Y. 1982) (vote designated where creditor changed ballot after an insider of the debtor paid the creditor $25,000), *aff'd*, 36 B.R. 460 (E.D.N.Y. 1984).

25. Here, the Debtors miss the point, as they focus on the purported benefits of an injunction. The question, however, is whether certification of a direct appeal will materially advance the case. "[I]t is not enough to rely on the truism that leapfrogging district-court review always advances litigation. " *WestLB*, 514 B.R. at 292-293 ("[T]his is not an argument for certification, but instead an argument on the merits of the trustee's motion to consolidate. The question is not whether *substantive consolidation* will materially advance the litigation. The question is whether *skipping district-court review* . . . will materially advance the litigation. The trustee's argument about the advantages of substantive consolidation (besides relying on contested factual findings) does not answer the latter question . . . .") (emphasis in original).

26. In any event, the Debtors concede that an injunction is not necessary to a successful reorganization. 6/3 Tr. 78:12-23 (Millstein). They only speculate that an injunction might "enhance" the likelihood of a successful case and that the absence of an injunction "could be" value destructive. *Id.* The Debtors also agree that an injunction is not relevant to their operations and financial performance, which they say have improved during the bankruptcy case despite the pendency of the Defendants' guarantee actions. 6/3 Tr. 60:12-61:8, 77:13-78:11 (Millstein); 6/4 Tr. 42:4-22 (Zelin).

27. More importantly, even if granted, certification of a direct appeal will not achieve the objective the Debtors say they want. The Debtors state that an immediate, direct appeal is necessary in order to avoid a determination on the merits of the guarantee question. Application ¶ 5, 8 (ruling on appeal critical "before an intervening ruling in the Prepetition Litigation"). However, under any timeline, a decision by the Circuit on the merits would be months away, and probably would come after a summary judgment decision in the guarantee

cases.[4] Further, even if the Debtors prevailed on appeal, they would not automatically be entitled to an injunction. The best result the Debtors could achieve on appeal would be a holding that the Court has *authority* to issue the injunction the Debtors request, with a remand for a determination of whether the Debtors had carried their burden of showing that an injunction is appropriate under the facts established at trial. Mot. ¶ 8 (sole question presented is whether the Court has authority to issue an injunction); *see In re GAC Storage El Monte, LLC*, 489 B.R. 747, 770 (Bankr. N.D. Ill. 2013) (injunction denied where "there has been no showing of danger of imminent, irreparable harm to the Debtor's ability to reorganize").

28. The Debtors' conduct also belies the urgency they now profess. The Court will recall that the Debtors declined the opportunity to litigate their request for an injunction immediately upon the filing of their Complaint. Instead, the Debtors agreed to a schedule that resulted in a trial nearly three months later. If it was not important for the Debtors to proceed expeditiously to trial, it cannot be critical for the Debtors to proceed immediately to the Seventh Circuit now that they have lost at the trial they voluntarily delayed.

29. Regardless, CEC's liability on its guarantees must be determined at some point. The Court and the Debtors' stakeholders must know the answer to that critical question if the Debtors seek to confirm a plan that releases CEC from the guarantees. Without an answer, it will be impossible to determine whether CEC is paying fair value for a release of its liability. A direct appeal with the purported objective of preventing such a determination would just delay the day of reckoning and ultimately set this case back by many months, if not years.

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[4] A recent appeal pursuant to 28 U.S.C. § 158(d)(2)(A) accepted by the Seventh Circuit involved a pure issue of law – whether a proof of claim deadline applies to secured creditors – and was decided more than a year after the underlying bankruptcy court decision. *See In re Pajian*, 785 F.3d 1161, 1161 (7th Cir. May 11, 2015); *In re Pajian*, 508 B.R. 708 (Bankr. N.D. Ill. April 15, 2014).

30. Finally, adjudication of CEC's guarantee liability is just one of many issues that need to be resolved to move this case forward. For example, the Debtors entirely ignore the Examiner's pending investigation and forthcoming report, which is not expected until this Fall (at the earliest). Regardless of what happens on appeal with respect to the Debtors' requested injunction, the bankruptcy case is unlikely to progress towards confirmation until the Examiner completes his investigation and weighs in on the many important claims available to the estate with respect to the "controversial" prepetition transactions orchestrated by CEC. A direct appeal will do nothing to advance or facilitate that process.

III. CONCLUSION

31. For the foregoing reasons, there is no basis for a direct appeal of the Court's Order denying the Debtors' requested injunction. The Defendants respectfully request that this Court enter an order denying the Motion.

Dated: July 28, 2015

Respectfully submitted,

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