NO. 15-3259

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Debtors-Plaintiffs-Appellants,
v.
BOKF, N.A., ET AL., *Defendants-Appellees*.

On Appeal from the United States District Court for the
Northern District of Illinois, Case No. 1:15-cv-06504

DEFENDANTS-APPELLEES' PETITION FOR REHEARING EN BANC OR PANEL REHEARING

.

DRINKER BIDDLE & REATH LLP
James H. Millar
Counsel of Record
Kristin K. Going
Frank F. Velocci
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714
(212) 248-3140

Timothy R. Casey
191 North Wacker Drive, Suite 3700
Chicago, IL 60606
(312) 569-1000

Counsel for Appellees Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, and Trilogy Portfolio Company, LLC

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Circuit Rule 26.1, Appellees Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, and Trilogy Portfolio Company, LLC make the following disclosures:

1. Appellee Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, states that it has no corporate parent and no publicly-held corporation owns 10% or more of its stock. Drinker Biddle & Reath LLP has appeared for Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust in this case.

2. Appellee Trilogy Portfolio Company, LLC states that it has no corporate parent and no publicly-held corporation owns 10% or more of its stock. Drinker Biddle & Reath LLP has appeared for Trilogy Portfolio Company, LLC in this case.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES
(cont'd)

Statutes

Other Authorities

FED.R.APP.P. 35(b) STATEMENT

Based on my professional judgment, I believe the panel decision is contrary to the following precedents of this Court: *In re TekNek, LLC*, 563 F.3d 639 (7th Cir. 2009); *Fisher v. Apostolou*, 155 F.3d 876 (7th Cir. 1998) and *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159 (7th Cir. 1994). Therefore, consideration by the full court is necessary to secure and maintain uniformity of the Seventh Circuit's decisions.

Based on my professional judgment, I believe the within appeal involves a question of exceptional importance for the following two reasons: 1) the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals and creates a new standard for a non-debtor third party injunction pursuant to title 11 of United States Code (the "Bankruptcy Code") section 105 that is a lower threshold than any other circuit has articulated, and conflicts with the "related to" jurisdictional grant that a bankruptcy judge must rely upon to consider a third party injunction and 2) the panel decision authorizes an Article I court (the bankruptcy court) to enjoin proceedings in an Article III court (the United States District Court for the Southern District of New York) in violation of the constitutional principle of separation of powers.

Dated: January 11, 2016

By: /s/ James H. Millar

James H. Millar
Kristin K. Going
Frank F. Velocci
DRINKER BIDDLE & REATH LLP
1177 Ave. of the Americas, 41st Fl.
New York, NY 10036-2714
(212) 248-3140

Timothy R. Casey
DRINKER BIDDLE & REATH LLP
191 North Wacker Drive, Suite 3700
Chicago, IL 60606-1698
(312) 569-1000

Counsel for Appellees Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, and Trilogy Portfolio Company, LLC

COMBINED ARGUMENT FOR *EN BANC* AND PANEL REHEARING

On December 23, 2015 the panel issued an opinion vacating the denial of a request for a preliminary injunction sought by Caesars Entertainment Operating Company Inc. ("CEOC"), a chapter 11 debtor. CEOC requested the injunction from the Chicago bankruptcy court pursuant to Bankruptcy Code section 105 to enjoin the above-named appellees (the "Senior Unsecured Plaintiffs") and certain other guarantee plaintiffs from proceeding with lawsuits they brought against CEOC's ultimate parent company, Caesars Entertainment Corporation ("CEC"), which had not filed for bankruptcy protection. The Senior Unsecured Plaintiffs' suit, filed in the United States District Court for the Southern District of New York (the "SDNY") based upon federal question jurisdiction, sought to enforce two debt guarantees that CEC had disavowed prior to CEOC filing bankruptcy.

The panel remanded the case to the bankruptcy court to determine whether to issue the injunction under a new legal standard. *See In re Caesars Entertainment Operating Co., Inc.*, 2015 WL 9311432, at *4 (7th Cir. Dec. 23, 2015).

I. THE PANEL'S OPINION CONFLICTS WITH EXISTING SEVENTH CIRCUIT PRECEDENT

Until the panel's decision, the Seventh Circuit had consistently focused its section 105 injunction jurisprudence on whether the litigation between non-debtor parties was sufficiently "related to" the bankruptcy to warrant an injunction. *In re TekNek, LLC*, 563 F.3d 639 (7th Cir. 2009); *Fisher v. Apostolou*, 155 F.3d 876 (7th Cir. 1998). The panel's opinion effectively

rewrites the law on section 105 injunctions in the Seventh Circuit by (1) eliminating the "related to" analysis and (2) changing the standard for a section 105 injunction in the Seventh Circuit. Rehearing *en banc* is appropriate and necessary to ensure consistent application of a section 105 injunction.

In the first instance, the panel's opinion is inconsistent with Seventh Circuit precedent establishing that, before a bankruptcy court may issue an injunction to stop third party litigation, that litigation must be sufficiently related to a bankruptcy case. *See TekNek*, 563 F.3d 639; *see also Fisher*, 155 F.3d 876 and *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159 (7th Cir. 1994). Under that precedent, a bankruptcy court has no authority to consider issuance of an injunction unless the third-party action "affect[s] the amount of property in the bankruptcy estate." *TekNek*, 563 F.3d at 648 (citing *Fisher*, 155 F.3d at 882; *Zerand-Bernal*, 23 F.3d at 161-62; *In re Mem'l Estates, Inc.*, 950 F.2d 1364, 1368 (7th Cir. 1992)). Here, the panel rewrote that standard by ruling that an injunction could issue if it "is likely to enhance the prospects for a successful resolution of the disputes attending its bankruptcy." *Caesars* 2015 WL 9311432, at *2. That new standard no longer focuses on property of the bankruptcy estate, but rather turns the focus to the abilities (such as financial wherewithal) of the non-debtor party to participate in a restructuring.

Of critical importance, the panel's decision creates a jurisdictional dilemma for bankruptcy courts. While *Fisher* and *TekNek* set a high bar for issuing an injunction of litigation proceeding between non-debtors outside of bankruptcy—a remedy that has been universally acknowledged as "drastic"

and only to be used in "limited circumstances"—the panel has changed the standard such that virtually any action could be enjoined under the guise that it may increase the chances of resolving otherwise unrelated disputes pending in a bankruptcy proceeding. *Id.* This new standard expands the scope of section 105 injunctions beyond the limits of a bankruptcy court's jurisdiction pursuant to 28 U.S.C. § 1334.[1]

Not only does the panel's decision expand the scope of a third party injunction beyond the scope of a bankruptcy court's related-to jurisdiction, it also opens the door for bankruptcy debtors to essentially "sell" preliminary injunctions to third parties desiring a stay of litigation unrelated to the debtor's bankruptcy. For example, under the panel's analysis, a party with no relationship to a debtor could "buy" a stay of litigation it was involved in simply by offering to provide the debtor capital under a bankruptcy plan. In fact, this example is not that different from the facts of the within case. Here, CEC is offering to buy a stay of the litigation pending against it by entering into a restructuring support agreement with CEOC.

While the panel correctly notes that nothing in section 105 of the Bankruptcy Code requires a "same acts" analysis, the panel ignores the fact that the Seventh Circuit has consistently considered the issue through a jurisdictional lens. *See Caesars Entertainment Operating Co., Inc. v. BOKF, N.A.*

[1] Section 105 does not provide an independent source of bankruptcy jurisdiction; thus, a bankruptcy court must first establish that it has subject matter jurisdiction to enter the injunction. *See In re W.R. Grace & Co.*, 591 F.3d 164, 170 (3d Cir. 2009).

(In re Caesars Entertainment Operating Co., Inc.), 533 B.R. 714, 729 (Bankr. N.D. Ill. 2015) ("Perhaps because the purpose of a section 105(a) injunction is to protect the bankruptcy court's jurisdiction, the Seventh Circuit defined those circumstances in jurisdictional terms") (citing *Fisher*, 155 F.3d at 882; *TekNek*, 563 F.3d at 648).

Both *Fisher* and *TekNek* determined that the bankruptcy court cannot enjoin a third party non-debtor action unless it is sufficiently "related to" the bankruptcy estate, such that the injunction is necessary to preserve the bankruptcy court's jurisdiction. These cases further held that the standard for determining whether something is sufficiently "related to" the bankruptcy is "whether the claims are for the same pool of money, in the possession of the same defendants, as a result of the same acts performed by the same individuals." *TekNek*, 563 F.3d at 649 (citing *Fisher*, 155 F.3d at 882). Only then might the third-party action "threaten" the bankruptcy court's jurisdiction.

It is understandable that *Fisher*, *TekNek* and *Zerand* would describe their section 105 analysis in jurisdictional terms. Section 105 of the Bankruptcy Code does not provide an independent source of bankruptcy jurisdiction. A bankruptcy court, therefore, must first establish that it has subject matter jurisdiction to enter the section 105 injunction. *See W.R. Grace & Co.*, 591 F.3d at 170 ("before considering the merits of any §105(a) injunction, a bankruptcy court must establish that it has subject matter jurisdiction to enter the injunction"); *Combustion Eng'g, Inc.*, 391 F.3d 190, 225 (3d Cir. 2004) ("the

exercise of bankruptcy power must be grounded in statutory bankruptcy jurisdiction"), *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (noting that "a bankruptcy court's 'related to' jurisdiction [under section 105] cannot be limitless"). The only manner in which a bankruptcy court can conceivably have jurisdiction over suits between third party non-debtors is pursuant to related-to jurisdiction under 28 U.S.C. § 1334(b). *Zerand*, *Fisher* and *TekNek* all agreed that related-to jurisdiction in the context of section 105 was limited to "suits…which may affect the amount of property in the bankrupt estate or the allocation of property among creditors" *TekNek*, 563 F.3d at 648, citing others (internal quotations omitted). These three Seventh Circuit decisions also consistently found that it was only within the confines of related-to jurisdiction that a bankruptcy court can issue any order, process, or judgment that is necessary or appropriate . . ." 11 U.S.C. § 105.

In *Fisher*, the Court explained: "In limited circumstances, the trustee may temporarily block adjudication of claims that are not property of the estate by petitioning the bankruptcy court to enjoin other litigation, if it is sufficiently 'related to' her own work on behalf of the estate. 28 U.S.C. § 1334(b)." *Fisher*, 155 F.3d at 882. *Fisher* went on to explain that, in this context, "related to" means "likely to affect." *Id.* (citing *In re Heath*, 115 F.3d 521, 524 (7th Cir. 1997)). In reaching its conclusion that a section 105 injunction was appropriate, *Fisher* found, "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 the possession of the same defendants, as a result of the same acts,

performed by the same individuals, as part of the same conspiracy." *Id.*

In *TekNek*, the Court addressed the question of whether third party claims against a non-debtor based upon independent facts and actions were sufficiently "related to" the bankruptcy such that they could be temporarily enjoined under section 105. The analysis in *TekNek* also focused on whether the claims in the third party action were sufficiently "related to" the bankruptcy estate, not whether the injunction is likely to "enhance the prospects for a successful resolution of disputes attending its bankruptcy" as the panel found here.

In assessing the facts surrounding the claims sought to be enjoined in *TekNek*, the Court analogized to the facts of *In the Matter of Johns-Manville Corp.*, 26 B.R. 405 (Bankr. S.D.N.Y. 1983), where independent companies were jointly liable with the debtor for various asbestos injuries. The Court determined that, as in *Johns-Manville*, the claims in *Tek-Nek* were not sufficiently "related to" the bankruptcy such that the bankruptcy court was empowered to enjoin them under section 105. *TekNek*, 563 F.3d at 649. Here, the panel did not analyze whether the claims brought to enforce guarantees against a third party are closely "related to" the CEOC bankruptcy proceeding or otherwise threaten the bankruptcy court's jurisdiction over the reorganization. Critically, the panel did not consider or explain how claims to enforce guarantees against a third party could threaten the bankruptcy court's

jurisdiction in this case, particularly in light of the evidence below.[2]

The panel simply ignored the Court's prior declarations that the enforcement of such guarantees is a "common case" that does *not* warrant an injunction. *TekNek*, 563 F.3d at 649 (citing *Fisher*, 155 F.3d at 882-83, quoting *In re Hendrix*, 986 F.2d 195, 197 (7th Cir. 1993)). Because the panel's decision contradicts both *Fisher* and *TekNek*, *en banc* rehearing is appropriate.

II. THE PANEL'S OPINION IS INCONSISTENT WITH THE PRECEDENT OF OTHER CIRCUITS

The panel's new standard is also inconsistent with the law of other circuits. *See W.R. Grace & Co.*, 591 F.3d at 173 ("[I]n order for a bankruptcy court to have related-to jurisdiction to enjoin a lawsuit, that lawsuit must 'affect the bankruptcy [ ] without the intervention of yet another lawsuit.'"); *In re Quigley Co., Inc.*, 676 F.3d 45, 54 n. 8 (2d. Cir. 2012) (citing *W.R. Grace*, 591 F.3d at 173); *In re DeLorean Motor Co.*, 991 F.2d 1236, 1242 (6th Cir. 1993) (third party can be enjoined under section 105 to aid a bankruptcy court in its jurisdiction); *In re Davis*, 730 F.2d 176, 184 (5th Cir. 1984) (bankruptcy court had the authority to enjoin litigants from pursing actions in other courts to protect property of the bankruptcy estate); *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1096-99 (9th Cir. 2007) (rejecting the notion that a bankruptcy court must only consider whether "an action in another forum 'could conceivably have any effect on the administration of the bankruptcy estate'" on

[2] At trial, CEC conceded that it could in fact pay both the amount sought by the Senior Unsecured Plaintiffs and the contribution it was proposing to make to the CEOC bankruptcy under the restructuring support agreement. *See Caesars Entertainment Operating Co., Inc. v. BOKF, N.A.*, Adversary Case No. 15-00149 (Bankr. N.D. Ill.), June 4, 2015 Hr'g Tr. at 284:22-286:9.

the grounds that "a bankruptcy court would be required to grant every preliminary injunction motion over which it had jurisdiction") (citations omitted); *In re W. Real Estate Fund, Inc.*, 922 F.2d 592, 599 (10th Cir. 1990) (applying a balancing of harms analysis in denying a motion for a section 105 injunction on grounds that "whatever minor involvement, if any, [the debtor] might have in such an isolated, limited context is not the kind of substantial burden sufficient to justify a stay against [a third party's] enforcement of his statutory rights against a [non-debtor]"), *modified sub nom.*, 932 F.2d 898 (10th Cir. 1991).

Indeed, contrary to the law of every other circuit, the broad language in the panel's opinion might be interpreted as authorizing an injunction in virtually every case. *Cf. Excel Innovations*, 502 F.3d at 1095 (noting that section 105 injunction should "not be granted lightly"); *In re Combustion Eng'g*, 391 F.3d at 236 ("the equitable powers authorized by § 105(a) are not without limitation, and courts have cautioned that this section does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity") (internal quotes and citations omitted); *In the Matter of Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995) (noting that a temporary injunction under section 105 "may be proper under unusual circumstances"); *In re Third Eighty-Ninth Assocs.*, 138 B.R. 144, 146 (S.D.N.Y. 1992) (section 105 injunctions are considered an "extraordinary and drastic remedy").

CEOC has already argued that the panel's opinion effectively jettisoned

traditional standards for injunctive relief in federal courts and created a brand-new, bankruptcy-specific rule that, it claims, dispenses with any balancing of harms, any consideration of prejudice to the potentially-enjoined defendant, and any assessment of prospects for success on the merits of the underlying action. See *CEOC Motion for Expedited Issuance of the Mandate*, ¶¶ 4-5 [Dkt. No. 48]; Debtor's Notice of Opinion from the U.S. Court of Appeals for the Seventh Circuit and Motion for Emergency Request for Ruling, ¶¶ 2-3, *CEOC v. BOKF, N.A.*, Bankr. Adv. Pro. 15-00149 [Dkt. No. 189]. While the Senior Unsecured Plaintiffs disagree that the panel opinion can or should be read so broadly, rehearing is necessary to clarify this important issue and (re)align the Court with the precedent in other circuits.

III. THE PANEL'S OPINION VIOLATES THE PRINCIPLE OF SEPARATION OF POWERS

The panel misapprehended both the law and the facts when it determined that the bankruptcy court had jurisdiction to enjoin the Senior Unsecured Plaintiffs' action that is pending in the SDNY and involves questions of federal statutory interpretation (the "Guarantee litigation"). By contrast, the panel relied on *In re Quigley Co., Inc.*, 676 F.3d 45 (2d Cir. 2012)) for the proposition that the bankruptcy court could enjoin the Guarantee litigation. *Quigley*, and all cases cited and discussed by *Quigley,* involve a bankruptcy court enjoining a state court deciding issues of state law. *Quigley* did not address the separation of powers issue of whether a bankruptcy court may enjoin litigation proceeding in federal district court.

The panel's opinion is inconsistent with the principle of separation of

powers because it provides that the Chicago bankruptcy court—an inferior legislative court under Article I of the United States Constitution—may unilaterally enjoin a United States District Court from performing its core judicial function under Article III of the Constitution of adjudicating pending disputes between non-debtors under a non-bankruptcy federal statute. Any such injunction, however, would be a gross violation of separation of powers between the co-equal branches of government because the legislative branch would effectively be asserting a veto over the right and obligation of the Judiciary to exercise its powers. As James Madison said on the floor of the First Congress: "if there is a principle in our Constitution, indeed in any free constitution, more sacred than another, it is that which separates the legislative, executive and judicial powers." 1 Annals of Cong. 581 (1789).

The SDNY is presiding over lawsuits brought by the Senior Unsecured Plaintiffs and certain other parties against CEC, the non-debtor parent company of the primary debtor in the bankruptcy below. The SDNY is exercising federal question jurisdiction over claims under the Trust Indenture Act of 1939 (the "TIA") as well as resolving other non-bankruptcy disputes between the Senior Unsecured Plaintiffs and CEC.

Unless the parties voluntarily reach a settlement, the SDNY is duty-bound to interpret the TIA and resolve the issues between the parties in the proper exercise of its powers under Article III of the Constitution. That, of course, is the role of the Judiciary. As Chief Justice Marshall held in *Marbury v. Madison*: "It is emphatically the province and duty of the Judicial

Department to say what the law is." 1 Cranch 137, 177 (1803).

The panel, however, evidently overlooked the infringement upon the Judiciary's powers if a bankruptcy court were permitted to enjoin the Southern District's proceedings. The panel concluded (without any analysis) that "[t]he bankruptcy judge's exercise of jurisdiction over [the Southern District action, among others] would have been constitutional . . . ." *Caesars*, 2015 WL 9311432, at *1 (citing *In re Quigley*, 676 F.3d at 52–53). The jurisdictional underpinnings and constitutionality of any such injunction were not presented to the panel—only the standard to be applied under section 105 of the Bankruptcy Code.[3] In reaching and deciding the constitutional issue, the panel sanctioned a meaningful intrusion into the powers of the Judiciary.

Article III, § 1, of the Constitution commands that "[t]he judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The Supreme Court's 2011 decision in *Stern v. Marshall* thoroughly unpacked separation of powers in the bankruptcy context and concluded that Article I bankruptcy courts may not enter final orders unless the proceedings concern a "public right" in bankruptcy—which is narrowly limited to issues within the bankruptcy case itself as well as the claims allowance process against the debtor. *See Stern v. Marshall*, 131 S.Ct. 2594 (2011). Bankruptcy courts may

[3] A litigant may raise a court's lack of subject-matter jurisdiction at any time. *Mansfield, C. & L.M.Ry. Co. v. Swan*, 111 U.S. 379, 382, 4 S.Ct. 510 (1884); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006) ("The objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a party, or by a court on its own initiative, at any [time].")

not adjudicate matters reserved for the Judiciary, as to do so would violate separation of powers. *Id.*[4]

Here, permitting a bankruptcy court to enjoin an Article III Court would be even farther outside the boundaries as compared with the infringement recognized in *Stern*. The bankruptcy court would be enjoining a proceeding between two non-debtors that not only theoretically belongs to the Judiciary, but also in fact is presently being litigated in an Article III Court that otherwise intends to move forward with the action. If separation of powers means that a bankruptcy court cannot perform the function of the Judiciary, it also must mean that a bankruptcy court cannot prevent the Judiciary from performing the Judiciary's function. Otherwise, the system of checks and balances as well as the integrity of judicial decision-making would be illusory.

The bankruptcy court's decision here is no different than Judge Easterbrook's condemnation of the "rogue TRO" in *In Matter of Mahurkar Double Lumen Hemodialysis Catheter Patent Litig.*, 140 B.R. 969 (N.D. Ill. 1992). "For one federal court to issue an injunction forbidding litigation in another is extraordinary, given principles of comity among coordinate

[4] Article III is "an inseparable element of the constitutional system of checks and balances" that "both defines the power and protects the independence of the Judicial Branch." *Stern v. Marshall*, 131 S.Ct. 2594, 2608 (2011) (quoting *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 58, 102 S.Ct. 2858 (1982) (plurality opinion)). Under "the basic concept of separation of powers . . . that flow[s] from the scheme of a tripartite government" adopted in the Constitution, "the 'judicial Power of the United States' . . . can no more be shared" with another branch than "the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto." *Id.* (quoting *United States v. Nixon,* 418 U.S. 683, 704, 94 S.Ct. 3090 (1974) (quoting U.S. Const., Art. III, § 1)).

tribunals. For a bankruptcy judge to issue an injunction with the effect of preempting resolution of a pending motion in a district court is unheard of." *Id* at 974.

CONCLUSION

For the foregoing reasons, the panel's opinion in the captioned case should be vacated and the Court should grant rehearing *en banc*, or, in the alternative, rehearing before the panel.

Respectfully submitted,

January 11, 2016

DRINKER BIDDLE & REATH LLP

By: /s/ James H. Millar
James H. Millar
Kristin K. Going
Frank F. Velocci
1177 Avenue of the Americas, 41st Fl.
New York, NY 10036-2714
(212) 248-3140

Timothy R. Casey
191 North Wacker Drive, Suite 3700
Chicago, IL 60606
(312) 569-1000

Counsel for Appellees Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, and Trilogy Portfolio Company, LLC

☑

CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on January 11, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ James H. Millar

☐

CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:	address:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

s/_____