No. 1:15-cv-06504

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Debtors.

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Plaintiffs-Appellants,

v.

BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, MEEHANCOMBS GLOBAL CREDIT OPPORTUNITIES MASTER FUND, LP, RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA MASTER FUND, LTD., TRILOGY PORTFOLIO COMPANY, LLC, AND FREDRICK BARTON DANNER,
Defendants-Appellees.

On Appeal from the United States Bankruptcy Court for the Northern District of Illinois (Goldgar, J.)
Chapter 11 Case No. 15-01145
Adversary Proceeding No. 15-00149

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Bankruptcy Procedure 8012, Plaintiffs-Appellants make the following disclosure:

1. Eighty-nine and three tenths percent (89.30%) of the equity of CEOC is directly owned by Caesars Entertainment Corporation, a publicly-held corporation, and no other publicly-held corporation owns more than ten percent (10%) of CEOC's equity.

2. One hundred percent (100%) of the equity of 190 Flamingo, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of 190 Flamingo, LLC.

3. One hundred percent (100%) of the equity of 3535 LV Corp. is directly owned by CEOC, and no publicly-held corporation owns any equity of 3535 LV Corp.

4. One hundred percent (100%) of the equity of 3535 LV Parent, LLC is directly owned by 3535 LV Corp., and no publicly-held corporation owns any equity of 3535 LV Parent, LLC.

5. One hundred percent (100%) of the equity of AJP Holdings, LLC is directly owned by AJP Parent, LLC, and no publicly-held corporation owns any equity of AJP Holdings, LLC.

6. One hundred percent (100%) of the equity of AJP Parent, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of AJP Parent, LLC.

7. One hundred percent (100%) of the equity of B I Gaming Corporation is directly owned by Harrah's International Holding Company, Inc., and no publicly-held corporation owns any equity of B I Gaming Corporation.

8. One hundred percent (100%) of the equity of Bally's Midwest Casino, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Bally's Midwest Casino, Inc.

9. One hundred percent (100%) of the equity of Bally's Park Place, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Bally's Park Place, Inc.

10. One hundred percent (100%) of the equity of Bally's Las Vegas Manager, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Bally's Las Vegas Manager, LLC.

11. One hundred percent (100%) of the equity of Benco, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Benco, Inc.

12. One hundred percent (100%) of the equity of Biloxi Hammond, LLC is directly owned by Grand Casinos of Biloxi, LLC, and no publicly-held corporation owns any equity of Biloxi Hammond, LLC.

13. One hundred percent (100%) of the equity of Biloxi Village Walk Development, LLC is directly owned by Grand Casinos of Biloxi, LLC, and no publicly-held corporation owns any equity of Biloxi Village Walk Development, LLC.

14. One hundred percent (100%) of the equity of BL Development Corp. is directly owned by Grand Casinos, Inc., and no publicly-held corporation owns any equity of BL Development Corp.

15. One hundred percent (100%) of the equity of Boardwalk Regency Corporation is directly owned by Caesars New Jersey, Inc., and no publicly-held corporation owns any equity of Boardwalk Regency Corporation.

16. One hundred percent (100%) of the equity of BPP Providence Acquisition Company, LLC is directly owned by Bally's Park Place, Inc., and no publicly-held corporation owns any equity of BPP Providence Acquisition Company, LLC.

17. One hundred percent (100%) of the equity of Caesars Air, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Air, LLC.

18. One hundred percent (100%) of the equity of Caesars Baltimore Acquisition Company, LLC is directly owned by CEOC, and

no publicly-held corporation owns any equity of Caesars Baltimore Acquisition Company, LLC.

19. One hundred percent (100%) of the equity of Caesars Baltimore Development Company, LLC is directly owned by Caesars Baltimore Acquisition Company, LLC, and no publicly-held corporation owns any equity of Caesars Baltimore Development Company, LLC.

20. One hundred percent (100%) of the equity of Caesars Baltimore Management Company, LLC is directly owned by Caesars Baltimore Acquisition Company, LLC, and no publicly-held corporation owns any equity of Caesars Baltimore Management Company, LLC.

21. One hundred percent (100%) of the equity of Caesars Entertainment Canada Holding, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Entertainment Canada Holding, Inc.

22. One hundred percent (100%) of the equity of Caesars Entertainment Finance Corp. is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Entertainment Finance Corp.

23. One hundred percent (100%) of the equity of Caesars Entertainment Golf, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Entertainment Golf, Inc.

24. One hundred percent (100%) of the equity of Caesars Entertainment Retail, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Entertainment Retail, Inc.

25. One hundred percent (100%) of the equity of Caesars Entertainment Windsor Limited is directly owned by Caesars World, Inc., and no publicly-held corporation owns any equity of Caesars Entertainment Windsor Limited.

26. One hundred percent (100%) of the equity of Caesars Escrow Corporation is directly owned by Caesars Operating Escrow LLC, and no publicly-held corporation owns any equity of Caesars Escrow Corporation.

27. One hundred percent (100%) of the equity of Caesars India Sponsor Company, LLC is directly owned by California Clearing Corporation, and no publicly-held corporation owns any equity of Caesars India Sponsor Company.

28. One hundred percent (100%) of the equity of Caesars License Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars License Company, LLC.

29. One hundred percent (100%) of the equity of Caesars Marketing Services Corporation is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Marketing Services.

30. One hundred percent (100%) of the equity of Caesars Massachusetts Acquisition Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Massachusetts Acquisition Company, LLC.

31. One hundred percent (100%) of the equity of Caesars Massachusetts Development Company, LLC is directly owned by Caesars Massachusetts Acquisition Company, LLC, and no publicly-held corporation owns any equity of Caesars Massachusetts Development Company, LLC.

32. One hundred percent (100%) of the equity of Caesars Massachusetts Investment Company, LLC is directly owned by Caesars Massachusetts Acquisition Company, LLC, and no publicly-held corporation owns any equity of Caesars Massachusetts Investment Company, LLC.

33. One hundred percent (100%) of the equity of Caesars Massachusetts Management Company, LLC is directly owned by Caesars Massachusetts Acquisition Company, LLC, and no publicly-held corporation owns any equity of Caesars Massachusetts Management Company, LLC.

34. One hundred percent (100%) of the equity of Caesars New Jersey, Inc. is directly owned by Caesars World, Inc., and no publicly-held corporation owns any equity of Caesars New Jersey, Inc.

35. One hundred percent (100%) of the equity of Caesars Operating Escrow LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Operating Escrow LLC.

36. One hundred percent (100%) of the equity of Caesars Palace Corporation is directly owned by Caesars World, Inc., and no publicly-held corporation owns any equity of Caesars Palace Corporation.

37. One hundred percent (100%) of the equity of Caesars Palace Realty Corporation is directly owned by Caesars Palace Corporation, and no publicly-held corporation owns any equity of Caesars Palace Realty Corporation.

38. One hundred percent (100%) of the equity of Caesars Palace Sports Promotions, Inc. is directly owned by Desert Palace, Inc., and no publicly-held corporation owns any equity of Caesars Palace Sports Promotions, Inc.

39. Eighty-two percent (82%) of the equity of Caesars Riverboat Casino, LLC is directly owned by Roman Holding Corporation of Indiana, and eighteen percent (18%) of the equity of Caesars Riverboat Casino, LLC is directly owned by CEOC. No publicly-held corporation owns any equity of Caesars Riverboat Casino, LLC.

40. One hundred percent (100%) of the equity of Caesars Trex, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars Trex, Inc.

41. One hundred percent (100%) of the equity of Caesars United Kingdom, Inc. is directly owned by Caesars World, Inc., and no publicly-held corporation owns any equity of Caesars United Kingdom, Inc.

42. One hundred percent (100%) of the equity of Caesars World Marketing Corporation is directly owned by Caesars World, Inc., and no publicly-held corporation owns any equity of Caesars World Marketing Corporation.

43. One hundred percent (100%) of the equity of Caesars World Merchandising, Inc. is directly owned by Caesars World, Inc., and no

publicly-held corporation owns any equity of Caesars World Merchandising, Inc.

44. One hundred percent (100%) of the equity of Caesars World, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Caesars World, Inc.

45. One hundred percent (100%) of the equity of California Clearing Corporation is directly owned by Desert Palace, Inc., and no publicly-held corporation owns any equity of California Clearing Corporation.

46. One hundred percent (100%) of the equity of Casino Computer Programming, Inc. is directly owned by Horseshoe Gaming Holding, LLC, and no publicly-held corporation owns any equity of Casino Computer Programming, Inc.

47. One hundred percent (100%) of the equity of CG Services, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of CG Services, LLC.

48. One hundred percent (100%) of the equity of Chester Facility Holding Company, LLC is directly owned by Harrah's Chester Downs Investment Company, LLC, and no publicly-held corporation owns any equity of Chester Facility Holding Company, LLC.

49. One hundred percent (100%) of the equity of Christian County Land Acquisition Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Christian County Land Acquisition Company, LLC.

50. One hundred percent (100%) of the equity of Consolidated Supplies, Services and Systems is directly owned by CEOC, and no publicly-held corporation owns any equity of Consolidated Supplies, Services and Systems.

51. One hundred percent (100%) of the equity of Corner Investment Company Newco, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Corner Investment Company Newco, LLC.

52. One hundred percent (100%) of the equity of Cromwell Manager, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Cromwell Manager, LLC.

53. One hundred percent (100%) of the equity of CZL Development Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of CZL Development Company, LLC.

54. One hundred percent (100%) of the equity of CZL Management Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of CZL Management Company, LLC.

55. One hundred percent (100%) of the equity of DCH Exchange, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of DCH Exchange, LLC.

56. One hundred percent (100%) of the equity of DCH Lender, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of DCH Lender, LLC.

57. Eighty percent (80%) of the equity of Des Plaines Development Limited Partnership is directly owned by Harrah's Illinois Corporation, and twenty percent (20%) of the equity of Des Plaines Development Limited Partnership is directly owned by Des Plaines Development Corporation. No publicly-held corporation holds any equity of Des Plaines Development Limited Partnership.

58. One hundred percent (100%) of the equity of Desert Palace, Inc. is directly owned by Caesars Palace Corporation, and no publicly-held corporation owns any equity of Desert Palace, Inc.

59. One hundred percent (100%) of the equity of Durante Holdings, LLC is directly owned by AJP Holdings, LLC, and no publicly-held corporation owns any equity of Durante Holdings, LLC.

60. One hundred percent (100%) of the equity of East Beach Development Corporation is directly owned by CEOC, and no publicly-

held corporation owns any equity of East Beach Development Corporation.

61. One hundred percent (100%) of the equity of FHR Corporation is directly owned by Parball Corporation, and no publicly-held corporation owns any equity of FHR Corporation.

62. One hundred percent (100%) of the equity of FHR Parent, LLC is directly owned by FHR Corporation, and no publicly-held corporation owns any equity of FHR Parent, LLC.

63. One hundred percent (100%) of the equity of Flamingo-Laughlin Parent, LLC is directly owned by Flamingo-Laughlin, Inc., and no publicly-held corporation owns any equity of Flamingo-Laughlin Parent, LLC.

64. One hundred percent (100%) of the equity of Flamingo-Laughlin, Inc. is directly owned by Parball Corporation, and no publicly-held corporation owns any equity of Flamingo-Laughlin, Inc.

65. One hundred percent (100%) of the equity of GCA Acquisition Subsidiary, Inc. is directly owned by Grand Casinos, Inc., and no publicly-held corporation owns any equity of GCA Acquisition Subsidiary, Inc.

66. One hundred percent (100%) of the equity of GNOC, Corp. is directly owned by Bally's Park Place, Inc., and no publicly-held corporation owns any equity of GNOC, Corp.

67. One hundred percent (100%) of the equity of Grand Casinos of Biloxi, LLC is directly owned by Grand Casinos, Inc., and no publicly-held corporation owns any equity of Grand Casinos of Biloxi, LLC.

68. One hundred percent (100%) of the equity of Grand Casinos of Mississippi, LLC—Gulfport is directly owned by Grand Casinos, Inc., and no publicly-held corporation owns any equity of Grand Casinos of Mississippi, LLC—Gulfport.

69. One hundred percent (100%) of the equity of Grand Casinos, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Grand Casinos, Inc.

70. One hundred percent (100%) of the equity of Grand Media Buying, Inc. is directly owned by Grand Casinos, Inc., and no publicly-held corporation owns any equity of Grand Media Buying, Inc.

71. One hundred percent (100%) of the equity of Harrah South Shore Corporation is directly owned by Harveys Tahoe Management Company, Inc., and no publicly-held corporation owns any equity of Harrah South Shore Corporation.

72. One hundred percent (100%) of the equity of Harrah's Arizona Corporation is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Arizona Corporation.

73. One hundred percent (100%) of the equity of Harrah's Bossier City Investment Company, L.L.C. is directly owned by Harrah's Shreveport/Bossier City Investment Company, LLC, and no publicly-held corporation owns any equity of Harrah's Bossier City Investment Company, L.L.C.

74. One hundred percent (100%) of the equity of Harrah's Bossier City Management Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Bossier City Management Company, LLC.

75. One hundred percent (100%) of the equity of Harrah's Chester Downs Investment Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Chester Downs Investment Company, LLC.

76. One hundred percent (100%) of the equity of Harrah's Chester Downs Management Company, LLC is directly owned by Harrah's Chester Downs Investment Company, LLC, and no publicly-held corporation owns any equity of Harrah's Chester Downs Management Company, LLC.

77. One hundred percent (100%) of the equity of Harrah's Illinois Corporation is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Illinois Corporation.

78. One hundred percent (100%) of the equity of Harrah's Interactive Investment Company is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Interactive Investment Company.

79. One hundred percent (100%) of the equity of Harrah's International Holding Company, Inc. is directly owned by CEOC, and and no publicly-held corporation owns any equity of Harrah's International Holding Company, Inc.

80. One hundred percent (100%) of the equity of Harrah's Investments, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Investments, Inc.

81. One hundred percent (100%) of the equity of Harrah's Iowa Arena Management, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Iowa Arena Management, LLC.

82. One hundred percent (100%) of the equity of Harrah's Management Company is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Management Company.

83. One hundred percent (100%) of the equity of Harrah's Maryland Heights Operating Company is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Maryland Heights Operating Company.

84. One hundred percent (100%) of the equity of Harrah's MH Project, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's MH Project, LLC.

85. Ninety-nine percent (99%) of the equity of Harrah's NC Casino Company, LLC is directly owned by CEOC, and one percent (1%) of the equity of Harrah's NC Casino Company, LLC is directly owned by Harrah's Management Company. No publicly-held corporation owns any equity of Harrah's NC Casino Company, LLC.

86. One hundred percent (100%) of the equity of Harrah's New Orleans Management Company is directly owned by CEOC, and no

publicly-held corporation owns any equity of Harrah's New Orleans Management Company.

87. One hundred percent (100%) of the equity of Harrah's North Kansas City LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's North Kansas City LLC.

88. One hundred percent (100%) of the equity of Harrah's Operating Company Memphis, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Operating Company Memphis, LLC.

89. One hundred percent (100%) of the equity of Harrah's Pittsburgh Management Company is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Pittsburgh Management Company.

90. One hundred percent (100%) of the equity of Harrah's Reno Holding Company, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Reno Holding Company, Inc.

91. One hundred percent (100%) of the equity of Harrah's Shreveport Investment Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Shreveport Investment Company, LLC.

92. One hundred percent (100%) of the equity of Harrah's Shreveport Management Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Shreveport Management Company, LLC.

93. One hundred percent (100%) of the equity of Harrah's Shreveport/Bossier City Holding Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Shreveport/Bossier City Holding Company, LLC.

94. Eighty-four and three tenths percent (84.30%) of the equity of Harrah's Shreveport/Bossier City Investment Company, LLC is directly owned by Harrah's Shreveport Investment Company, LLC, nine and eight tenths percent (9.80%) of the equity of Harrah's

Shreveport/Bossier City Investment Company, LLC is directly owned by Harrah's Shreveport/Bossier City Holding Company, LLC, nine tenths of one percent (0.90%) of the equity of Harrah's Shreveport/Bossier City Investment Company, LLC is directly owned by Harrah's Shreveport Management Company, LLC, and five percent (5%) of the equity of Harrah's Shreveport/Bossier City Investment Company, LLC is directly owned by Harrah's New Orleans Management Company. No publicly-held corporation owns any equity of Harrah's Shreveport/Bossier City Investment Company, LLC.

95. One hundred percent (100%) of the equity of Harrah's Southwest Michigan Casino Corporation is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Southwest Michigan Casino Corporation.

96. One hundred percent (100%) of the equity of Harrah's Travel, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's Travel, Inc.

97. One hundred percent (100%) of the equity of Harrah's West Warwick Gaming Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Harrah's West Warwick Gaming Company, LLC.

98. One hundred percent (100%) of the equity of Harveys BR Management Company, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Harveys BR Management Company, Inc.

99. One hundred percent (100%) of the equity of Harveys C.C. Management Company, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Harveys C.C. Management Company, Inc.

100. One hundred percent (100%) of the equity of Harveys Iowa Management Company, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Harveys Iowa Management Company, Inc.

101. One hundred percent (100%) of the equity of Harveys Tahoe Management Company, Inc. is directly owned by HTM Holding, Inc., and no publicly-held corporation owns any equity of Harveys Tahoe Management Company, Inc.

102. One hundred percent (100%) of the equity of H-BAY, LLC is directly owned by Caesars Entertainment Operating Company, Inc.

103. One hundred percent (100%) of the equity of HBR Realty Company, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of HBR Realty Company, Inc.

104. One hundred percent (100%) of the equity of HCAL, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of HCAL, LLC.

105. One hundred percent (100%) of the equity of HCR Services Company, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of HCR Services Company, Inc.

106. One hundred percent (100%) of the equity of HEI Holding Company One, Inc. is directly owned by B I Gaming Corporation, and no publicly-held corporation owns any equity of HEI Holding Company One, Inc.

107. One hundred percent (100%) of the equity of HEI Holding Company Two, Inc. is directly owned by B I Gaming Corporation, and no publicly-held corporation owns any equity of HEI Holding Company Two, Inc.

108. One hundred percent (100%) of the equity of HHLV Management Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of HHLV Management Company, LLC.

109. One hundred percent (100%) of the equity of HIE Holdings Topco, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of HIE Holdings Topco, Inc.

110. One hundred percent (100%) of the equity of Hole in the Wall, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Hole in the Wall, LLC.

111. Ninety-one and ninety-two hundredths percent (91.92%) of the equity of Horseshoe Entertainment is directly owned by New Gaming Capital Partnership, and eight and eight hundredths percent (8.08%) of the equity of Horseshoe Entertainment is directly owned by Horseshoe Gaming Holding, LLC. No publicly-held corporation owns any equity of Horseshoe Entertainment.

112. One hundred percent (100%) of the equity of Horseshoe Gaming Holding, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Horseshoe Gaming Holding, LLC.

113. One hundred percent (100%) of the equity of Horseshoe GP, LLC is directly owned by Horseshoe Gaming Holding, LLC, and no publicly-held corporation owns any equity of Horseshoe GP, LLC.

114. One hundred percent (100%) of the equity of Horseshoe Hammond, LLC is directly owned by Horseshoe Gaming Holding, LLC, and no publicly-held corporation owns any equity of Horseshoe Hammond, LLC.

115. One hundred percent (100%) of the equity of Horseshoe Shreveport, L.L.C. is directly owned by Horseshoe Gaming Holding, LLC, and no publicly-held corporation owns any equity of Horseshoe Shreveport, LLC.

116. One hundred percent (100%) of the equity of HTM Holding, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of HTM Holding, Inc.

117. One hundred percent (100%) of the equity of JCC Holding Company II Newco, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of JCC Holding Company II Newco, LLC.

118. One hundred percent (100%) of the equity of Koval Holdings Company, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Koval Holdings Company, LLC.

119. One hundred percent (100%) of the equity of Koval Investment Company, LLC is directly owned by Koval Holdings Company, LLC, and no publicly-held corporation owns any equity of Koval Investment Company, LLC.

120. One hundred percent (100%) of the equity of Las Vegas Golf Management, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Las Vegas Golf Management, LLC.

121. One hundred percent (100%) of the equity of Las Vegas Resort Development, Inc. is directly owned by Winnick Parent, LLC, and no publicly-held corporation owns any equity of Las Vegas Resort Development, Inc.

122. One hundred percent (100%) of the equity of Laundry Parent, LLC is directly owned by Parball Corporation, and no publicly-held corporation owns any equity of Laundry Parent, LLC.

123. One hundred percent (100%) of the equity of LVH Corporation is directly owned by Parball Corporation, and no publicly-held corporation owns any equity of LVH Corporation.

124. One hundred percent (100%) of the equity of LVH Parent, LLC is directly owned by LVH Corporation, and no publicly-held corporation owns any equity of LVH Parent, LLC.

125. One hundred percent (100%) of the equity of Martial Development Corp. is directly owned by Caesars New Jersey, Inc., and no publicly-held corporation owns any equity of Martial Development Corp.

126. One hundred percent (100%) of the equity of Nevada Marketing, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Nevada Marketing, LLC.

127. Ninety-nine percent (99%) of the equity of New Gaming Capital Partnership is directly owned by Horseshoe Gaming Holding,

LLC, and one percent (1%) of the equity of New Gaming Capital Partnership is directly owned by Horseshoe GP, LLC. No publicly-held corporation owns any equity of New Gaming Capital Partnership.

128. One hundred percent (100%) of the equity of Ocean Showboat, Inc. is directly owned by Showboat Holding, Inc., and no publicly-held corporation owns any equity of Ocean Showboat, Inc.

129. One hundred percent (100%) of the equity of Octavius Linq Holding Co., LLC is directly owned by Caesars Palace Realty Corporation, and no publicly-held corporation owns any equity of Octavius Linq Holding Co., LLC.

130. One hundred percent (100%) of the equity of Parball Corporation is directly owned by CEOC, and no publicly-held corporation owns any equity of Parball Corporation.

131. One hundred percent (100%) of the equity of Parball Parent, LLC is directly owned by Parball Corporation, and no publicly-held corporation owns any equity of Parball Parent, LLC.

132. One hundred percent (100%) of the equity of PH Employees Parent LLC is directly owned by PHW Manager LLC, and no publicly-held corporation owns any equity of PH Employees Parent LLC.

133. One hundred percent (100%) of the equity of PHW Investments, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of PHW Investments, LLC.

134. One hundred percent (100%) of the equity of PHW Las Vegas, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of PHW Las Vegas, LLC.

135. One hundred percent (100%) of the equity of PHW Manager, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of PHW Manager, LLC.

136. One hundred percent (100%) of the equity of Players Bluegrass Downs, Inc. is directly owned by Players Holding, LLC, and no publicly-held corporation owns any equity of Players Bluegrass Downs, Inc.

137. One hundred percent (100%) of the equity of Players Development, Inc. is directly owned by Players International, LLC, and no publicly-held corporation owns any equity of Players Development, Inc.

138. One hundred percent (100%) of the equity of Players Holding, LLC is directly owned by Players International, LLC, and no publicly-held corporation owns any equity of Players Holding, LLC.

139. One hundred percent (100%) of the equity of Players International, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Players International, LLC.

140. One hundred percent (100%) of the equity of Players LC, LLC is directly owned by Players Holding, LLC, and no publicly-held corporation owns any equity of Players LC, LLC.

141. One hundred percent (100%) of the equity of Players Maryland Heights Nevada, LLC is directly owned by Players Holding, LLC, and no publicly-held corporation owns any equity of Players Maryland Heights Nevada, LLC.

142. One hundred percent (100%) of the equity of Players Resources, Inc. is directly owned by Players International, LLC, and no publicly-held corporation owns any equity of Players Resources, Inc.

143. One percent (1%) of the equity of Players Riverboat II, LLC is directly owned by Players Riverboat Management, LLC, and ninety-nine percent (99%) of the equity of Players Riverboat II, LLC is directly owned by Players Riverboat, LLC. No publicly-held corporation owns any equity of Players Riverboat II, LLC.

144. One hundred percent (100%) of the equity of Players Riverboat Management, LLC is directly owned by Players Holding, LLC, and no publicly-held corporation owns any equity of Players Riverboat Management, LLC.

145. One hundred percent (100%) of the equity of Players Riverboat, LLC is directly owned by Players Holding, LLC, and no publicly-held corporation owns any equity of Players Riverboat, LLC.

146. One hundred percent (100%) of the equity of Players Services, Inc. is directly owned by Players International, LLC, and no publicly-held corporation owns any equity of Players Services, Inc.

147. One hundred percent (100%) of the equity of Reno Crossroads LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Reno Crossroads LLC.

148. One hundred percent (100%) of the equity of Reno Projects, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Reno Projects, Inc.

149. One hundred percent (100%) of the equity of Rio Development Company, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Rio Development Company, Inc.

150. Ninety-nine percent (99%) of the equity of Robinson Property Group Corp. is directly owned by Horseshoe Gaming Holding, LLC, and one percent (1%) of the equity of Robinson Property Group Corp. is directly owned by Horseshoe GP, LLC. No publicly-held corporation owns any equity of Robinson Property Group Corp.

151. One hundred percent (100%) of the equity of Roman Entertainment Corporation of Indiana is directly owned by Caesars World, Inc., and no publicly-held corporation owns any equity of Roman Entertainment Corporation of Indiana.

152. One hundred percent (100%) of the equity of Roman Holding Corporation of Indiana is directly owned by Caesars World, Inc., and no publicly-held corporation owns any equity of Roman Holding Corporation of Indiana.

153. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 1, LLC is directly owned by Showboat Atlantic City Mezz 2, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 1, LLC.

154. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 2, LLC is directly owned by Showboat Atlantic City

Mezz 3, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 2, LLC.

155. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 3, LLC is directly owned by Showboat Atlantic City Mezz 4, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 3, LLC.

156. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 4, LLC is directly owned by Showboat Atlantic City Mezz 5, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 4, LLC.

157. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 5, LLC is directly owned by Showboat Atlantic City Mezz 6, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 5, LLC.

158. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 6, LLC is directly owned by Showboat Atlantic City Mezz 7, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 6, LLC.

159. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 7, LLC is directly owned by Showboat Atlantic City Mezz 8, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 7, LLC.

160. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 8, LLC is directly owned by Showboat Atlantic City Mezz 9, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 8, LLC.

161. One hundred percent (100%) of the equity of Showboat Atlantic City Mezz 9, LLC is directly owned by Ocean Showboat, Inc., and no publicly-held corporation owns any equity of Showboat Atlantic City Mezz 9, LLC.

162. One hundred percent (100%) of the equity of Showboat Atlantic City Operating Company, LLC is directly owned by Ocean

Showboat, Inc., and no publicly-held corporation owns any equity of Showboat Atlantic City Operating Company, LLC.

163. One hundred percent (100%) of the equity of Showboat Atlantic City Propco, LLC is directly owned by Showboat Atlantic City Mezz 1, LLC, and no publicly-held corporation owns any equity of Showboat Atlantic City Propco, LLC.

164. One hundred percent (100%) of the equity of Showboat Holding, Inc. is directly owned by CEOC, and no publicly-held corporation owns any equity of Showboat Holding, Inc.

165. One hundred percent (100%) of the equity of Southern Illinois Riverboat/Casino Cruises, Inc. is directly owned by Players Holding, LLC, and no publicly-held corporation owns any equity of Southern Illinois Riverboat/Casino Cruises, Inc.

166. One hundred percent (100%) of the equity of Tahoe Garage Propco, LLC is directly owned by Harveys Tahoe Management Company, Inc., and no publicly-held corporation owns any equity of Tahoe Garage Propco, LLC.

167. One hundred percent (100%) of the equity of The Quad Manager, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of The Quad Manager, LLC.

168. One hundred percent (100%) of the equity of TRB Flamingo, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of TRB Flamingo, LLC.

169. One hundred percent (100%) of the equity of Trigger Real Estate Corporation is directly owned by CEOC, and no publicly-held corporation owns any equity of Trigger Real Estate Corporation.

170. One hundred percent (100%) of the equity of Tunica Roadhouse Corporation is directly owned by CEOC, and no publicly-held corporation owns any equity of Tunica Roadhouse Corporation.

171. One hundred percent (100%) of the equity of Village Walk Construction, LLC is directly owned by Grand Casinos of Biloxi, LLC,

and no publicly-held corporation owns any equity of Village Walk Construction, LLC.

172. One hundred percent (100%) of the equity of Winnick Holdings, LLC is directly owned by Winnick Parent, LLC, and no publicly-held corporation owns any equity of Winnick Holdings, LLC.

173. One hundred percent (100%) of the equity of Winnick Parent, LLC is directly owned by CEOC, and no publicly-held corporation owns any equity of Winnick Parent, LLC.

STATEMENT REGARDING ORAL ARGUMENT

Appellants respectfully request oral argument. This case presents important issues regarding the scope of a bankruptcy court's authority under 11 U.S.C. §105(a) to enjoin litigation that threatens to derail a bankruptcy proceeding. Appellants believe that argument will materially assist the Court in its analysis of the disputed issues presented on appeal.

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INTRODUCTION

This is a pivotal moment in the Debtors' reorganization efforts. Any successful reorganization of the Debtors will require a substantial financial contribution from their non-debtor parent, Caesars Entertainment Company ("CEC"), either voluntarily or through litigation, because estate causes of action against CEC are one of the bankruptcy estate's two primary assets. And the Debtors have an agreement with CEC and certain of the Debtors' significant creditors that calls for CEC to provide substantial contributions and credit support worth at least $1.5 billion to the Debtors' restructuring. However, certain creditors are attempting to jump to the front of the line by litigating to judgment—in other courts—claims to revive previously released guarantees for *multiple billions of dollars* against CEC. If any of those actions move forward and is successful, CEC will be unable to contribute anything meaningful to the Debtors' reorganization for proper distribution to *all* of the Debtors' creditors in accordance with the absolute priority rule, thus imperiling their proposed chapter 11 plan.

This should not be happening. Courts have broad authority under 11 U.S.C. § 105(a) to issue "*any* order … that is necessary or appropriate" to protect their jurisdiction and carry out the provisions of Title 11. (Emphasis added). It is well-settled that a bankruptcy court may temporarily enjoin actions against non-debtor third parties (like CEC) that will affect the integrity or the administration of the bankruptcy estate. That is what the Debtors sought here.

Although acknowledging that the actions against CEC would have been stayed in most other courts, the bankruptcy court refused to enter an injunction here based solely on the view that the Seventh Circuit—uniquely among all other circuit courts—has restricted § 105(a) relief to situations where the debtor has a claim against the non-debtor defendant that arises from the "same acts" as those underlying the non-bankruptcy litigation sought to be enjoined. Compounding its error, it also held this "same acts" requirement can only be satisfied when the debtor and third-party causes of action require identical proof.

Respectfully, that is not the law. To the contrary, it is well established in the Seventh Circuit and elsewhere that a bankruptcy court has authority to enjoin any third-party actions that threaten the

bankruptcy estate, and courts are left to apply that *flexible* standard on a case-by-case basis. Numerous courts both within and outside this district, as the bankruptcy court itself acknowledged, often have used that authority to enjoin third-party actions in nearly identical circumstances.

But even if there were some "same acts" requirement, the Debtors would still satisfy it. At most, that would require that the claims of the debtor and the third-party plaintiff arise from overlapping and closely related acts of alleged misconduct by the non-debtor defendant inflicted against or involving the debtor. That is precisely the case here, where the claims of both the Debtors and the creditors arise from the same capital markets transactions involving the Debtors and their debt. The bankruptcy court concluded otherwise only by erroneously holding—as a matter of law—that the facts in *Fisher v. Apostolou*, 155 F.3d 876 (7th Cir. 1998), define the outer limits of a court's § 105(a) authority. Yet *Fisher* says exactly the opposite.

The Debtors are entitled to a temporary injunction as a matter of law, and it is time for Appellees' race to judgment to come to an end. The bankruptcy court unquestionably had authority to enjoin Appellees'

actions: those actions affect the amount of property in the bankruptcy estate, the allocation of property among creditors, and the Debtors' ability to formulate a viable reorganization plan. The other requirements for a § 105 injunction are also satisfied beyond reasonable dispute. Indeed, it is undisputed that, with a contribution from CEC, the Debtors have a reasonable likelihood of a successful reorganization, and that the public interest strongly favors moving forward with a reorganization that will benefit over 32,000 employees and several dozen communities. This Court should reverse and remand with instructions to immediately enter the injunction requested by the Debtors.

STATEMENT OF JURISDICTION

The United States Bankruptcy Court for the Northern District of Illinois (Goldgar, J.) had jurisdiction over this core adversary proceeding "concerning the administration of the estate" under 28 U.S.C. §§ 157(b)(2)(A) and 1334(a). The bankruptcy court entered a final order denying all requested relief on July 22, 2015. A62-63. The Debtors timely filed their notice of appeal on July 24, 2015. A1098; *see also* Fed. R. Bankr. P. 8002(a)(1). This Court has jurisdiction to hear

this appeal from the bankruptcy court's final order under 28 U.S.C. § 158(a)(1).

STATEMENT OF THE ISSUES

1. Whether the bankruptcy court erred in concluding it has no authority to issue an order pursuant to 11 U.S.C. § 105(a) to enjoin an action against a non-debtor that threatens the integrity or the administration of the debtor's estate unless that action arises from the "same acts" that give rise to claims the estate has against the non-debtor.
2. Whether the bankruptcy court erred in denying the requested injunction under the proper standard.
3. Whether the bankruptcy court erred in denying the requested injunction even if there is a "same acts" requirement.

STANDARD OF REVIEW

This Court reviews the denial of an injunction under 11 U.S.C. § 105(a) for an abuse of discretion. *See In re Rimsat, Ltd.*, 212 F.3d 1039, 1049 (7th Cir. 2000); *In re Brittwood Creek, LLC*, 450 B.R. 769, 774 (N.D. Ill. 2011). A bankruptcy court abuses its discretion by definition when "it commits an error of law or makes a clearly

erroneous finding of fact." *Kress v. CCA of Tenn., LLC*, 694 F.3d 890, 892 (7th Cir. 2012); *Christmas v. City of Chicago*, 682 F.3d 632, 638 (7th Cir. 2012).

STATEMENT OF THE CASE AND THE FACTS

I. BACKGROUND

A. The Debtors

Caesars Entertainment Operating Company ("CEOC") and its debtor affiliates (collectively, the "Debtors") are the primary operating units of CEOC's parent, Caesars Entertainment Corporation ("CEC"). A432. CEC is not a debtor. CEC and its affiliates (collectively, "Caesars") own, operate or manage 50 casinos in five countries. A433. Caesars employs more than 68,000 people, provides 3 million square feet of gaming space, and has 39,000 hotel rooms. A433-34. The Debtors themselves own, operate or manage 38 casinos in 14 states. A434-35. In its most recent fiscal year, Caesars had more than $8 billion in revenues, of which the Debtors contributed more than $5 billion. *Id.*

The Debtors' capital structure is a legacy of one of the largest leveraged buyouts in history. On January 28, 2008, affiliates of Apollo

and TPG along with certain co-investors (collectively, the "Sponsors") acquired Caesars for approximately $30.7 billion. A435. The Sponsors contributed approximately $6.1 billion in cash to fund the LBO. *Id.* The remainder was funded through the issuance of approximately $24 billion in debt. *Id.*

The Debtors have positive cash flow before debt service but a number of economic factors and industry trends have left them unable to support their overleveraged capital structure and extraordinary interest expense. A435-36. Over the past several years, Caesars has undertaken numerous initiatives to manage the Debtors' debt maturities and interest expense without subjecting the Debtors to a formal bankruptcy case. In addition to certain operational initiatives and property closures, Caesars has engaged in more than 45 capital markets transactions, including asset sales, exchange and tender offers, debt repurchases and refinancings. A437.

Certain of these transactions were highly controversial and the subject of pre-petition litigation filed by the Debtors' creditors. These transactions (collectively, the "Disputed Transactions") include:

- The CIE Transactions: In May 2009, the Debtors transferred their interest in the World Series of Poker ("WSOP")

intellectual property to non-debtor affiliate Caesars Interactive Entertainment ("CIE") in exchange for a $15 million economic interest in CIE. In September 2011, the Debtors transferred their rights to host WSOP tournaments for $20.5 million.

- The CERP Transaction: In fall 2013, the Debtors transferred their interest in the Octavius Tower at Caesars Palace Las Vegas and Project Linq (a retail, dining and entertainment development on the Las Vegas Strip) to non-debtor affiliate Caesars Entertainment Resort Properties ("CERP") for $80.7 million, the retirement of $52.9 million of CEOC notes and avoided corporate overhead.

- The Growth Transaction: In fall 2013, the Debtors transferred their interests in the Planet Hollywood Resort & Casino in Las Vegas, the Horseshoe Baltimore, and 50% of the management fees for those properties to Caesars Growth Partners ("CGP") for $360 million in cash.

- The Four Properties Transaction: In spring 2014, the Debtors transferred their interests in the Cromwell Hotel and Casino in Las Vegas, the Quad Hotel and Casino in Las Vegas, Bally's Las Vegas Hotel and Casino, and Harrah's New Orleans Hotel and Casino, and 50 percent of the management fees for these properties to CGP for $1.8 billion. As part of the Four Properties Transaction, CEOC also entered into a shared services joint venture called Caesars Enterprise Services ("CES") with CEC and an affiliate of CGP. CEOC contributed to CES a worldwide license to certain intellectual property, including the industry-leading Total Rewards customer loyalty program, in exchange for a 69% ownership interest and a 33% voting interest in CES.

- The B-7 Refinancing: In May and June 2014, CEOC refinanced debt with short term maturities with $1.75 billion from a new B-7 term loan, and amended its first lien credit agreements to extend maturities and provide covenant relief. As part of this transaction, CEC sold five percent of its shares of CEOC common stock to unaffiliated investors, which triggered a

release of CEC's guaranty of certain first lien and second lien debt because CEOC ceased to be a wholly owned subsidiary of CEC.

- The Senior Unsecured Notes Transaction: In August 2014, CEC and CEOC repurchased $155 million of CEOC senior unsecured notes from certain noteholders, and CEC contributed $426 million of senior unsecured notes to CEOC for cancellation. As part of this transaction, CEOC's senior unsecured notes indentures were amended to, among other things, release CEC's guaranty of the senior unsecured debt.

A437-38; A462-69; A1002-03.

In summer 2014, when the Debtors started engaging with their stakeholders regarding a potential restructuring, the CEOC Board of Directors formed a Special Governance Committee consisting of two recently-appointed independent directors. The Special Governance Committee was tasked with, among other things, conducting an independent investigation into potential claims the Debtors and/or their creditors may have against CEC or its affiliates. A469-70. Based on its investigation, the Special Governance Committee concluded that it would require a contribution of at least $1.5 billion from CEC to settle and release claims that the Debtors or their creditors could assert related to, among other things, the Disputed Transactions. A470; A1065:4–7.

In December 2014, CEC agreed to provide more than $1.5 billion in financial contributions and credit support to the Debtors' restructuring to resolve the Debtors' and their stakeholders' claims against it. A1052:19–22. This agreement is in the form of a restructuring support agreement ("RSA") among the Debtors, CEC, and holders of approximately 80% of the Debtors' approximately $6.35 billion first lien bondholders. *See* A250.

The Debtors filed voluntary chapter 11 petitions with the bankruptcy court on January 15, 2015 (the "Petition Date"). Two months later, on March 2, 2015, the Debtors filed a proposed chapter 11 plan of reorganization. *See* A765. The December 2014 RSA is the centerpiece of that proposed plan. *See generally id.* To this day, the Debtors continue to actively engage in discussions with creditors who have not already agreed to the proposed plan, attempting to obtain their support for the plan and the RSA.

On March 12, 2015, the bankruptcy court entered an order directing the U.S. Trustee to appoint an examiner to investigate and issue a report regarding potential claims arising from, among other things, the Disputed Transactions. A911. The examiner has

commenced his investigation and has provided a target date for completion of October 15. *See* Notice of Motion of Examiner for an Order Approving Protocol and Procedures (Dkt. No. 1279), *In re Caesars Entertainment Operating Co., Inc.*, Case No. 15-01145 (Bankr. N.D. Ill.).

B. The Guaranty Litigation

Both before and after the Petition Date, certain of the Debtors' creditors commenced litigation against CEOC and its non-debtor parent, CEC. Though the bankruptcy filing automatically stayed all actions against the Debtors, lawsuits against CEC were not stayed.

The litigation against CEC at issue here principally relates to the pre-Petition Date release of CEC's guaranties of certain CEOC debt as a result of the B-7 Refinancing and Senior Unsecured Notes Transaction, and includes the following lawsuits:

WSFS Action. On August 4, 2014, Wilmington Savings Fund Society, FSB ("WSFS"), indenture trustee for certain of the Debtors' second lien notes with an outstanding principal balance of approximately $3.7 billion, sued CEOC and CEC in Delaware Chancery Court. *See* A169. WSFS asserts claims for breach of contract and declaratory relief with respect to the release of CEC's guaranty of this

second lien debt. *See id.* WSFS also recently sought to amend its complaint to allege that the release of CEC's guaranty violated the Trust Indenture Act of 1939 (the "TIA").

Unsecured Notes Actions. On September 3, 2014, MeehanCombs, Chicago Fundamental Investment Partners, and Trilogy Capital Management (collectively, "MeehanCombs") filed a lawsuit against CEOC and CEC in the U.S. District Court for the Southern District of New York ("SDNY"). *See* A678. On October 2, 2014, Frederick Barton Danner, individually and on behalf of all others similarly situated (along with MeehanCombs, the "Unsecured Notes Defendants"), also sued CEOC and CEC in the SDNY. *See* A731. The Unsecured Notes Defendants allege that CEC's release of the guaranty of approximately $142 million of CEOC's unsecured debt violated the TIA. *See* A715-17; A756-57.

BOKF Action. On March 3, 2015, BOKF, as indenture trustee to certain second lien debt, commenced an action against CEC in SDNY. *See* A844. BOKF seeks to enforce CEC's previously released guaranty of approximately $750 million of the Debtors' second lien debt. *See* A908. BOKF alleges that any out-of-court transactions that CEC

asserts released CEC's guaranty are void as they violated the TIA. *See* A903-05.

UMB Action. Following trial before the bankruptcy court on the adversary proceeding, UMB Bank, N.A., as indenture trustee to certain first lien debt, sued CEC in SDNY on June 16, 2015. *UMB Bank, N.A. v. Caesars Entertainment Corporation*, Case No. 15-cv-4634-SAS (S.D.N.Y.). The lawsuit seeks to reinstate CEC's guaranty on an additional $6 billion of first lien notes. Complaint (Dkt. No. 1), *UMB Bank, N.A. v. Caesars Entertainment Corporation*, Case No. 15-cv-4634-SAS (S.D.N.Y.). Although UMB was not a defendant in the adversary proceeding, it has agreed to be bound by any injunction entered with respect to the guaranty litigation.

Thus, taken together, the five actions seek to reinstate CEC's guaranties of certain first lien, second lien and unsecured debt and recover approximately $12 billion from CEC. *See* A169; A678; A731; A844; A1015:18–1016:14.

C. The Guaranty Litigation Threatens The Debtors' Restructuring

The Debtors possess two principal assets around which to reorganize: an operating business and their estate claims against CEC.

See A1006:14–1007:2; A1013:20–1015:3. To fulfill their duty to maximize value, the Debtors must recover on estate claims against CEC that the Debtors' Special Governance Committee concluded are worth at least $1.5 billion. *See* A1065:4–7. Appellees themselves contend "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." A997 ¶ 37. The Debtors, as discussed above, entered into the RSA with CEC to consensually resolve those valuable estate claims and provide a viable path toward a successful reorganization. A1014:16-1015:3.

However, litigation by Appellees—a subset of the Debtors' creditors—threatens to render CEC insolvent and deprive the Debtors from recovering *any* assets from CEC. Appellees' claims on the previously released guaranties arise from their relationship as creditors of Debtor CEOC (the primary obligor on their notes). It is undisputed that both the Debtors' estate claims and these creditors' guaranty claims seek to recover from the same limited pool of assets from the same entity (CEC). *See* A1038:24–1039:7; A1053:25–1054:15; A1061:24–1062:4; A1091:9–13. Indeed, according to these creditors'

own complaints in the underlying actions, their claims arise from the same "aggregate plan or scheme" as the Debtors' estate claims against CEC based on the Disputed Transactions:

- "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***." A702 ¶ 85 (emphasis added); *see also* A683, A697-98, A711-12¶¶ 14, 62, 117.

- "***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***." A867 ¶ 70 (emphasis added); *see also* A846 ¶ 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. . . ." A736-37 ¶ 12 (emphasis added); *see also* A748 ¶ 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***." A170-71 ¶ 1 (emphasis added).

Thus, the very objective of the creditors' litigation against CEC is for certain creditors to jump to the front of the line by obtaining a judgment

outside of the bankruptcy process based on claims that substantially overlap with the Debtors' estate claims and seek to recover against certain of the same assets that the Debtors concluded were wrongly removed from their estate. *See* A1038:24–1040:13; A1053:25–1054:15.

The problem with these creditors' efforts to obtain billions of dollars of recoveries from CEC outside of the chapter 11 process, however, is that CEC lacks the ability to both satisfy the guaranty claims and make any meaningful contribution on account of the estate's claims. Appellees do not contend otherwise. *See* A1019:17–1021:22; A1073:11–1074:2. The five actions brought by Appellees and UMB threaten to render CEC insolvent and leave the Debtors without *any* meaningful recovery from CEC. A1057:21–1058:11; A1084:2–1085:2. CEC has publicly disclosed as much, stating that:

> [W]ere 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 . . . .

A924. An adverse decision in the guaranty litigation would materially impair CEC's ability to help fund and otherwise support the Debtors'

restructuring, whether under the current chapter 11 plan or any other plan.

II. PROCEEDINGS BELOW

Given the risk that the guaranty actions pose to CEOC's ability to reorganize by recovering on one of its principal estate assets, and to protect that asset from being diverted to only a subset of the Debtors' creditors, the Debtors commenced an adversary proceeding in March 2015 seeking to temporarily enjoin the continued prosecution of those actions against CEC. *See* A64.

After the Debtors commenced the adversary proceeding, on the eve of the injunction trial, certain Appellees commenced a race to secure judgment on their guaranty claims before the bankruptcy court could potentially enjoin them. When the Debtors filed the adversary complaint, the SDNY cases were in the initial stages of fact discovery. *See* Scheduling Order (Dkt. No. 34), *MeehanCombs Global Credit Opportunities Master Fund, LP v. Caesar Entertainment Corp.*, Case No. 1:14-cv-07091-SAS (S.D.N.Y. Feb. 3, 2015), at ¶¶ 4(b), (d). Less than a week before trial in the adversary proceeding, the SDNY court granted BOKF's request to file a summary judgment motion in June

before the close of fact discovery. *See* A982. In that order, Judge Scheindlin concluded that she would "not limit BOKF from attempting to vindicate noteholders' rights under non-bankruptcy law." A984. UMB's recent lawsuit was also assigned to Judge Scheindlin, who granted UMB leave to file an early summary judgment motion as well. Order (Dkt. No. 19), *UMB Bank, N.A. v. Caesars Entertainment Corporation*, Case No. 1:15-cv-4634-SAS (S.D.N.Y. June 19, 2015), at 5. Judge Scheindlin has indicated that she expects to rule on the motions for summary judgment in both actions "shortly" after briefing concludes on August 7. *UMB Bank, N.A. v. Caesars Entertainment Corporation*, Case No. 15-cv-4634-SAS (S.D.N.Y.), July 23, 2015 Hr'g Tr. at 27:5–16.

On July 22, 2015, the bankruptcy court denied the Debtors' request for a § 105(a) injunction of the guaranty actions, which conclusively resolved the issues in the adversary proceeding. A62-63. Although the bankruptcy court observed that the Debtors' motion presented a "familiar"—indeed, "*textbook*"—pattern for which 105(a) relief is frequently granted in other circuits (and has previously been granted by lower courts in this circuit), it nonetheless denied relief based on the conclusion that "the Seventh Circuit has a different

textbook." A56. The bankruptcy court held that the Seventh Circuit has "restricted the section 105(a) remedy to a particular set of 'limited circumstances,'" A49, and that, as a matter of law, "[u]nless the debtor's estate has a claim against the non-debtor, and unless that claim is based on the same acts and would be paid from the same assets as the third party's claim against the non-debtor, no relief is possible." A56.

The Debtors now appeal the bankruptcy court's Opinion and Order.

SUMMARY OF ARGUMENT

The bankruptcy court's order refusing to temporarily block the guaranty actions is based on an inappropriately rigid and narrow interpretation of its authority under 11 U.S.C. § 105(a) that has no basis in law. Because of that legally erroneous understanding of § 105(a), the bankruptcy court allowed actions in other courts to proceed that will undermine if not render completely unworkable the RSA agreement at the center of the Debtors' proposed plan of reorganization and thus at least temporarily derail this bankruptcy case. That untenable result is exactly what § 105(a) is supposed to prevent, and the bankruptcy court's flawed order cannot stand. The Debtors are entitled to the requested injunction.

The bankruptcy court's order is flawed first and foremost because it ignores the Seventh Circuit's well-established precedent that bankruptcy courts have broad authority to temporarily enjoin third-party actions that would defeat or impair the court's jurisdiction or otherwise threaten the integrity of the bankrupt's estate. The bankruptcy court acknowledged this is the law in other courts. Yet it held, despite clear precedent to the contrary, that the Seventh Circuit follows "a different textbook." A56. That is simply not true, and the bankruptcy court's entire opinion hinges on a misreading of *Fisher*, 155 F.3d at 876, and *In re Teknek*, 563 F.3d 639 (7th Cir. 2009). Neither of those decisions adopted the "same acts" requirement the bankruptcy court imposed.

To the contrary, those decisions embrace a bankruptcy court's broad authority. That is evident from the language in the opinions, which expressly condone § 105(a) injunctions to temporarily halt third-party actions that will "affect the amount of property in the bankrupt estate or the allocation of property among creditors." *Fisher*, 155 F.3d at 882 (quotation marks and citations omitted); *Teknek*, 563 F.3d at 648. And it is evident from the precedent those cases cite, which adopt

the same broad language and cite leading § 105(a) decisions from other circuits. It would be very strange for the Seventh Circuit to adopt a novel legal rule that breaks from the uniform consensus across the circuits without comment and while citing decisions that rely on the leading § 105(a) decisions outside the Seventh Circuit. The bankruptcy court nonetheless held that the Seventh Circuit did exactly that based on the discussion of whether the third-party actions in *Fisher* and *Teknek* arose from the same acts as the estate claims in those cases. But the bankruptcy court misread that discussion, which makes clear that the authority to enjoin third-party actions arising from the same acts as estate claims is at the core of a bankruptcy court's § 105(a) power, not its outer limit. This Court should not affirm a decision that misreads Seventh Circuit precedent to silently cast that court as a national outlier and that calls into question other § 105(a) decisions in this district.

Applying the proper legal standard, there is no question the Debtors are entitled to an injunction. The guaranty actions affect the amount of property in the bankruptcy estate, the allocation of property among creditors, and the Debtors' ability to formulate a reorganization

plan. There is also no room for dispute that, with a contribution from CEC, the Debtors have a reasonable likelihood of successfully emerging from bankruptcy, and that the public interest strongly favors not derailing the Debtors' proposed reorganization. That reorganization will benefit over 32,000 employees and several dozen communities.

But even if the bankruptcy court were correct that a "same acts" requirement exists, it is not as narrow as that court held. Indeed, it compounded its initial legal error by holding that two claims arise from the same acts only if the elements of the respective causes of action require identical proof. There is no support in *Fisher* and *Teknek* for that exceedingly narrow interpretation. Neither case even discussed the elements of the relevant underlying causes of action. Instead, the "same acts" requirement at most requires that the claims of the debtor and the third-party plaintiff arise from overlapping and closely related acts of alleged misconduct by the non-debtor defendant inflicted against or involving the debtor. That is precisely what is happening here, where the claims of both the Debtors and the creditors arise from the same series of capital market transactions by CEC involving the assets and debt of the Debtors.

There is no need for a remand for further proceedings. Under any reasonable interpretation of Seventh Circuit law, the Debtors are entitled to an injunction temporarily staying the guaranty actions. That will maximize recoveries for *all* creditors. Because any other conclusion would amount to an abuse of discretion, this Court should direct the bankruptcy court to immediately enter the Debtors' requested injunction.

ARGUMENT

I. The Debtors Are Entitled To An Injunction Under The Correct Legal Standard

The bankruptcy court's order refusing to temporarily block the guaranty actions strays from "sound legal principles" and cannot stand. *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005)). Rather than follow the well-established and flexible standard for whether to enjoin an action against a non-debtor, the bankruptcy court imposed a rigid legal rule that, "[u]nless the debtor's estate has a claim against the non-debtor, and unless that claim is based on the same acts … as the third party's claims against the non-debtor, no relief is possible." A56. That is not

the law. Under the correct legal standard, the Debtors are entitled to an injunction.

A. There Is No "Same Acts" Requirement For An Injunction Against Third Party Actions

1. The Seventh Circuit's Well-Established Standard For § 105(a) Injunctions Is Inherently Flexible, Not Formalistic

The bankruptcy court fundamentally misunderstood the scope of its authority to enjoin third-party actions. Section 105(a) grants courts the authority to "issue *any* order … that is necessary or appropriate" to protect its jurisdiction and "carry out the provisions of" the bankruptcy code. 11 U.S.C. § 105(a) (emphasis added). It has been analogized to the All Writs Act, providing "the basis for a broad exercise of power in the administration of a bankruptcy case." *In re Casse*, 198 F.3d 327, 336 (2d Cir. 1999). Consistent with this broad authority, bankruptcy courts have the power to temporarily enjoin third-party actions against non-debtors that "would defeat or impair its jurisdiction," *In re L & S Indus., Inc.*, 989 F.2d 929, 932 (7th Cir. 1993), or otherwise "threaten the integrity of the bankrupt's estate," *In re Energy Co-Op, Inc.* 886 F.2d 921, 929 (7th Cir. 1989). *See also Fisher*, 155 F.3d at 883 (holding

authority under § 105 extends to third-party actions that "would derail the bankruptcy proceedings").

This is an inherently flexible standard. An action threatens the integrity of the estate whenever it "may affect the amount of property in the bankrupt estate" or the "allocation of property among creditors," *Fisher*, 155 F.3d at 882, or where it imperils "a debtor's ability to formulate a plan of reorganization," *In re Paul R. Glenn Architects, Inc.*, 2013 WL 441602, *3 (Bankr. N.D. Ill. Feb. 5, 2013); *In re Gander Partners, LLC*, 432 B.R. 781, 788 (Bankr. N.D. Ill. 2010); *Wilson v. Allegheny Int'l, Inc.*, 134 B.R. 282, 284 (N.D. Ill. 1991). And within these broad categories, whether to temporarily block litigation that threatens the estate is necessarily a "case by case decision[]," *In re Western Real Estate Fund, Inc.*, 922 F.2d 592, 599 (10th Cir. 1993); *see also* S. Rep. No. 95-989, 95th Cong., 2d Sess. at 51 (1978) ("[T]he court will have to determine on a case-by-case basis whether a particular action which may be harming the estate should be stayed.").

2. The Bankruptcy Court's Rigid "Same Acts" Test Makes The Seventh Circuit A National Outlier

Rather than simply applying this flexible standard, however, the bankruptcy court created a new requirement that the debtor and the

third-party plaintiff must both have "claims" against the non-debtor *and* those claims must arise from the "same acts." A47; *see also* A51; A53-54; A56-57. This new requirement has no basis in principle or precedent. Other courts in this district have enjoined third-party actions when the debtor had *no claim at all* against the non-debtor. *See, e.g.*, *Paul R. Glenn*, 2013 WL 441602 at *3; *Gander Partners*, 432 B.R. at 784-85; *In re Kham & Nate's Shoes No. 2, Inc.*, 97 B.R. 420, 428-29 (Bankr. N.D. Ill. 1989). For example, the bankruptcy estate in *Gander Partners* had no claim against the individuals who guaranteed some of the debtors' mortgages, yet the bankruptcy court enjoined actions to enforce those guaranties. 432 B.R. at 788-89. An injunction was necessary, the bankruptcy court held, because those individuals' assets were a "vital" "source of funds for the Debtors' reorganization efforts" that could disappear if the guaranties were enforced by third-party creditors. *Id.* at 788.

Courts across the country have likewise temporarily blocked third-party actions in similar circumstances. *See, e.g.*, *In re Lyondell Chem. Co.*, 402 B.R. 571, 581-83 (Bankr. S.D.N.Y. 2009) (temporarily enjoining actions against debtor's parent-guarantors that threatened

debtor's ability to reorganize); *In re Lanham Mfg. Co.*, 33 B.R. 681, 683 (Bankr. S.D. 1983) (enjoining actions against guarantors to protect "funds" without which "reorganization would be impossible").[1] Indeed, this is the "classic scenario" for a § 105 injunction against third-party actions. *In re Regency Realty Assocs.,* 179 B.R. 717, 719 (Bankr. M.D. Fla. 1995). It accordingly makes no sense to impose a "same acts" requirement when it is well established that § 105 relief *does not even require an estate claim* against the non-debtor.

The court below recognized its novel rule would foreclose this "familiar" type of § 105 injunction that other courts "often issue[]." A55. But it held the normal rules do not apply in the Seventh Circuit—and also implicitly held that *Gander Partners, Paul R. Glenn*, and *Kham & Nate's Shoes* were all wrongly decided—because in its view the Seventh Circuit uses a "different textbook" than everyone else. A56. According to the bankruptcy court, the Seventh Circuit in *Fisher* and *Teknek* "restricted" what had previously been broad authority under § 105 to

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[1] *See generally In re Kasual Kreation, Inc.*, 54 B.R. 915, 916-17 (Bankr. S.D. Fla. 1985) (enjoining actions brought by third parties against guarantors without reference to any debtor claims against guarantor); *In re St. Petersburg Hotel Assocs., Ltd.*, 37 B.R. 380, 381-83 (Bankr. M.D. Fla. 1984) (same); *In re Otero Mills, Inc.*, 21 B.R. 777, 778 (Bankr. D.N.M.) (same), *aff'd*, 25 B.R. 1018 (D.N.M. 1982).

the "particular set of limited circumstances" captured by its newly minted rule. A49.

Adopting the bankruptcy court's interpretation of *Fisher* and *Teknek* would cast the Seventh Circuit as a national outlier. None of the other courts of appeals have adopted a supposed "same acts" requirement. To the contrary, every other court of appeals to consider the issue has recognized that a bankruptcy court may broadly "use its injunctive authority [under § 105(a)] to protect the integrity of a bankrupt's estate," without making an inquiry into whether the harm to the estate is caused by the same acts underlying the third-party actions, or whether the debtor must even have a claim against the third-party defendant. *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1003 (4th Cir. 1986); *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1093 (9th Cir. 2007) ("Section 105(a) gives the bankruptcy courts the power to stay actions that … 'threaten the integrity of a bankrupt's estate.'"); *In re DeLorean Motor Co.*, 991 F.2d 1236, 1242 (6th Cir. 1993) (similar); *In re Davis*, 730 F.2d 176, 183-84 (5th Cir. 1984) (similar); *Western Real Estate Fund*, 922 F.2d at 599; *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986).

In re A.H. Robins Co., Inc. illustrates how significantly the bankruptcy court's "same acts" requirement deviates from the understanding in other courts. 828 F.2d 1023 (4th Cir. 1987). In that case, the Fourth Circuit upheld a § 105 injunction—where the debtor had no claim against the non-debtor defendant in the third-party action—merely because the third-party discovery burden that action would place on the debtor's officers, directors, and employees would "exhaust their energies" and "detract from the reorganization process." *Id.* at 1026; *see also Western Real Estate Fund*, 922 F.2d at 599 (noting "burdensome involvement in the ancillary litigation can justify preemptive injunctive relief"). In *A.H. Robins*, in other words, there was no estate claim, no same act, and no effect on the amount of funds available to creditors.

There is no reason to conclude the Seventh Circuit in *Fisher* and *Teknek* silently broke from *A.H. Robins* and every other court of appeals. When the Seventh Circuit disagrees with other courts of appeals, it is not bashful about saying so. *See, e.g.*, *Mullins v. Direct Digital LLC*, ___ F.3d ___, 2015 WL 4546159, *1-2 (7th Cir. July 28, 2015). The bankruptcy court's reading of Seventh Circuit precedent is

wrong as a matter of law and, when this court applies *de novo* review to this legal issue, should be reversed.

3. ***Fisher* and *Teknek* Do Not Support, Much Less Require, The Bankruptcy Court's Novel Rule**

Tellingly, the bankruptcy court cites no other decisions within the Seventh Circuit purporting to read *Fisher* and *Teknek* as it does, much less any other decision imposing a "same acts" requirement. In fact, in another post-*Teknek* decision, the bankruptcy court itself previously entered a § 105 injunction against a third-party action without imposing a "same acts" requirement. *In re R&G Props.*, No. 09-37463 (Bankr. N.D. Ill. Feb. 3, 2010) (Goldgar, J.), Hr'g Tr. 4:15-18 ("You 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."). *Gander Partners*—another post *Teknek* decision—likewise discussed *Fisher* and *Teknek*, but, as discussed above, enjoined third-party litigation even though the estate did not have a claim against the non-debtor. 432 B.R. at 784-85. So too, in *Paul R. Glenn* where the bankruptcy court enjoined third-party actions post-*Fisher* and *Teknek*—despite the absence of an estate claim against the

non-debtor—without mentioning a "same acts" requirement. 2013 WL 441602 at *3-4.

There is a reason other courts have not adopted the bankruptcy court's reading of *Fisher* and *Teknek*: it is wrong as a matter of law. *Fisher* and *Teknek* did not significantly alter Seventh Circuit precedent, such as *Energy Co-op*, 886 F.2d at 929, without comment. Authority to enjoin third-party actions both before and after those cases merely requires that the action is sufficiently "related to" the debtor's estate such that, if not temporarily enjoined, it would "derail" the debtor's efforts to recover for creditors as a whole. *Teknek*, 563 F.3d at 648; *Fisher*, 155 F.3d at 882-83.

Fisher and *Teknek* embrace the premise that bankruptcy courts have broad authority to enjoin third-party actions that will "'affect the amount of property in the bankrupt estate' or 'the allocation of property among creditors.'" *Fisher*, 155 F.3d at 882 (quoting *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 161-62 (7th Cir. 1994) and *In re Memorial Estates*, 950 F.2d 1364, 1368 (7th Cir. 1992)); *Teknek*, 563 F.3d at 648. Indeed, in formulating its standard for enjoining third party actions, the Seventh Circuit cited *Collier on Bankruptcy*—the

leading bankruptcy treatise—and followed earlier pathmarking court of appeals decisions that applied the well-established, flexible standard discussed above. *Teknek*, 563 F.3d at 648; *Fisher*, 155 F.3d at 882 (citing Lawrence P. King, *Collier on Bankruptcy* ¶ 105[2]).

The "'affect the property in the bankruptcy estate'" language in both *Fisher* and *Teknek*, for example, comes from the Seventh Circuit's earlier decision in *Zerand-Bernal*, 23 F.3d at 161-62. *Fisher* 155 F.3d at 882; *see also Teknek*, 563 F.3d at 648. *Zerand-Bernal* was not a radical decision. It based its decision on the scope of a bankruptcy court's "related-to" jurisdiction and authority under § 105 on the Fourth Circuit's *Piccinin* decision discussed above, *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990), and *In re G.S.F. Corp*, 938 F.2d 1467, 1474 (1st Cir. 1991). *Lemco* "adopt[s]" the standard "*Pacor* formulation" for "related-to" jurisdiction—"whether the outcome of the proceeding could *conceivably have an effect* on the estate." 910 F.2d at 788 & n.19 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis added). And *G.S.F. Corp.*, 938 F.2d at 1474-75, relies on the "threatens the integrity of the bankrupt's estate" language from the *Seventh Circuit's* decision in *Energy Co-op*, 938 F.2d at 929. It

would be very strange for the Seventh Circuit to silently adopt the novel, rigid rule the bankruptcy court read into *Fisher* and *Teknek* while so firmly and explicitly grounding itself in well-established, mainstream bankruptcy jurisprudence.

Fisher and *Teknek*, it is true, did involve estate claims against the non-debtor and discussed whether the third-party and estate claims arose "as a result of the same acts." *Fisher*, 155 F.3d at 882. But neither announces that the existence of both an estate claim and a third-party claim against the non-debtor that arise from the same acts is a litmus test. Quite the opposite. *Fisher* held where a debtor and a third party both have "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," it is "difficult to imagine how" the third-party claim "could be more closely 'related to'" the debtor's estate. *Id.* In fact, according to the Seventh Circuit, the third party's claim against the non-debtor at issue in *Fisher* was virtually "property of" the debtor's estate subject to the bankruptcy automatic stay, *see* 11 U.S.C. § 362, such that a holding that courts had no authority to enjoin such third-party actions would "eliminate § 105

from" the bankruptcy code. *Fisher*, 155 F.3d at 882. Enjoining third-party actions involving claims arising from the same acts as estate claims, in other words, is at the core of a bankruptcy court's § 105 authority—not its outer limits.

Teknek is consistent with this understanding of a court's § 105 authority. In that case, a third party had obtained a pre-petition patent-infringement judgment against Teknek, the debtor, and one of its corporate affiliates. *Teknek*, 563 F.3d at 641. While that litigation was pending, Teknek's shareholders funneled assets of Teknek and its affiliate to a new company, rendering Teknek and its affiliate insolvent. *Id.* The third party was not pleased by this behavior and convinced the court presiding over the patent suit to make the shareholders of Teknek and its affiliate jointly liable for that judgment as alter egos. *Id.* at 641-42.

Teknek filed for bankruptcy in the meantime, and both Teknek's estate and the third party sought to collect the patent-infringement judgment from the alter egos. The third party did so on a theory that the alter egos were now directly and independently liable for the judgment via *Teknek's affiliate* on a veil-piercing theory. *Id.* at 645.

The bankruptcy estate, in contrast, claimed it could reach the alter egos via *Teknek* because the judgment is a debt the alter egos owed the estate. *Id.* Because both the third party and the estate were going after the same pool of money, the bankruptcy estate sought to enjoin the third party's collection efforts. *Id.* at 643.

The Seventh Circuit held the third-party's attempts to collect on the judgment were not sufficiently "related to" Teknek's estate, and thus the bankruptcy court had no authority to enter a § 105 injunction, for several reasons. One of those reasons is that the competing claims were based on "separate acts, which caused separate injuries to two separate companies." *Id.* at 649. The third-party claims thus did not depend "on the non-debtor's misconduct *with respect to the corporate debtor*." *Id.* (emphasis in original). It sought to collect based on the alter egos' unrelated fleecing of "*an independent non-debtor*." *Id.* at 650 (emphasis added). The Seventh Circuit accordingly held the fact that the same alter egos controlled Teknek and its affiliate "is not sufficient" by itself to bring the third-party's affiliate-related claims "under the umbrella of the bankruptcy proceeding." *Id.* at 649. That makes perfect sense. Teknek's theory was essentially that bankruptcy courts

lack authority to enjoin slip-and-fall litigation against a non-debtor merely because the non-debtor is also liable to the debtor on a wholly distinct and independent breach-of-contract claim. No court has held § 105 stretches that far, and the Debtors are not arguing that here.

But the Seventh Circuit held the third-party's collection efforts were not sufficiently "related to" Teknek's estate for two additional reasons. *First*, the third-party there was Teknek's "only major creditor," so its collection efforts would have "no effect" on other creditors and would not prevent "a pro rata distribution to all creditors." *Id.* at 650. *Second*, those collection efforts would not affect or derail the bankruptcy proceedings because the alter egos had sufficient funds "to satisfy both [the third-party's] claim and any fraudulent transfer claims" brought by the estate. *Id.* at 644. There would have been no need to address either of these issues if, as the bankruptcy court held here, *Teknek* adopted a mandatory "same acts" requirement. The Seventh Circuit could have stopped after concluding the two sets of claims were distinct and independent.

The bankruptcy court's policy justifications for its reading of *Fisher* and *Teknek* are equally flawed. The "idea that bankruptcy

jurisdiction itself is limited" is a *non sequitur*. A56. The bankruptcy court held it had jurisdiction to enjoin the third-party actions here, A3033, and *Fisher* makes clear a bankruptcy court has the authority to stay third-party actions if necessary "[t]o protect [its] jurisdiction," 155 F.3d at 882.

The bankruptcy court's decision also got it exactly backwards when it comes to which way "comity" considerations cut here. A56. The bankruptcy court suggested that one court "medd[ling] with proceedings in another court" is "no small matter." *Id.* But the bankruptcy case is supposed to be the main event, with exclusive jurisdiction over estate assets which are marshaled for "equitable distribution" to *all* creditors. *Village of San Jose v. McWilliams*, 284 F.3d 785, 790 (7th Cir. 2002); *see also Teknek*, 563 F.3d at 650; *In re Xonics, Inc.*, 813 F.2d 127, 131 (7th Cir. 1987) ("Adjusting competing claims … is the central function of bankruptcy law."). Other courts therefore should not meddle with the bankruptcy case by adjudicating claims that threaten the estate or adjusting case schedules to promote the "race to the courthouse" Congress intended to prevent through bankruptcy cases consolidated in a single forum. When courts and litigants do meddle with the

bankruptcy process, however, a bankruptcy court should not invoke "comity" to let that interference with its jurisdiction continue unabated. That is precisely when a court *should* exercise its § 105 authority to protect the bankruptcy and its jurisdiction. *See Delorean*, 991 F.2d at 1242. The bankruptcy court's conclusion that it lacked that power as a matter of law cannot be sustained.

B. The Debtors Are Entitled To An Injunction

Once the bankruptcy court's legal errors are corrected, the Debtors easily satisfy the standard for a § 105(a) injunction to temporarily block the guaranty lawsuits, which destroy creditor value and imperil the Debtors' reorganization. To enjoin proceedings in another court, a debtor need only show that (1) the proceedings threaten the integrity of the bankruptcy estate; (2) the debtor has a reasonable likelihood of a successful reorganization; and (3) an injunction is in the public interest. *See Fisher*, 155 F.3d at 882; *Gander Partners*, 432 B.R. at 788. Based on the bankruptcy court's factual findings—and the undisputed evidence at trial—each of those requirements is satisfied here, and denying an injunction would be an abuse of discretion.

1. The Guaranty Lawsuits Threaten The Integrity Of The Bankruptcy Estate

There can be no genuine dispute that the guaranty lawsuits are sufficiently related to the Debtors' reorganization such that allowing them to proceed will threaten the Debtors' efforts to reorganize and successfully emerge from bankruptcy.

First, the guaranty lawsuits will "affect the amount of property" in the Debtors' estate. *Fisher*, 155 F.3d at 882. It is undisputed that one of the estate's two primary assets is its claims against CEC arising from the Disputed Transactions. *See* A1006:14-1007:2; A1013:20-1015:3. Appellees themselves contend "that CEC is liable to the bankruptcy estate for … billions of dollars" on account these claims. *See* A997 ¶ 37. Through their guaranty lawsuits, however, Appellees seek to obtain that value from CEC for themselves. Indeed, as the bankruptcy court found, the transactions giving rise to the estate's claims against CEC are the very reason that CEC has any value at all. *See* A37 ("Before the transactions, however, CEC was a holding company that owned 100 percent of CEOC; CEC had no other assets. Only as a result of the assets that CEC obtained through the various transactions did it come to have 'independent value,' meaning value beyond its ownership

interest in CEOC.") (internal citations omitted). The estate's claims and Appellees' claims both seek to recover from the same limited pool of assets from the same entity (CEC). And if Appellees are successful, there is no dispute that CEC will have no meaningful value to contribute to the estate for the benefit of all its creditors—thus directly affecting the amount of property in the estate. *See* A1019:17-1021:22; A1073:11-1074:2.

Second, the guaranty actions will affect the allocation of property among the Debtors' creditors. Appellees are certain unsecured creditors and indenture trustees for second lien noteholders. A70] ¶ 16. Under the bankruptcy code's statutory priority scheme, Appellees would all recover only after satisfaction of the Debtors' nearly $12 billion in first lien debt. A438. There is no dispute that the very purpose of the guaranty actions is to jump to the front of the creditor line, in turn depriving the estate of a substantial contribution from CEC for distribution to all of its creditors. *See* A1038:24-1040:13; A1053:25-1054:15. That too threatens the integrity of the bankruptcy process. Bankruptcy is intended to prevent "race[s] to the courthouse" by creditors, which ultimately destroy the value of the estate and impair

an equitable distribution of assets to *all* creditors. *Fisher*, 155 F.3d at 883; *see also Teknek*, 563 F.3d at 650 (finding absence of other creditors "relevant" given trustee's duty to "marshal the estate's assets for a pro rata distribution to all creditors").

Third, the guaranty actions could "derail the bankruptcy proceedings." *See Fisher*, 155 F.3d at 883. The Debtors and certain of their first lien creditors have agreed on the terms of a consensual restructuring, as documented in the RSA. A44. The Debtors believe the RSA framework is the blueprint for maximizing creditor recoveries in these cases—and there is no evidence otherwise. A1013:20-1015:3. Regardless, the RSA contemplates that CEC will make certain contributions to the estate in exchange for a release of claims against it. A44; A1007:3-14; A1010:10-14; A1068:2-1070:1. While the value of those contributions may be debated, what cannot be disputed is that they are critical to the creditor recoveries embodied in the RSA. A1075:24–1076:12. Without CEC's contribution, the RSA, and the consensual reorganization it entails, will crumble.

The guaranty actions thus put CEC's contribution at risk. The undisputed evidence and CEC's public statements make clear an

adverse ruling in the guaranty actions may force CEC to make its own bankruptcy filing. A1019:17–1021:22; A1023:9–1026:22; A1048:12–1049:7; A1057:21–1058:11; A1074:3-21; A1075:10-23; A1084:2-1085:2; A915. A CEC bankruptcy would, at a minimum, delay and substantially impair CEC's ability to make any significant contribution to the Debtors' estate, and likely unleash years of costly litigation. A1026:23-1027:21; A1034:15-1037:8; A1078:4-1080:4. And while the Debtors are considering other restructuring alternatives, the Debtors' ability to formulate *any* plan of reorganization heavily depends on the ability to recover on their estate claims against CEC. A1011:23-1015:3.

In short, an injunction that preserves, at least in the interim, CEC's ability to participate in the Debtors' restructuring provides a path forward to consensual resolution of these bankruptcy cases on a measured timeline. *Cf. Celotex Corp. v. Edwards*, 514 U.S. 300, 310 (1995) (finding "at least" related-to jurisdiction to enjoin proceedings that threatened a settlement that "may well be the linchpin of [the] Debtors' formulation of a feasible plan."). The alternative would substantially delay and potentially derail the entire proceedings by casting doubt over the current alternatives for a confirmable plan.

A1026:23-1027:9; A1029:8-14. That alternative scenario is precisely what § 105(a) is supposed to prevent. *See, e.g.*, *Paul R. Glenn*, 2013 WL 441602, at *3; *Gander Partners*, 432 B.R. at 784-85; *Kham & Nate's Shoes*, 97 B.R. at 428-29.

2. The Debtors Have A Reasonable Likelihood Of Successfully Reorganizing

Courts in this district and elsewhere have routinely held that, in the context of a § 105 injunction, likelihood of success on the merits means a reasonable likelihood of a successful reorganization. *See Gander Partners,* 432 B.R. at 788; *Otero Mills,* 21 B.R. at 779 ("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) (similar). Here, Appellees do not dispute that the Debtors are likely to successfully restructure. The Debtors have a strong operating business, a "diversified footprint of casinos across a number of states," a strong brand name, and an iconic presence in Las Vegas—all propositions with which Appellees' sole witness agreed. A1094:17-1095:20. Nor is there any dispute that the Debtors have substantial earnings before interest, taxes, depreciation, and amortization (EBITDA)—approximately $1 billion—and free cash flow

after capital expenditures. A1030:12–1031:19; *see also* A1002-03. The Debtors' primary problem is over-leverage, but that is a problem chapter 11 reorganization is well suited to address. A1030:12–1031:19; A1096:14-19. Indeed, there is no evidence or argument that the Debtors are unlikely to reorganize successfully, assuming a significant contribution from CEC. *See In re Lyondell*, 402 B.R. at 590 (finding likelihood of successful reorganization where debtors "have so far been successful in doing everything they've needed to do to date").

3. The Public Interest Favors Issuing The Requested Injunction

The temporary injunction that the Debtors seek here is in the public interest. "Promoting a successful reorganization is one of the most important public interests." *Gander Partners*, 432 B.R. at 789. Indeed, the very purpose of bankruptcy is to provide debtors with a breathing spell so they can pursue a consensual resolution with their creditors. *Cf. 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."), *aff'd* 455 U.S. 385 (1982). Here, there is no dispute that an injunction and temporary stay of the guaranty

lawsuits will avoid a race to the courthouse, preserve a substantial contribution that will fund a plan of reorganization, and provide the parties with a window to pursue a consensual resolution in the chapter 11 case. A1041:15–1042:8.

Nor have Appellees identified any harm that they will suffer from a temporary stay of their guaranty lawsuits other than the inability to improperly jump to the front of the creditor line. The Debtors only seek a temporary—not permanent—injunction. Appellees will still have their claims—and those claims will provide Appellees with significant leverage in negotiating a consensual reorganization. And if no deal is reached, Appellees will be able to pursue their claims.

* * *

The bankruptcy court's refusal to enjoin the guaranty actions turns entirely on a mistaken, formalistic reading of Seventh Circuit precedent that transforms § 105(a) from a robust tool for protecting the integrity of a bankruptcy estate into an empty shell, useful only when not really needed. Once that purely legal error is corrected, then based on the undisputed facts and the facts found by the bankruptcy court, it follows that the Debtors are entitled to an injunction. This Court

should therefore reverse and order entry of that injunction forthwith. *See, e.g.*, *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton,* 752 F.3d 755, 767 (9th Cir. 2014) ("We remand to the district court with instructions for it to enter a preliminary injunction."); *Virgin Enters., Ltd. v. Nawab*, 335 F.3d 141, 142-43 (2d Cir. 2003) ("We find that the plaintiff is likely to succeed on the merits and was entitled to a preliminary injunction. We therefore reverse and remand with instructions to enter a preliminary injunction.").

II. Even Under A "Same Acts" Requirement, The Debtors Are Entitled To An Injunction

For the reasons explained in Part I.A., *supra*, the legal standard for a § 105 injunction is no different in the Seventh Circuit than anywhere else in the country: Simply put, there is no "same acts" requirement. But even if there were some kind of requirement to that effect for enjoining actions that threaten recovery from a party the debtor has a claim against, the bankruptcy court still should have enjoined the guaranty lawsuits here as a matter of law.

Although not *necessary* for § 105(a) relief, the Seventh Circuit has certainly held that whenever the claims of the estate and the third party arise from "overlap[ping]" and "closely related" acts of misconduct

by a non-debtor inflicted against or involving the debtor, that is *sufficient* for granting an injunction. *Fisher*, 155 F.3d at 883; *Teknek*, 563 F.3d at 649 (requiring "misconduct with respect to the corporate debtor" (emphasis omitted)). Otherwise, allowing third parties to "race to the courthouse" to collect on their claims first "would derail the bankruptcy proceedings" by depriving the estate of needed funds or allowing them to cut to the front of the creditor line. *Fisher*, 155 F.3d at 883; *see also id.* at 881 (holding third-party litigants "must wait their turn"). Those are precisely the circumstances here, and there is no justification for the bankruptcy court treating the competing claims as too attenuated to permit § 105 relief. If this case does not satisfy a "same act" requirement, virtually none will.

As the bankruptcy court acknowledged, both sets of claims arise from the same allegedly "broad[] scheme on CEC's part to transfer away CEOC assets" via a series of forty-five capital market transactions, including the Disputed Transactions. A54; *see also* A36-37. Those transactions transformed CEC from a holding company that had no assets other than CEOC stock into a company with significant "independent value," including the equity in other subsidiaries that own

many "assets that once belonged to CEOC." A37; A1039-41; A1054; A437; A462. It is this acquisition of former CEOC assets via those transactions that give rise to the estate's avoidable preference and fraudulent transfer claims. A1020; A1088; A470; *see also* A1006-07; A1014-15; A1040; A1045. And two of the Disputed Transactions terminated the disputed guaranties and gave rise to Appellees' guaranty actions. A37 ("Two of these transactions gave rise to the actions the debtors want enjoined."). Both sets of claims thus arise from the same series of acts performed "as part of the same conspiracy." *Fisher*, 155 F.3d at 882.

The bankruptcy court held otherwise based on an exceedingly narrow view of what constitutes the same acts. Two claims arise from the same acts, according to the court below, only if the elements of the respective causes of action require identical proof. A54-55. That rule has no basis in Seventh Circuit precedent, and it cannot be the law. As an initial matter, the two cases from which the bankruptcy court gleans a "same acts" requirement do not engage in the "count-by-count" comparison the bankruptcy court now insists is essential. A55 n.17.

Neither *Fisher*, 155 F.3d at 881-82, nor *Teknek*, 563 F.3d at 641-45, even mention the elements of the underlying causes of action.

In addition, the bankruptcy court's exceedingly narrow approach to "same acts" would effectively limit a court's authority to enjoin third-party actions to the facts of *Fisher*—a result *Fisher* specifically forecloses. Unless the estate and the third-party plaintiffs are seeking "redress of identical, if individual, harms," *Fisher*, 155 F.3d at 881, it is difficult to see how a debtor could satisfy the bankruptcy court's identity requirement. But *Fisher* made clear the authority to enjoin the third-party actions in that case does not even approach the outer limits of a bankruptcy court's § 105 authority. *See id.* at 882. To the contrary, as discussed above, the facts in *Fisher* practically trigger the automatic stay. *Id.* A legal rule that limits § 105 to the facts of *Fisher*, and thus effectively eliminates a court's authority to temporarily block third-party actions, cannot be the correct one.

Finding support in *Teknek* for the bankruptcy court's narrow view of what constitutes the same acts is even more difficult. Because the the third-party actions in *Teknek* had no connection to "the non-debtor's misconduct *with respect to the corporate debtor*," the Seventh Circuit

had no reason to decide how tightly coupled two claims that do arise from debtor-related misconduct must be in order to arise from the same acts. 563 F.3d at 649 (emphasis in original) ("[A] separate non-debtor, Electronics, [ ] is directly liable to SDI on the patent judgment without regard to the debtor's liability."). In the end, the bankruptcy court's entire analysis started from a fundamentally flawed legal premise. By starting from that flawed premise, the bankruptcy court necessarily arrived at a fundamentally flawed conclusion that requires reversal.

*   *   *

Under any interpretation of Seventh Circuit law, there is only one legally permissible result in this case. The Debtors are entitled to an injunction temporarily staying the guaranty actions while the Debtors pursue a consensual reorganization that maximizes creditor recoveries for *all* creditors. Any other conclusion would amount to an abuse of discretion. The Court accordingly should do more than reverse and remand for further proceedings. It should direct the bankruptcy court to enter Debtors' requested injunction. *Connaughton,* 752 F.3d at 767; *Virgin Enters.*, 335 F.3d at 142-43.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand with instructions to immediately enjoin the guaranty actions until 60 days after the court-appointed examiner issues his final report.

Dated: August 7, 2015
Chicago, Illinois

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bankr. P. 8015(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. Bankr. P. 8015(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. Bankr. P. 32(a)(7)(B)(iii), the brief contains 9,993 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Century Schoolbook font. As permitted by Fed. R. Bankr. P. 32(a)(7)(C), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: August 7, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2015, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all CM/ECF participants, resulting in service upon all counsel of record.

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