ORAL ARGUMENT REQUESTED

No. 15-3259

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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 District Court for the Northern District of Illinois (Gettleman, J.), No. 1:15-cv-06504

Originating 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 Appellate Procedure 26.1 and Circuit Rule 26.1, 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 Corporation.

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, LLC. 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.

174. The names of all law firms whose partners or associates have appeared for the Debtors in this case are Kirkland & Ellis LLP, Kirkland & Ellis International LLP, DLA Piper LLP (US), and Paul Hastings LLP.

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INTRODUCTION

The central question this appeal presents is whether the lower courts were correct in holding that 11 U.S.C. § 105(a) is only available to enjoin third-party litigation that affects the integrity of a bankruptcy estate if the third-party plaintiff's claims against a defendant arise out of the "*same acts*" as the estate's claims against that defendant. The sole basis for that holding—and for denying the Debtors' request for injunctive relief—is their incorrect interpretation of this Court's decisions in *In re Teknek, LLC*, 563 F.3d 639 (7th Cir. 2009), and *Fisher v. Apostolou*, 155 F.3d 876 (7th Cir. 1998), as imposing a "same acts" requirement. Respectfully, that fundamentally misunderstands this Court's precedent.

It is well-settled in this Circuit and elsewhere that bankruptcy 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. Section 105(a) has been analogized to the All Writs Act—not just by the Debtors, A52, but by other circuits—as 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) (internal quotations omitted). By contrast, the bankruptcy court itself recognized that its interpretation rendered this Court a national outlier, candidly observing that "courts have often issued section 105(a) injunctions to halt actions of the kind and under the circumstances the debtors describe." A81. Yet it (erroneously) concluded that this Court follows "a different textbook" than everyone else, A82, and that, "[i]n the Seventh Circuit, the section 105(a) injunction is a more limited remedy than in other courts." A73. Applying similar reasoning, the district court held that the Debtors are wrong that § 105 provides "the bankruptcy court with broad authority to grant injunctive relief to protect the 'integrity of the bankruptcy estate.'" A53. But that is the broad, flexible standard this Court has repeatedly articulated—in *Fisher, Teknek*, and countless other cases—and that other circuits routinely apply. Because this Court is not an outlier, the decision below must be reversed.

The denial of injunctive relief is particularly egregious here. Although Appellees cast their third-party litigation against the Debtors' parent company Caesars Entertainment Company ("CEC") in the U.S. District Court for the Southern District of New York (Schiendlin, J.)

and in Delaware state court as run-of-the-mill enforcement of a guaranty, it is anything but. Appellees are themselves second-tier junior creditors of the Debtors. At the time CEC acted as guarantor to the Debtors in transactions with Appellees, CEC had no independent assets, other than its ownership interest in the Debtors. The guarantees, in other words, were ones of convenience, and Appellees knew any recovery would come from the Debtors and the Debtors alone. Debtors' contend that, over time, CEC siphoned off assets from them—giving rise to the estate's claims. The recovery now sought by the Appellees in their guaranty actions against CEC would thus come *directly from the very same assets* that the Debtors allege were fraudulently transferred to CEC; otherwise CEC would have nothing from which Appellees could recover.

That directly affects not just the amount of property in the Debtors' estates, but the allocation of property among creditors. In addition to thwarting the Debtors' multi-billion-dollar restructuring effort, which depends on a substantial contribution from CEC in settlement of the Debtors' claims against it, the upshot of the Appellees' actions is to let them jump the line in front of other creditors, including

more senior ones. In effect, it gives them priority in recovering against assets that should be part of the Debtors' estates—and to which more senior creditors should have priority—but now are in the hands of CEC.

Worse yet, to decide whether or not Appellees can prevail in their guaranty actions against CEC, the Southern District of New York is adjudicating whether the very transactions that, among other things, transferred the disputed assets from the Debtors to CEC were "routine corporate transactions" or were "undertaken as part of a plan to accomplish an out-of-court restructuring" of the Debtors' debt. *BOKF, N.A. v. Caesars Entm't Corp.*, 2015 WL 5076785, *11 (S.D.N.Y. Aug. 27, 2015). These are quintessentially issues for the bankruptcy process, not third-party litigation. If such litigation cannot be temporarily enjoined pursuant to § 105(a), it is hard to see what vitality § 105(a) has left in this Circuit.

Neither *Teknek* nor *Fisher* require such a result. To the contrary, consistent with other circuits, this Court has repeatedly held that a bankruptcy court has authority to enjoin third-party actions that threaten the bankruptcy estate under an inherently *flexible* standard—not the wooden formalism applied below. Under the correct standard,

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. With a contribution from CEC, the Debtors have a reasonable likelihood of a successful reorganization, and 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 grant the Debtors' requested injunction.

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. A88-89. The Debtors timely filed their notice of appeal on July 24, 2015. A1223; *see also* Fed. R. Bankr. P. 8002(a)(1).

The United States District Court for the Northern District of Illinois (Gettleman, J.) had jurisdiction under 28 U.S.C. § 158(a)(1). The district court entered a final judgment affirming the bankruptcy

court on October 6, 2015, which was publicly docketed on October 8, 2015. A11, 1296. The Debtors timely filed a notice of appeal on October 9, 2015. A1297.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 158(d), 1291, and 1292(a)(1).

STATEMENT OF THE ISSUES

1. Whether the lower courts erred in concluding an injunction should not be granted under 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 lower courts erred in denying the requested injunction even if there is some form of a "same acts" requirement in this Circuit, given the close relationship of the third-party guaranty litigation to the bankruptcy case.
3. Whether the Debtors are entitled to injunctive relief.

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"). A458. CEC is not a debtor. CEC and its affiliates (collectively, "Caesars") own, operate or manage 50 casinos in five countries. A459. Caesars employs more than 68,000 people, provides 3 million square feet of gaming space, and has 39,000 hotel rooms. A459-60. The Debtors themselves own, operate or manage 38 casinos in 14 states. A460-61. 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 Global Management LLC and TPG Capital, L.P., along with certain co-investors (collectively, the "Sponsors") acquired Caesars for approximately $30.7 billion. A461. 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. A461-62. Over the past several years, Caesars has undertaken numerous initiatives to manage the Debtors' debt maturities and interest expense. 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. A463.

Certain of these transactions were highly controversial and the subject of pre-petition litigation filed by some of 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.

A463-64; A488-95; A1028-29.

Prior to the Disputed Transactions, CEC was simply a holding company with its sole assets consisting of ownership of the Debtors. A44 At the time it guaranteed both the Senior Unsecured Notes and the second lien notes, it owned nothing other than its ownership interest in the guaranteed Debtors. *Id.* It was *only* as a result of the Disputed Transactions that CEC came to possess assets independent of its ownership interest in the Debtors—namely the assets that were transferred to it from the Debtors. *Id.*

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. A495-96. 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 and/or their creditors could assert related to, among other things, the Disputed Transactions. A496; A1118:4–7.

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. A1100:19–22. 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* A276.

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* A791. 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 requested by the Debtors for the appointment of an examiner to investigate and issue a report regarding potential claims arising from, among other things, the Disputed Transactions. A937. The examiner has commenced his investigation and has provided a target date for completion of December 15, although acknowledging that he may need additional time. *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.); Sept. 21, 2015 Examiner's Fourth Interim Report at ¶¶ 23-24.

B. The Guaranty Litigation

Both before and after the Petition Date, certain of the Debtors' junior 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* A195. 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* A704. 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* A757. 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* A741-43;

A782-83.

BOKF Action. On March 3, 2015, BOKF, as indenture trustee to certain second lien debt, commenced an action against CEC in the SDNY. *See* A870. BOKF seeks to enforce CEC's previously released guaranty of approximately $750 million of the Debtors' second lien debt. *See* A934. BOKF alleges that any out-of-court transactions that CEC asserts released CEC's guaranty are void as they violated the TIA. *See* A929-31.

UMB Action. Following trial before the bankruptcy court on the adversary proceeding that led to this appeal, UMB Bank, N.A., as indenture trustee to certain first lien debt, sued CEC in the 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* A194; A704; A757; A870; A1042:18–1043:14.

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* A1033:14–1034:2; A1040:20–1042:3. To fulfill their duty to maximize value, the Debtors must recover on estate claims against CEC—through litigation or otherwise—that the Debtors' Special Governance Committee concluded are worth at least $1.5 billion. *See* A1118:4–7. 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." A1023 ¶ 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. A1041:16-1042:3.

However, litigation by Appellees—a minority of the Debtors' creditors—threatens to render CEC insolvent and deprive the Debtors

of the ability to recover their 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 junior creditors' guaranty claims seek to recover from the same limited pool of assets from the same entity (CEC). *See* A1065:24–1066:7; A1101:25–1102:15; A1112:24–1113:4; A1212:9–13. Indeed, CEC's assets are the very assets that Debtors allege were fraudulently transferred to CEC. In other words, *any relief Appellees obtain in the guaranty actions ultimately will come from the very assets that—according to the Debtors—were allegedly improperly taken from them by CEC.*

Moreover, two of the Disputed Transactions specifically "*led to the lawsuits that Debtors seek to enjoin*." A44 (emphasis added). According to the Appellees' 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*." A728 ¶ 85 (emphasis added); *see also* A709, A723-24, A737-38¶¶ 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*." A893 ¶ 70 (emphasis added); *see also* A872 ¶ 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. . . ." A762-63 ¶ 12 (emphasis added); *see also* A774 ¶ 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*." A196-97 ¶ 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 are substantially intertwined 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* A1065:24–1067:13; A1101:25–1102:15.

CEC, however, lacks the ability to both satisfy the guaranty

claims and make any meaningful contribution in settlement of the estate's claims. Appellees do not contend otherwise. *See* A1046:17–1048:22; A1133:11–1034:2. The five actions brought by Appellees and UMB threaten to render CEC insolvent and leave the Debtors without *any* meaningful recovery from CEC. A1107:21–1108:11; A1189:2–1190:2. 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 . . . .

A950. 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.

D. The Guaranty Litigation Will Adjudicate Issues Closely Related to the Bankruptcy Proceeding

The fact that the guaranty actions are intertwined with the issues before the bankruptcy court is highlighted by recent rulings in the Southern District of New York. As that court recently observed,

questions at the heart of Appellees' guaranty actions include whether the disputed transactions were "routine corporate transactions … undertaken in an effort to *improve* [Debtor] CEOC's financial condition or whether the transactions were undertaken as part of a plan to accomplish an out-of-court restructuring of all CEOC debt." *BOKF*, 2015 WL 5076785 at *11 (internal quotations omitted; emphasis in original). The Disputed "transactions *must be analyzed as a whole* to determine if the overall effect was to achieve a debt restructuring." *Id.* (emphasis added). The factfinder in the guaranty actions will specifically have to consider whether Debtor "CEOC h[e]ld talks with creditors in order to make arrangements for maintaining repayments," and whether it did so in an "attempt to extend the life of a company facing bankruptcy." *Id.* In other words, CEC's liability depends on the factfinder's assessment of the Debtors' actions and motives in the disputed transactions. All of these are issues intertwined with the Debtors' potential claims against CEC and are currently being reviewed by the bankruptcy-court-appointed examiner.

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 minority 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* A90.

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. A88-89. 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." A82. The bankruptcy court held that this Court has "restricted the section 105(a) remedy to a particular set of 'limited circumstances,'" 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." A75; A82.

After expedited briefing and argument, the district court affirmed on appeal. At argument, the district court observed that "the *Teknek* decision, frankly needs some clarification, because I think either [side] could pull language out of that decision to support your positions because it speaks so broadly of the different factual situations and procedural situations in both the *Fisher* and in the *Teknek* case itself, which I think leads to this type of dispute that we have today." A1294. Nonetheless, it concluded that under *Fisher* and *Teknek*, "whether a third-party's claims against a non-debtor arise out of the same acts as the estate's claims is a key component of the determination of whether a § 105(a) injunction is permitted." A52. The district court rejected the argument that § 105(a) "provid[es] the bankruptcy court with broad authority to grant injunctive relief to protect the 'integrity of the bankruptcy estate.'" A52-53. Despite the effects on the bankruptcy estate, the origin of the assets in dispute in the guaranty actions, and the relationship between the issues in the guaranty actions and the bankruptcy case, the district court treated the guaranty actions like any

"'common case' where a creditor of a bankrupt corporation files a suit against the bankrupt's insurer or guarantor." A54.

This appeal follows.

SUMMARY OF ARGUMENT

The decisions denying a temporary stay of the guaranty actions are based on an inappropriately rigid and narrow interpretation of 11 U.S.C. § 105(a) and this Court's precedents, which has no basis in law and that ultimately makes no sense. Because of its 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 at the center of the Debtors' proposed plan of reorganization, that will allow one set of junior creditors to potentially raid the very assets of the Debtors' estates that Debtors allege were fraudulently transferred to CEC, and that will adjudicate issues about the Debtors' transactions that are more appropriate for the bankruptcy court than in third-party litigation. This untenable result is exactly what § 105(a) is supposed to prevent. The district court's decision simply perpetuated the bankruptcy court's error. The Debtors are entitled to the requested injunction.

1. The decisions below are flawed first and foremost because they cannot be reconciled with this Court'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 this Court follows "a different textbook." A82. That is simply not true. The decisions below hinge entirely on a fundamental misreading of *Fisher* and *Teknek*. Neither of those decisions adopted the "same acts" requirement the lower courts have imposed.

To the contrary, *Fisher* describes a bankruptcy court's authority in broad terms, and it expressly condones § 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). And *Teknek* focuses principally on the question of who owned a claim and would ultimately be able to recover a final judgment—thereby exhausting the claim—not whether *temporary* injunctive relief

was appropriate. Here, of course, the Debtors merely seek temporary relief until 60 days after the examiner issues his report, so that, through the bankruptcy process, all of the relevant stakeholders can evaluate and respond to the examiner's assessment of the disputed transactions and perhaps achieve consensus on restructuring.

Moreover, the precedent cited in *Fisher* and *Teknek* adopt the same broad language when it comes to the scope of § 105(a), and cite leading § 105(a) decisions from other circuits. To hold, as the courts below did, that this Court adopted a novel legal rule that breaks from the uniform consensus across the circuits without saying so (and while relying on decisions from other circuits) is far-fetched. As *Fisher* itself makes clear, enjoining third-party actions arising from the same acts as estate claims is within the heartland of a bankruptcy court's § 105(a) power, not its outer limit. Yet, the decisions below would limit *Fisher* to its facts. Ultimately, the decisions below lead to the anomalous situation where a bankruptcy court has broad discretion to enjoin third party actions that will merely "distract" debtors from reorganization or hinder the pace of reorganization, but virtually no authority to *temporarily* enjoin actions that would fundamentally thwart the

reorganization, that would effectively change the allocation of property among creditors, and that would permit a subset of junior creditors to leapfrog the others and recover assets that rightfully belong to the estate. That cannot be the law.

2. Even if some form of "same acts" requirement exists, it is readily satisfied here. The courts below held that injunctive relief was not available because Appellees' "claims against CEC do not in any way depend on CEC's misconduct with respect to CEOC." A51. But there is no support in *Fisher* and *Teknek* for holding that two claims arise from the same acts only if the elements of the respective causes of action require identical proof. Neither case even discussed the elements of the relevant underlying causes of action. Instead, even assuming a debtor must show that its claims involve the "same acts" that give rise to the third-party plaintiff's claim, the question should be whether those claims arise from overlapping or closely related acts of alleged misconduct by the non-debtor defendant involving the debtor. That is precisely the case here, where the claims of both the Debtors and the Appellees arise from the same series of capital market transactions by CEC involving *the very assets* from which Appellees now seek to recover.

The fact that CEC would have no assets from which to satisfy Appellees' guaranty claims but for the allegedly fraudulent transactions that stripped those assets from the Debtors makes clear just how intertwined the facts here are. And, if that were not enough, the fact that in order to prevail in their guaranty actions, the Appellees must prove that the Disputed Transactions were not "routine corporate transactions," but instead "part of a plan to accomplish an out-of-court restructuring of all [Debtor] CEOC debt," *BOKF*, 2015 WL 5076785, at *11 (internal quotations omitted), shows that their claims depend on the "same acts" as the Debtor's claims against CEC. Indeed, there can be little doubt that the bankruptcy court could exercise "related to" jurisdiction over these actions. 28 U.S.C. § 1334(b). And, much like *Fisher*, change the facts only slightly and § 362 itself would enjoin these actions. It cannot be that the bankruptcy court is powerless to temporarily enjoin them under § 105(a).

3. The Debtors' request for a temporary injunction should thus be granted. There are no relevant factual disputes. 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.

Under any reasonable interpretation of this Court's precedent, the Debtors are entitled to an injunction temporarily staying the guaranty actions until 60 days after the examiner's report. That will provide an opportunity to maximize recoveries for *all* creditors. Because any other conclusion would amount to an abuse of discretion, this Court should direct the bankruptcy court on remand to immediately enter the Debtors' requested injunction.

STANDARD OF REVIEW

This Court looks through the district court's opinion and directly reviews the bankruptcy court's decision. *See In re Marcus-Rehtmeyer*, 784 F.3d 430, 436 (7th Cir. 2015). Review of a bankruptcy court's denial of an injunction under 11 U.S.C. § 105(a) is for an abuse of discretion. *See In re Rimsat, Ltd.*, 212 F.3d 1039, 1049 (7th Cir. 2000).

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).

ARGUMENT

I. This Court Does Not, and Should Not, Have a "Same Acts" Requirement for Section 105(a) Injunctions Of Third Party Actions

The decisions below, refusing to temporarily stay the guaranty actions, depend on a misreading of this Court's precedents that cannot be sustained. Rather than follow the well-established and flexible standard for whether to temporarily 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." A82. The district court affirmed that decision, holding that "whether a third-party's claims against a non-debtor arise out of the same acts as the estate's claims is a key component of the determination of whether a § 105(a) injunction is

permitted. A52. Neither is a correct statement of the law. Under the correct legal standard, the Debtors are entitled to an injunction.

A. This Court's Well-Established Standard For § 105(a) Injunctions Is Inherently Flexible, Not Formalistic

The courts below fundamentally misunderstood the scope of a bankruptcy court's power 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) (internal quotations omitted). Consistent with this broad authority, bankruptcy courts have the power to temporarily enjoin third-party actions against non-debtors that—in this Court's words—"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 inherently flexible standard was not invented by the Debtors, as the district court seemed to suggest, A53, but is well-settled in this Court's jurisprudence. It encompasses a broad array of situations, depending on the potential impact on the bankruptcy proceedings and the estate. As this Court observed in *Fisher*, 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." 155 F.3d at 882 (internal quotations omitted). Applying that standard, courts in this Circuit have granted injunctions 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).

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) (per curiam) (internal quotations omitted); *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.").

B. The Rigid "Same Acts" Test Advocated by Appellees Would Render The Seventh Circuit A National Outlier

Rather than simply applying this flexible standard, however, the bankruptcy court invented (and district court affirmed) a new requirement that the debtor and the third-party plaintiff must both have "claims" against the non-debtor defendant *and* those claims must arise from the "same acts." A73; *see also* A77; A79-80; A82-83. This new requirement has no basis in principle or precedent. Even after *Teknek*, other courts in this Circuit 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 whatsoever 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 Laham 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). *In re A.H. Robins Co., Inc.* illustrates how significantly the "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

[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).

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. 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. Yet, under the lower courts' approach, a bankruptcy court would apparently have broad discretion to enjoin third party litigation that merely distracts the debtors, but virtually no authority to enjoin litigation that threatens the very integrity of debtors' reorganization efforts. That cannot be the law.

The bankruptcy court candidly acknowledged that its novel rule would foreclose the "familiar" types of § 105 injunctions that other courts "often issue[]." A81. But it held the normal rules do not apply in this Circuit—and also implicitly held that *Gander Partners, Paul R. Glenn*, and *Kham & Nate's Shoes* were all wrongly decided—because in

its view this Court employs a "different textbook" than everyone else. A82. According to the courts below, *Fisher* and *Teknek* "restricted" what had previously been broad authority under § 105 to the "particular set of limited circumstances" captured by its newly minted rule. A75; A49.

Adopting the lower courts' interpretation of *Fisher* and *Teknek* would make this Circuit 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) (internal quotations omitted); *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); *Western Real Estate Fund*, 922 F.2d at 599; *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986); *In re Davis*, 730 F.2d 176, 183-84 (5th Cir. 1984) (similar).

There is no reason to believe that in *Fisher* and *Teknek*, this Court silently broke from every other court of appeals and engaged in the artificial line-drawing ascribed to it by the courts below. Indeed, when this Court disagrees with other courts of appeals, it is not bashful about saying so. *See, e.g.*, *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 662 (7th Cir. 2015). The lower courts' reading of Circuit precedent is wrong as a matter of law and, when this Court applies *de novo* review to this legal issue, should be reversed.

C. *Fisher* and *Teknek* Do Not Support, Much Less Require, That Claims Arise From the "Same Acts" to Grant Injunctive Relief

The fundamental premise behind the decision below is simply inconsistent with *Fisher* and *Teknek*, which did not abandon without comment earlier Seventh Circuit precedent (such as *Energy Co-op*, 886 F.2d at 929). Rather, the decision 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 sufficiently affect the integrity of the bankruptcy estate in a manner that could "derail" restructuring efforts. *Teknek*, 563 F.3d at 648; *Fisher*, 155 F.3d at 882-83.

Indeed, finding a "same acts" requirement hidden in *Fisher* and *Teknek* would require reading those decisions to overrule past Seventh Circuit precedent. Years before those decisions, the Seventh Circuit established that bankruptcy courts have broad authority to temporarily enjoin third-party actions against non-debtors that "would defeat or impair its jurisdiction," *In re L & S Indus.*, 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). That inherently flexible standard—applicable across a variety of fact-patterns—is irreconcilable with the "same acts" requirement Appellees and the bankruptcy court read into *Fisher* and *Teknek*. Because one Seventh Circuit panel cannot overrule the decision of a prior panel, *see Iqbal v. Patel*, 780 F.3d 728, 729 (7th Cir. 2015), this only further demonstrates that Appellees are reading into *Fisher* and *Teknek* a legal rule that does not exist.

Fisher instead specifically embraces 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,'" and holds that bankruptcy courts have both the "*power* and *responsibility*" to "preliminarily enjoin" such suits. *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)) (emphasis added); *see also Teknek*, 563 F.3d at 648. Indeed, in formulating its standard for enjoining third party actions, this Court cited *Collier on Bankruptcy*—the leading bankruptcy treatise—and followed earlier pathmarking circuit court decisions that applied the well-established, flexible standard discussed above. *Fisher*, 155 F.3d at 882 (citing Lawrence P. King, *Collier on Bankruptcy* ¶ 105[2]); *Teknek*, 563 F.3d at 648.

The "'affect the amount of property in the bankruptcy estate'" language in both *Fisher* and *Teknek* comes from this Court'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 in the Fourth Circuit's *Piccinin* decision discussed above, in *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11th Cir. 1990), and in *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 very "threaten the integrity of the bankrupt's estate" language from *Energy Co-op*, 886 F.2d at 929. It would be strange for this Court to have silently adopted the novel, rigid rule the lower courts read into *Fisher* and *Teknek* while so firmly and explicitly grounding itself in well-established, mainstream bankruptcy jurisprudence from other circuits.

Tellingly, the lower courts cite no other decisions within this Circuit purporting to read *Fisher* and *Teknek* as they do, much less any other decision imposing a "same acts" requirement. In fact, in another post-*Teknek* decision, the bankruptcy court itself 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* 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.[2]

Fisher, it is true, did involve estate claims against the non-debtor and ultimately discussed whether the third-party and estate claims arose "as a result of the same acts." *Fisher*, 155 F.3d at 882. But that was in the context of initially addressing whether the claims at issue were estate claims or individual claims. In *that* context, this Court made the simple point that it was "difficult to imagine how" the third-

[2] It is also telling that no bankruptcy organizations or publications flagged *Teknek* as a seismic shift in the law when it was decided, as one would expect if it is as radical of a decision as the lowers court interpret it to be.

party claim "could be more closely 'related to'" the debtor's estate, and that it could "think of no hypothetical change to this case which would bring it closer to a 'property of' case without converting it into one" in which § 362 would automatically stay the litigation. *Id.* This Court, thus, observed that to deny § 105(a) injunctive relief where the claims were "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," would effectively "eliminate § 105 from" the bankruptcy code. *Id.* at 882-83. Far from suggesting that such fact patterns are the outer limits of a bankruptcy court's § 105 authority (as the decisions below effectively hold), *Fisher* itself makes clear that it was at the heart of a bankruptcy court's authority. To be sure, when a debtor's claim against a third-party defendant arises from the "same acts" as a third-party plaintiff's claim, it is often self-evident how competing claims can impair the integrity of the bankruptcy estate. But that is just one means of satisfying the test, it is not the test itself.

Teknek is not to the contrary. As an initial matter, as one court observed, "[t]he *Teknek* ruling did not address the propriety of

temporarily enjoining lawsuits against a debtor's guarantors by a bankruptcy court." *Gander Partners*, 432 B.R. at 784 (emphasis added). Rather, it was "addressing situations where nondebtors and trustee/debtors disagree over which entity owns a claim," which was ultimately dispositive because the issue was which entity could collect a judgment that had already been rendered final, in effect exhausting the other party's claim to that judgment. *Id.* In *Teknek*, a third party had obtained a pre-petition patent-infringement judgment against the debtor (Teknek), and one of its corporate affiliates. 563 F.3d at 641. While that litigation was pending, Teknek's shareholders funneled Teknek's assets and those of its affiliate to a new company, thereby rendering Teknek and its affiliate insolvent. *Id.* The third party 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.*

As *Teknek* itself observed, "[t]he question presented by [that] appeal [was] whether SDI's collection action against Kennett, Hamilton and Holdings (the alter egos) may be enjoined so that the trustee can pursue its claim *for the same judgment* against Kennett and Hamilton." *Id.* at 642 (emphasis added). This Court ultimately found there was "less of a principled basis for requiring a claim to be brought by the trustee rather than by the individual creditor" because the case did not implicate a broader set of creditors. *Id.* at 650.

In so doing, this Court affirmed a decision finding that neither § 362 nor § 105 supported an injunction that would allow the trustee to collect the individual creditor's judgment. It noted 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). Instead, the third-party plaintiff sought to collect based on the alter egos' unrelated fleecing of "*an*

independent non-debtor." *Id.* at 650 (emphasis added). This Court accordingly held the fact that the same alter egos controlled Teknek and its affiliate was "not sufficient" by itself to bring the third-party's affiliate-related claims "under the umbrella of the bankruptcy proceeding." *Id.* at 649.

That was not the end of the analysis, however. This Court further observed that the third-party plaintiff there was Teknek's "only major creditor," so its collection efforts would have "*no effect*" on other creditors. *Id.* at 650 (emphasis added). This was a "distinguishing characteristic" from *Fisher* because "the absence of other creditors is relevant. The trustee's 'paramount duty' in Chapter 7 is to marshal the estate's assets for a pro rata distribution to all creditors." *Id.* Thus, "to the extent that there is no larger creditor class, that duty will not be vindicated." *Id.*; *see id.* at 648 (distinguishing *Fisher*, noting that absent an injunction the third-party litigation "would have derailed those proceedings' efforts to recover for the class of creditors as a whole"). In addition, the third-party plaintiff's collection efforts in *Teknek* would not have affected, much less derailed, the bankruptcy proceedings because the alter-ego defendants had sufficient funds "to

satisfy both [the third-party plaintiff's] claim and any fraudulent transfer claims" brought by the estate. *Id.* at 644. In other words, allowing the third-party action to proceed in *Teknek* in no way impaired the integrity of the bankruptcy estate, nor affected the allocation among creditors of the debtor.

There would have been no need to address these issues if, as the courts below held here, *Teknek* adopted a "same acts" requirement. Moreover, precisely because the third-party litigation in *Teknek* posed no risk to the integrity of the bankruptcy estate, the district court here was simply wrong when it suggested that *Teknek* turned entirely on whether the claims arose from the "same acts" instead of ultimately considering the impact on the estate. A53.

* * *

Neither *Fisher* nor *Teknek* adopt the formalistic "same acts" approach ascribed to them by the courts below. Nor did they write a different "textbook," A82, from that used in every other circuit. Rather, the question in any request for § 105(a) relief is whether the injunctive relief is needed to protect the integrity of the bankruptcy estate. Legions of cases, both in this Circuit and beyond, grant 105(a) relief in

circumstances that do not even involve third-party litigation, or that do not involve claims by the debtor, let alone claims arising from the "same acts" as the third-party plaintiffs' claims. It makes no sense to have different rules under § 105(a) for different fact-patterns. After all, the purpose of § 105(a) is to empower a bankruptcy court to protect the bankruptcy process. Applying that basic principle, the decision below should be reversed.

II. Even Assuming Some "Same Acts" Requirement, The Debtors Are Entitled To An Injunction

Even if, in assessing a request for § 105(a) relief, a "key component" is whether a debtor's claims arise from the "same acts" as the third-party claims sought to be enjoined (as the district court held, A52), that factor would be readily met here and the guaranty actions should have been enjoined. Although not *necessary* for § 105(a) relief, this Court has 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. Otherwise, allowing third-party plaintiffs 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 treating the competing claims as too attenuated to permit § 105 relief—they (i) arise out of the same transactions; (ii) seek recovery not just from the same pool of money, but from precisely the same assets that the Debtors allege were fraudulently transferred to CEC; and (iii) ultimately turn on an analysis of the Debtors' and CEC's conduct in executing the Disputed Transactions. If this case does not satisfy a "same act" requirement, virtually none will. Indeed, accepting the narrow view taken by the courts below would limit *Fisher* to its facts and effectively "eliminate § 105 from" the bankruptcy code in contravention of that decision. 155 F.3d at 882. The automatic stay already temporarily blocks "any act to obtain possession of property of the estate." 11 U.S.C. § 362(a)(3). Likewise, the bankruptcy code grants a debtor-in-possession "sole responsibility" to bring actions to marshal estate assets or to represent the interests of creditors as a

class. *Fisher*, 155 F.3d at 879. Section 105(a) provides broader authority to bankruptcy courts.

First, both sets of claims arise from the same allegedly "broad[] scheme on CEC's part to transfer away CEOC assets," including the Disputed Transactions. A80; *see also* A62-63. Those transactions transformed CEC from a holding company that had no assets other than CEOC stock when it issued the disputed guaranties, into a company with significant "independent value," including the equity in other subsidiaries that own many "assets that once belonged to CEOC." A63; A1066-68; A1102; A463; A488. In other words, everything that gives CEC independent value to potentially satisfy the Appellees' guaranty claims came from the Debtors in the course of the Disputed Transactions themselves. A44. It is the acquisition of the Debtors' former assets via those transactions that give rise to the estates' alleged avoidance claims. A1047; A1194; A496; *see also* A1033-34; A1041-42; A1067; A1076. And two of the Disputed Transactions terminated the disputed guaranties and gave rise to Appellees' declaratory-judgment guaranty actions. A63 ("Two of these transactions gave rise to the actions the debtors want enjoined."); A44. 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 lower courts held otherwise based on an exceedingly narrow view of what constitutes the same acts. Claims arise from the same acts, in their view, only if the elements of the respective causes of action require identical proof. A80-81; A51. That rule has no basis in logic or this Court's precedent, and it cannot be the law, even assuming some "same acts" factor is relevant. 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. Moreover, as discussed above, a legal rule that limits § 105 to the facts of *Fisher* cannot be correct.

Second, further illustrating how intertwined the guaranty actions are with this bankruptcy case, is the fact that the assets that provide the only basis for recovery from CEC in the guaranty actions are the very assets that the Debtors allege were fraudulently transferred to CEC. In other words, this is not a situation where the Debtors and the third-party plaintiffs just seek to recover from the same pool of money; they actually seek recovery from *the very same assets* that were at issue in the same Disputed Transactions.

Appellees, of course, are not strangers to this bankruptcy case, they are junior creditors of the Debtors, whose claim against CEC depends on the fact that the Debtors are in bankruptcy. And at the time that CEC provided the disputed guaranties, it had no independent assets—Appellees knew their only recourse would be from the Debtors themselves. A44. Moreover, absent the Disputed Transactions, Appellees have implied that the Debtors would have had sufficient assets to avoid a bankruptcy, A1286, which means that Appellees' guaranty claims against CEC might not have been triggered in the first place. Now, however, rather than seek to satisfy their claims through the bankruptcy process, and despite affirmatively arguing that "CEC loot[ed] the Debtors through the 'disputed transactions,'" shifting "billions of dollars of value away from the Debtors," *id.*, Appellees now seek that "loot" for themselves at the expense of the Debtors' estates. That is reason enough to grant the requested temporary injunction.[3]

[3] Under the lower courts' reasoning, even in circumstances where third-party litigation threatens the integrity of the *only* asset that may be pursued by the estate, a bankruptcy court is powerless to temporarily enjoin that litigation. [Op. 13]. That cannot be the law, and contrary to the district court's suggestion, *id.*, *Teknek* does not remotely suggest that it is. As discussed above, there was no threat to the integrity of the bankruptcy estate in *Teknek*, precisely because there were no other

Third, Appellees' very right to recovery in the guaranty actions turns on the conduct of *the Debtors* and CEC in executing the Disputed Transactions. If that does not satisfy a "same acts" requirement, it is hard to imagine what would. The Southern District of New York recently observed that questions at the heart of the guaranty actions include whether the disputed transactions were "routine corporate transactions … undertaken in an effort to *improve* [Debtor] CEOC's financial condition or whether the transactions were undertaken as part of a plan to accomplish an out-of-court restructuring of all CEOC debt." *BOKF*, 2015 WL 5076785, at *11 (internal quotations omitted; emphasis in original). The Southern District of New York concluded that "the factfinder may examine all evidence related to these transactions," such as whether Debtor "CEOC h[e]ld talks with creditors in order to make arrangements for maintaining repayments," to determine if CEC remains liable under the guaranties. *Id.*

In other words, liability in the guaranty actions depends on the factfinder's assessment of *the Debtors'* actions and motives in the Disputed Transactions with CEC—the very transactions that Debtors

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major creditors and the third-party defendants had ample assets to satisfy any claims. *See* 563 F.3d at 644, 650.

themselves allege improperly transferred assets from them to CEC. That goes directly to the Debtors' fraudulent transfer allegations, the subject of the bankruptcy-court-appointed examiner's ongoing work, and the proposed settlement with CEC in the RSA. Indeed, if—as the Southern District of New York held—Appellees' claims for relief turn on what the Debtors did and why in the Disputed Transactions that form the basis for the Debtors' claims against CEC, it is hard to see how these claims could not satisfy a "same acts" standard. Indeed, allowing the guaranty actions to proceed puts the Debtors to the very Hobson's Choice § 105 is intended to prevent: the Debtors must either let a non-bankruptcy court make specific factual findings about their conduct, which could have a material impact on the administration of the estate, or become embroiled in non-bankruptcy litigation to ensure there are no negative implications for the administration of the Debtors' estate and reorganization.

Given the factual inquiry being undertaken in the guaranty actions, and the implications of having another court adjudicate the propriety of the transactions between the Debtors and CEC, there can be little doubt that the bankruptcy court could have exercised "related

to" jurisdiction over those actions. 28 U.S.C. § 1334(b). Although that is not necessary for a bankruptcy court to issue 105(a) injunctive relief, *see, e.g.*, *Celotex Corp. v. Edwards*, 514 U.S. 300, 309, 311 n.8 (1995); *Johns-Manville*, 801 F.2d at 64, it would be bizarre for a bankruptcy court to have "related to" jurisdiction over a third-party action, and yet be powerless to temporarily enjoin that action under § 105(a).

At bottom, it is not credible to assert, as Appellees have, that the claims of the Debtors and Appellees do not arise from "overlap[ping]" and "closely related" acts of misconduct by CEC against or involving the Debtors. *Fisher*, 155 F.3d at 883; *Teknek*, 563 F.3d at 649. That should be enough to satisfy any "same acts" requirement, assuming one exists, and there is no justification for treating the competing claims here as too attenuated to permit § 105 relief.

III. 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 guaranty lawsuits that threaten to 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.

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* A1033:14-1034:2; A1040:20-1042:3. Appellees themselves contend "that CEC is liable to the bankruptcy estate for … billions of dollars" on account these claims. *See* A1023 ¶ 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* A63 ("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)—assets that originally came from the Debtors themselves. 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 Debtors' estates. *See* A1046:17-1048:22; A1133:11-1134:2.

Second, the guaranty actions will affect the allocation of property among the Debtors' creditors. Appellees include certain unsecured creditors and indenture trustees for second lien noteholders. A96 ¶ 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. A464. 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* A1065:24-1067:13; A1101:25-1102:15. 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." *Fisher*, 155 F.3d at 883. The Debtors and 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. A1040:20-1042:3. The RSA contemplates that CEC will make certain contributions to the estate in exchange for a release of claims against it. A70; A1034:3-14; A1037:10-

14; A1125:2-1127:1. Although 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. A1135:24–1136:12. Without CEC's contribution, the RSA, and the consensual reorganization it entails, will crumble.

The guaranty actions 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. A1046:17–1048:22; A1050:9–1053:22; A1095:12–1096:7; A1107:21–1108:11; A1134:3-21; A1135:10-23; A1189:2-1190:2; A941. 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. A1053:23-1054:21; A1061:15-1064:8; A1138:4-1140:4. Although 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. A1038:23-1042:3.

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. CeFeotex*, 514 U.S. at 310 (finding "at least" related-to jurisdiction to enjoin proceedings that threatened a settlement that "may well be the linchpin of [the] 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. A1053:23-1054:9; A1056:8-14. 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 Circuit 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. A1215:17-1216:20. 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. A1057:12–1058:19; *see also* A1028-29. The Debtors' primary problem is over-leverage, but that is a problem chapter 11 reorganization is well-suited to address. A1057:12–1058:19; A1217:14-19. 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 (internal quotations omitted). 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. A1068:15–1069:8.

Nor have Appellees identified any legally cognizable 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. On appeal to the district court, Appellees revealed the true reason they do not want the guaranty actions stayed: they fear a plan might be confirmed by the bankruptcy court that could release

their claims against CEC. A1289. But that is a dispute for the bankruptcy court to resolve in the context of plan confirmation proceedings. Rather than oppose confirmation at the proper time, however, Appellees seek to sidestep the bankruptcy process and claim exclusively for themselves the very assets from CEC that the Debtors seek for equitable distribution to *all* creditors. This blatant attempt to "defeat or impair" the bankruptcy court's jurisdiction and the bankruptcy process is precisely when a court *should* exercise its § 105 authority. *L & S Indus.*, 989 F.2d at 932.

* * *

The lower courts' 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 given 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.").

CONCLUSION

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

Dated: October 19, 2015

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STATEMENT IN SUPPORT ORAL ARGUMENT

Pursuant to Fed. R. App. P. 34(a) and Circuit Rule 34(f), 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 respectfully submit that the issues in dispute are sufficiently important and far-reaching that oral argument will materially assist the Court in its analysis of the disputed issues presented on appeal.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(a)(7)(B)(iii), the brief contains 12,134 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. App. P. 32(a)(7)(C)(i), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: October 19, 2015

/s/ John C. O'Quinn
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CIRCUIT RULE 30(D) STATEMENT

I certify that all materials required by Circuit Rule 30(a)-(b) are included in the Appendix.

Dated: October 19, 2015

/s/ John C. O'Quinn
John C. O'Quinn

SHORT APPENDIX
(7th Cir. R. 30(a))

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Caesars Entertainment Operating Co., Inc., et al,

Plaintiff(s),

v.

BOKF, N.A., et al,

Defendant(s).

Case No. 15 C 6504
Judge Robert W. Gettleman

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

.

Defendant(s) shall recover costs from plaintiff(s).

☒ other: The decision of the Bankruptcy Court is affirmed.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☐ decided by Judge on a motion

Date: 10/6/2015

Thomas G. Bruton, Clerk of Court

George Schwemin, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Caesars Entertainm,ent Operating Co, Inc.	)	Case No: **15 C 6504**
v.	)	
	)	Judge: ROBERT W. GETTLEMAN
BOKF, N.A.	)	

ORDER

The decision of the bankruptcy court is affirmed.

Date: October 6, 2015

ROBERT W. GETTLEMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE 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.	No. 15 C 6504 Judge Robert W. Gettleman Chapter 11 Case No. 15-01145 Adversary Proceeding No. 15-100149

MEMORANDUM OPINION AND ORDER

Caesars Entertainment Operating Company, Inc. ("CEOC") and approximately 170 of its subsidiaries ("Debtors") appeal from the decision of the bankruptcy court in Adversary Action 15 A 149, In re Caesars Entertainment Operating Co, Inc., 533 B.R. 714 (B.K. N.D. Ill. 2015). In that decision, the court denied Debtors' request for a preliminary injunction under § 105(a) of the Bankruptcy Code, 11 U.S.C. § 105(a), by which Debtors sought to enjoin defendants BOKF, N.A., Wilmington Savings Fund Society, FSB ("Wilmington"), 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 Masters Fund, Ltd., Trilogy Portfolio

Company, LLC, ("MeehanCombs"), and Fredrick Barton Danner ("Danner"), from pursuing civil actions against CEOC's non-debtor parent, Caesars Entertainment Corp. ("CEC") pending in the Delaware Court of Chancery and the Souther District of New York. For the reasons described below, the decision of the bankruptcy court is affirmed.

BACKGROUND[1]

Debtors are the primary operating units of a larger groups of companies described as "the Caesars Gaming Enterprise ("Caesars")." CEOC is the debtor in the lead case[2], the other debtors are all subsidiaries of CEOC. CEC is majority owner of CEOC. Caesars owns, operates or manages 50 casinos in five countries including the United States. It has 68,000 employees, 3 million square feet of gaming space, and 39,000 hotel rooms. Debtors own, manage, or operate 38 of the casinos. In its most recent fiscal year Caesars had revenues in excess of $8 billions, of which Debtors contributed over $5 billion.

In September 2005, CEOC and CEC entered into an indenture with U.S. Bank N.A. as indenture trustee (the "2005 Indenture"). Pursuant to the 2005 Indenture, CEOC issued $750 million in notes due in 2017 with an interest rate of 5.75% (the "2017 notes"). In June 2006, CEOC entered into a second indenture with US Bank as indenture trustee (the "2006 Indenture") pursuant to which CEOC issued another $750 million in notes due in 2016 (the "2016 notes") with 6.5% interest. The 2016 and 2017 notes (jointly the "Senior Unsecured Notes") were unsecured, but CEC guaranteed CEOC's obligations under the Indentures and notes. Defendant

[1]The background facts are taken from sections of the bankruptcy court's findings of facts and conclusions of law to which neither party has objected.

[2]The underlying bankruptcy proceeding, 15 B 1145, is a set of jointly administered Chapter 11 actions.

MeehanCombs holds $15,318,000 of the 2016 notes and $5,623,000 of the 2017 notes. Defendant Danner holds $104,000,000 of the 2016 notes.

In 2008, affiliates of Apollo Global Management, LLC ("Apollo") and TPG Capital LP ("TPG") and other investors acquired CEC (and all of its subsidiaries) in a $30.7 billion leverage buyout. The investors paid $6.1 billion in cash with the remainder funded through the issuance of approximately $24 billion in debt. Of the $24 billion, $19.7 billion was secured by liens on substantially all of Debtors' assets.

In 2009, CEOC and CEC entered into a third indenture with U.S. Bank as indenture trustee (the "2009 Indenture") under which CEOC issued $3.71 billion in notes due in 2018 with interest at 10%. The notes were secured by second priority liens on, among other things, substantially all of CEOC's assets. In 2010 CEOC and CEC entered into a fourth indenture with U.S. Bank as trustee under which CEOC issued $750 million due in 2018 with interest at 12.75%. CEOC's obligations under the notes were secured in part by second priority liens on substantially all of its assets. CEC guaranteed CEOC's obligations under the 2009 and 2010 Indenture and under the 2018 Notes (jointly the "Second Lien Notes"). Defendant Wilmington succeeded U.S. Bank as Indenture Trustee under the 2009 Indenture. Defendant BOKF succeeded U.S. Bank under the 2010 Indenture.

Around 2009, as a result of the 2008 financial crisis, Caesars sought to "restructure and manage" CEOC's debt. Caesars engaged in a series of over 45 "capital market transactions, including "assets sales, exchange and tender offers, debt repurchases and refinances." (The "Disputed Transactions"). Debtors describe these transactions as designed to "extend debt

maturities, meet interest obligations, monetize assets and transfer debt in capital expenditure obligations at properties CEOC could not afford to invest in."

Prior to the Disputed Transactions, CEC was a holding company with its sole asset consisting of 100% of CEOC. At the time it guaranteed both the Senior Unsecured Notes and the

Second Lien Notes it possessed nothing but the equity in CEOC. It is only as a result of the Disputed Transactions that CEC obtained assets beyond its ownership interest in CEOC.

CEOC's creditors understandably take a dim view of the Disputed Transactions, considering them to be part of a "carefully orchestrated plan to strip CEOC of valuable assets," moving them beyond the creditors' reach. According to the creditors, the plan created a "Good Caesars" consisting of CEC and its affiliates holding prime assets that once belonged to CEOC, and "Bad Caesars," consisting of CEOC left with barely profitable or unprofitable properties and burdened with debt left from the 2008 leveraged buyout.

Two of the Disputed Transactions are particularly relevant to the instant dispute, because they led to the lawsuits that Debtors seek to enjoin. The first such transaction, referred to by the parties as the B-7 Refinancing, occurred in May 2014 when CEC and CEOC had CEOC amended its first lien credit agreement and obtain an additional $1.75 billion in new term loans. As part of that transaction, CEC sold 68.1 shares, or 5%, of CEOC common stock for $6.15 million to institutional investors not affiliated with CEC. Based on this sale, CEC took the position that because CEOC was no longer a wholly-owned subsidiary, CEC's guarantees of CEOC's obligations under the First and Second Lien Notes were terminated.

The second Disputed Transaction, referred to as the "Senior Unsecured Notes Transaction," occurred on August 12, 2014, when CEC and CEOC consummated a deal with certain holders of more than 51% of CEOC's outstanding Senior Unsecured Notes. CEC and CEOC repurchased $155.4 million of the Notes, with each paying $77.7 million plus accrued and unpaid interest. The selling noteholders agreed to support any future restructuring that had consent of at least 10% of outstanding noteholders. They also entered into a supplemental indenture that, among other things, removed CEC's guarantee of the Senior Unsecured Notes.

CEC's attempts to extinguish its guarantees of CEOC's obligations under both the Second Lien Notes and the Senior Unsecured Notes led to the four actions Debtors seek to enjoin. In each of those four actions, the plaintiff (defendants in the instant case) sought, among other things: (1) a declaration that CEC's efforts to effect a release of its guarantee is void; and (2) to enforce the respective guarantee. First, on August 4, 2014, Wilmington sued CEC, CEOC and others in the Delaware Court of Chancery, claiming, among other things, that the B-7 Refinancing breached the 2009 Indenture, and seeking a declaration that CEC's guarantee of the notes subject to the Indenture had not been released. Next, on September 3, 2014, MeehanCombs sued CEC and CEOC in the Southern District of New York raising eight claims based on the Senior Unsecured Notes Transaction. The suit seeks a declaration that CEC's guarantees of the 2005 and 2006 Indentures are still in effect, damages under the Trust Indenture Act, 15 U.S.C. §§ 77aaa-bbb, and damages for breach of the Indentures and guarantees.

One month later, on October 2, 2014, Danner filed a five count class action complaint against CEC and CEOC in the Southern District of New York. All counts contest the Senior Unsecured Notes Transaction. Danner seeks a declaration that the original 2006 Indenture

remains in effect and that the supplemental indenture and its release of the guarantee is void, and damages for breach of the 2006 Indenture. Finally, in March 2015, BOKF sued CEC in the Southern District of New York claiming that CEC breached the guarantee and 2010 Indenture, and that the release of the guarantee in the B-7 Refinancing is void.

In June 2014, just before Wilmington filed the first suit, CEOC appointed two independent directors as a Special Governance Committee ("SGC") tasked with investigating the Disputed Transactions to determine whether Debtors or their creditors or both have claims against CEC. The SGC investigation has taken thousands of hours. Although still ongoing, the SGC has apparently found that CEOC has substantial claims against CEC arising out of the Disputed Transactions, including claims for avoidable preferences and fraudulent transfers. It has not identified any specific claims or the transactions out of which they arise.

At the same time the SGC began its investigation, Debtors began negotiating with CEOC's first lien creditors and CEC over terms of a possible restructuring. On December 19, 2014, Debtors, CEC and some of the CEOC first lien note holders entered into a "Restructuring Support and Foreclosure Agreement" ("RSA"). In the RSA, CEC agreed to make a financial contribution to Debtors' restructuring. In exchange, CEOC agreed that the plan of reorganization would provide for a release of all claims the estates had against CEC, its affiliates, shareholders, officers, directors and others. The RSA would release CEC from more than $12 billion in note holder guarantee claims.

On January 12, 2015, three second lien noteholders filed an involuntary petition against CEOC in the District of Delaware. Three days later, January 15, 2015, Debtors filed voluntary Chapter 11 petitions in this district. The Delaware court transferred the involuntary case to this

district. On March 11, 2015, one week after BOKF filed the last of the four actions against CEC, Debtors filed the instant adversary action seeking, among other things, an injunction against defendants from prosecuting their guarantee claims against the "non-debtor affiliates." After an evidentiary hearing, the bankruptcy court denied Debtors' request for an injunction, concluding that "debtors have not demonstrated that the claims the estates have against CEC arise out of the same acts as the guaranty claims the defendants are pursuing against CEC in Delaware and New York." Caesars, 533 B.R. at 727.

DISCUSSION

This court has jurisdiction to hear appeals from final orders of the bankruptcy court. 28 U.S.C. § 158(a)(1). The court reviews the denial of an injunction 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, 744 (N.D. Ill. 2011). A trial court abuses its discretion 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). Under this standard, this court should reverse "only where no reasonable person could take the view adopted by the [bankruptcy] court." Bedrossian v. Northwestern Memorial Hospital, 409 F.3d 840, 845 (7th Cir. 2005).

Debtors seek an injunction under § 105(a) of the Bankruptcy Code, which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions this Title." 11 U.S.C. § 105(a). The statute permits a bankruptcy court to protect its jurisdiction by enjoining the prosecution of a third party's action against a non-debtor pending in another court. In re Teknek, LLC, 563 F.3d 639, 648 (7th Cir. 2009); Fisher v. Apostolou, 155 F.3d 876, 882 (7th Cir. 1998). This power to enjoin third party proceedings is

not limited to actions in which the third party seeks to prosecute claims that belong to the estate. "The jurisdiction of the bankruptcy court to stay actions in other courts extends beyond claims by and against the debtor, to include suits to which the debtor need not be a party but which may affect the amount of property in the bankrupt estate, or the allocation of property among creditors." Teknek, 563 F.3d at 648 (internal quotations omitted). The bankruptcy court's authority to enjoin actions under § 105(a) is not absolute, however, and when, as in the instant case, the third parties are asserting individual personal claims (as opposed to general claims that belong to the corporate debtor,) the court may enjoin prosecution only of claims that are sufficiently "related to" claims brought on behalf of the estate in the bankruptcy case. Id. (citing Fisher, 155 F.3d at 882).

In the instant case, the bankruptcy court determined that defendants' guarantee claims against CEOC are not sufficiently related to CEOC's potential (and as yet unidentified) claims against CEC to authorize an injunction. The court analyzed the Seventh Circuit's decisions in Fisher and Teknek, and concluded that individually and together they stand for the proposition that to be enjoined, the third parties' claims must arise out of the same acts as the estates' claims. Concluding that the third parties' breach of guarantee claims against CEC do not arise out of the same acts as CEOC's potential claims against CEC, it denied the requested injunction.

Debtors' argue that the Seventh Circuit precedent does not require the claims to arise from the "same acts," and that bankruptcy courts have the authority to enjoin any third party action that threatens the bankrupt estate. Next, they argue that even if the "same acts" requirement is the law in the Seventh Circuit, defendants' guarantee claims and CEOC's claims

against CEC all "arise from the same capital market transactions involving debtors and their debt."

It is not difficult to understand why the bankruptcy court held as it did. Although different factually, the Seventh Circuit's decisions in Fisher and Teknek focused on whether the third party claims against the non-debtor depended on the non-debtor's misconduct with respect to the corporate debtor. Teknek, 563 F.3d at 649. In Fisher, a Chapter 7 case, the corporate debtor was a commodities business that the individual debtor and his accomplices used as a "bucket shop" similar to a Ponzi scheme. After the fraud was discovered both the individual and the corporation were forced into bankruptcy. The corporate trustee brought claims against the non-debtor accomplices to recover on behalf of the estate, and a group of corporate investors sought to bring separate (outside the bankruptcy) securities, commodities and common law fraud claims against those same accomplices. The trustee filed an adversary action seeking to enjoin prosecution of the investors' claims because the estate had its own fraud claims against the investors. The bankruptcy court granted the injunction, but the district court reversed, concluding that the investors' claims were not the property of the estate. Fisher, 155 F.3d at 878-79.

The Seventh Circuit agreed with the district court that the investors' individual fraud claims (as opposed to claims that arose out of the investors' transactions with the corporation) were not property of the estate, id. at 881, but nonetheless upheld the bankruptcy court's injunction because the fraud claims were sufficiently related to the estate's claims. Id. at 882. In reaching this decision the court stated that "it is difficult to imagine how those claims could be more closely 'related to' it. They are claims to the same limited pool of money, in possession of

the same defendants, as a result of the same acts, performed by the same individuals, as part of the same conspiracy." Id. Thus, the court could "think of no hypothetical change to this case which would bring it closer to a 'property of' without converting it into one." Id.

In Teknek, another Chapter 7 case, Systems Divisions, Inc., ("SDI") obtained a judgment for patent infringement against Teknek, LLC ("Teknek") and a related corporation, Teknek Electronics ("Electronics"). While the infringement action was pending, Teknek's and Electronic's shareholders looted those two corporations, transferring their assets to Teknek Holdings ("Holdings"). The infringement court then added Holdings and the shareholders as alter egos and entered judgment against them directly. Teknek, 563 F.3d at 642.

Teknek filed for bankruptcy, but Electronics did not. The trustee brought an adversary action against the shareholders, seeking to hold them liable to the estate for the SDI judgment. At the same time, SDI was seeking to enforce its judgment against the same shareholders and Holdings. The bankruptcy court preliminarily enjoined SDI from collecting its judgment outside of the bankruptcy, concluding that SDI's claims against the alter egos were "property of the estate," giving the trustee exclusive right to bring the claims. The district court disagreed, finding that SDI's claims against the alter egos were neither property of the estate nor sufficiently related to the bankruptcy proceeding to warrant an injunction under § 105(a). The court vacated the preliminary injunction. Teknek, 563 F.3d at 641-2.

The Seventh Circuit affirmed the district court. After first concluding that SDI's claims against the alter egos were not property of the estate, the court turned to whether SDI's claims were sufficiently "related to" the estate's claims to warrant an injunction. In holding that they were not, the court distinguished both Fisher and Koch Ref. v. Farmers Union Cent. Exch., Inc.,

831 F.2d 1339 (7th Cir. 1987), a case which discusses the differences between general claims of the estate, and individual or personal claims of creditors:

> In both of these cases, the creditors' claims against the non-debtor fiduciaries depended on the non-debtors' misconduct with respect to the corporate debtor . . .. In this regard general claims and claims that are 'related to' the bankruptcy seemingly always involve transfers from the debtor to a non-debtor control person or entity.

Teknek, 563 F.3d at 649 (emphasis in original).

After acknowledging that the case involved such facts, the court then noted that Electronics was a separate non-debtor that was directly liable to SDI without regard to the debtors' liability. "SDI's claim against the alter egos does not depend on the alter egos' misconduct with respect to the debtor [Teknek]. SDI has equal recourse against the alter egos because of the injuries suffered by Electronics." Id. Thus, even though SDI's claims against the alter egos had the potential to affect the amount of property in the bankruptcy estate and the allocation of property among creditors, the court refused to enjoin them, stating, id.:

> Here, though SDI's claims involve the same pool of money as the trustee's claims, and that money is in the possession of the same defendants (the alter egos), the claims are not based on the same acts. The alter ego's looted both Teknek and Electronics. Those are separate acts, which cause separate injuries to two separate companies, only one of which is in bankruptcy.

In the instant case, defendants' claims against CEC do not in any way depend on CEC's misconduct with respect to CEOC. Defendants' claims arise out of CEC's failure to honor guarantee agreements entered by CEC well before any of the alleged Disputed Transactions. To be sure, the issue of whether the B 7 Refinancing and the Senior Unsecured Notes Transaction effectively released CEC's guarantee obligations will be litigated in the Delaware and Southern District of New York actions, and may also be litigated in the bankruptcy court. But it is the

defendants' claims that must relate to the debtors' potential claims, not just the issues or defenses involved in the litigation of those claims. See In re Pierport Dev. & Realty, Inc., 502 B.R. 819, 826 (B.K. N.D. Ill. 2013) (It is the conduct that cause the alleged injury, not the particular cause of action or legal theory that determines whether the bankruptcy trustee has standing.").

Here, defendants were allegedly injured by CEC's failure to honor its guarantees. The validity of the two transactions will be raised in the Delaware and New York actions, but the conduct causing defendants' injury is CEC's alleged breach of its contracts. And, in any event, Debtors have admitted at trial that they have no claim against CEC based on either the B 7 Refinancing or the Senior Unsecured Notes Transaction. Their argument that defendants' claims against CEC "arise from the same capital market transactions involving debtors and their debt," is simply wrong.

Thus, under any reading of Fisher and Teknek, it is obvious that whether a third-party's claims against a non-debtor arise out of the same acts as the estate's claims is a key component of the determination of whether a § 105(a) injunction is permitted. Whether it is a requirement for injunctive relief, as the bankruptcy court held, or whether it is simply a key factor that may tip the scale when no other factors mandate an injunction, is an issue that need not be resolved here. In the instant case, as in Teknek, defendants' claims involve the same pool of money as Debtors' claims, and that money is in the possession of the same defendant. The claims are not, however, based on the same acts. No other factors compel, or even support the issuance of an injunction.

Despite the obvious import of Teknek, Debtors continue to argue that § 105 is the "bankruptcy code's equivalent of the All Writs Act," providing the bankruptcy court with broad

authority to grant injunctive relief to protect the "integrity of the bankruptcy estate." The flaw in their position crystalized at oral argument when Debtors' counsel indicated that the size of the estate's claim is determinative. "And so if you're talking about something that would be a very small claim of the estate, I'm not sure that the bankruptcy court would necessarily have authority in those circumstances. But certainly it's got to be the case that a bankruptcy court would have the authority when the claim is the only asset of the estate." But, as defendants' counsel pointed out, if that were the test, the Seventh Circuit would have affirmed the injunction in Teknek, in which the estate's claims against the alter egos were it largest, if not only asset. Debtors' response was only to argue that Teknek did not address the propriety of temporarily enjoining lawsuits against a debtor's guarantors by a bankruptcy court, but instead addressed only situations where non-debtors and debtors disagreed over which entity owns a claim.

Debtors' reading of Teknek is incorrect. The Teknek bankruptcy court did hold that SDI's claims against the alter egos were property of the estate and therefore enjoined SDI from collecting its judgment outside the bankruptcy, but, as the Seventh Circuit made clear, the district court disagreed and held that SDI's claims were not property of the estate and not related to the bankruptcy proceeding. "It therefore ruled that SDI's claims were not subject to the automatic stay under § 362, nor to an injunction under § 105 of the Bankruptcy Code." Teknek, 563 F.3d at 642. The Seventh Circuit affirmed the district court on both points, holding that it had properly vacated the bankruptcy court's injunction. Thus, Teknek squarely addresses the propriety of an injunction under § 105, and demonstrates that something more than the claims simply involving the same pool of assets (even if very large) is needed to authorize the injunction. It is that something more that is missing in the instant case.

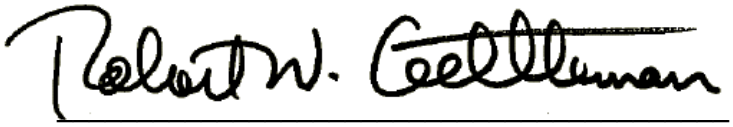
Without that something more, the instant case, like Teknek, is more akin to the "common case" where a creditor of a bankrupt corporation files a suit against the bankrupt's insurer or guarantor. Such suits are allowed to proceed because they are "only nominally against the debtor because the only relief sought is against [its] insurer, guarantor, or other similarly situated party." Teknek, 563 F.3d at 649 (quoting Fisher, 155 F.3d at 882-83).

Thus, for the same reason that a suit against a bankrupt's guarantor is not discharged under 11 U.S.C. § 524(e), because a discharge "does not affect the liability of any other entity on the debtor's debt," In re Hendrix, 986 F.2d 195, 197 (7th Cir. 1993), a third party action against a debtor's guarantor is not typically stayed under § 105(a). Consequently, the bankruptcy court's conclusion that Debtors are not entitled to an injunction is not erroneous as a matter of law and is not an abuse of discretion. The decision is affirmed.

CONCLUSION

For the reasons described above, the decision of the bankruptcy court is affirmed.

ENTER: October 6, 2015



Robert W. Gettleman
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 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.

/s/ John C. O'Quinn
John C. O'Quinn