UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	Case No. 15-01145 (ABG)
Debtors.	(Jointly Administered)
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	Chapter 11
Plaintiffs	Adversary Case. No. 15-00149
vs.	
BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, MEEHANCOMBS GLOBAL CREDIT OPPORTUNITIES MASTER FUND, LP, RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA MASTER FUND, LTD., TRILOGY PORTFOLIO COMPANY, LLC, and FREDERICK BARTON DANNER,	**Hearing Date: February 17, 2016 9:30 a.m. (prevailing Central Time)**
Defendants.	

PLAINTIFF DEBTORS' PARTIAL OBJECTION TO UNSECURED NOTES DEFENDANTS' MOTION TO TAKE JUDICIAL NOTICE

Plaintiffs Caesars Entertainment Operating Company, Inc. and its debtor affiliates (collectively, the "Debtors") hereby object in part to the Motion to Take Judicial Notice [Dkt. 199] (the "Motion") filed by Relative Value-Long/Short Debt Portfolio, a series of Underlying

[1] A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at https://cases.primeclerk.com/CEOC.

Funds Trust, and Trilogy Portfolio Company, LLC (collectively, the "Unsecured Notes Defendants"). In support thereof, the Debtors state as follows:

1. The Debtors object to the purported facts set forth in the second paragraph of the Motion because they are neither relevant nor the proper subject of judicial notice.

2. The Unsecured Notes Defendants ask the Court to take judicial notice of the following purported facts:

> On November 10, 2015, Judge Shira Scheindlin of the U.S. District Court for the Southern District of New York held a status conference, during which she determined that she must hold two separate trials – one for the related actions captioned *UMB Bank, N.A. v. Caesars Entertainment Corporation*, Case No. 15-cv-4634 (S.D.N.Y.) and *BOKF, N.A. v. Caesars Entertainment Corporation*, Case No. 15-cv-01561 (S.D.N.Y.) (collectively, the "BOKF Actions") and one for the related actions captioned *MeehanCombs Global Credit Opportunities Master Fund, LP v. Caesars Entertainment Corporation*, Case No. 14-cv-7091 (S.D.N.Y.) (the "Meehancombs Action") and *Danner v. Caesars Entertainment Corporation*, Case No. 14-cv-7973 (S.D.N.Y.) (the "Danner Action" and collectively with the Meehancombs Action, the "Unsecured Notes Action") – because the BOKF Actions and the Unsecured Notes Actions involve different transactions, different indentures, different indenture release provisions and entirely different arguments. (MeehanCombs Action, Dkt. No. 81 at 26, 2–7).

(Mot. ¶ 2.) The Court should decline to do so.

3. *First*, the Unsecured Notes Defendants' characterization of a portion of the November 10 status conference is not relevant to whether this Court should temporarily enjoin the guaranty plaintiffs from continuing to prosecute their claims before Judge Scheindlin pursuant to section 105 of the Bankruptcy Code. These "facts" are apparently being offered in support of the Unsecured Notes Defendants' argument at trial that a $159 million judgment in favor of the unsecured notes would not cause CEC to file for bankruptcy or render it unable to contribute to the Debtors' plan of reorganization. (Unsecured Notes Defendants' Post-Trial Br. [Dkt. 153] at 7.) But UMB's and BOKF's guaranty claims seek more than $7 billion, and those

claims will be tried to a jury beginning on March 14.[2] (*See* Debtors' Post-Trial Br. [Dkt. 151] ¶ 32*; see also* DX 4; Dkt. 150, Ex. 1.) WSFS likewise seeks another $3.7 billion on its claims, which are based on an indenture that contains identical relevant language as the indentures at issue in the UMB and BOKF actions. (*Compare* Indenture dated April 15, 2009, DX 45 at 117 *with* Indenture Dated February 15, 2013, DX 61 at 107.) Accordingly, a $7 billion judgment on the UMB and BOKF guaranty claims will likely trigger liability under the substantively identical $3.7 billion WSFS indenture. (June 3 Tr. at 54:7–55:2, 204:17–205:13.) Based on undisputed evidence at trial and the Court's own findings, CEC has a total enterprise value of only approximately $3 billion as of January 2015. (Mem. Op. [Dkt. 158] at 9.) CEC simply cannot satisfy the guaranties—whether $7 billion or $10.7 billion—and make any meaningful contribution to the Debtors' plan of reorganization. A judgment for plaintiffs in the UMB and BOKF actions necessarily would precipitate a CEC bankruptcy before any of the Unsecured Notes Defendants' claims went to trial in May 2016. For this reason, the fact that the UMB and BOKF trial may be held separately from the Unsecured Notes Trial is not relevant to whether this Court should temporarily enjoin the guaranty litigation for 60 days following the issuance of the Examiner report to afford the parties a critical window of opportunity to reach a global resolution of all their claims in these chapter 11 cases and the guaranty cases.

4. *Second*, the Unsecured Notes Defendants' characterization of the November 10 proceeding is not the proper subject of judicial notice. The parties in this case had a full and fair opportunity to litigate the legal and practical effect that a judgment for the guaranty litigants in

[2] UMB filed its guaranty complaint after trial in the adversary proceeding concluded. UMB has agreed that it will be bound by this Court's decision to the same extent as if the Debtors had requested injunctive relief with respect to the UMB lawsuit. Defendants BOKF and WSFS previously asked the Court to take judicial notice of this fact. (Joint Post-Trial Br. of BOKF and WSFS [Dkt. 152] at 13, n.3 and Ex. D.)

one case would have in other cases. Parties provided evidence through testimony and exhibits, and argument through pre-trial and post-trial briefing. The Debtors offered substantial evidence that a judgment for guaranty plaintiffs on any of the indentures would, as a practical matter, cascade liability across all indentures because of the similarity of the issues and language in the indentures. (*See* June 3 Tr. at 46:15–23; 54:7–55:2.) Indeed, CEC has stated as much in its public filings. (DX 34 at 7.) This is a static issue that turns largely on undisputed facts—the contents of the complaints and indentures, the practical consequences of a judgment in any of the cases, and the law. No new fact has occurred since trial that bears on the resolution of these issues before this Court.

5. In making the statements set forth in the second paragraph of the Motion, Judge Scheindlin was considering an entirely different issue from the question presented to this Court. She was deciding whether a jury might be confused if the actions were tried together. Judge Scheindlin was never presented with, and never considered, whether a judgment for any guaranty plaintiff on any one of the indentures would, as a legal or practical matter, result in liability against CEC on all of the other indentures. Moreover, even on the separate question of jury confusion, Judge Scheindlin left open the possibility of accelerating the Unsecured Notes Defendants' cases and trying them together in March with the UMB and BOKF cases. Though the Unsecured Notes Defendants attach only excerpts of the relevant transcript to their Motion, the complete transcript makes clear that Judge Scheindlin did not rule conclusively on whether the trials would proceed separately. In fact, she told counsel for the Unsecured Notes that "if after [this conference] you think about all of this you say rather than waiting until May 9 maybe we can do it all together, I'll be interested in listening…." (MeehanCombs Action [Dkt. 81] Nov. 10 Tr. at 34:20–22, attached hereto in its entirety as **Exhibit 1**.) At the conclusion of the

hearing, Judge Scheindlin likewise noted that the issue of whether the trials could be combined was one of two remaining "open" issues. (*Id.* at 36:5–6.) Following Judge Scheindlin's invitation to reconsider whether a single trial was more appropriate, the Unsecured Notes Defendants did just that and subsequently informed the Court via letter that they preferred that all four guaranty actions be tried together. The Unsecured Notes Defendants represented to Judge Scheindlin that "[their] decision [was] driven by the fact that the factual issues to be tried as part of the BOKF and UMB cases may encompass most if not all of the issues material to the MeehanCombs and Danner Plaintiffs." (MeehanCombs Action Jan. 13, 2016 Pierce Ltr. to Judge Scheindlin [Dkt. 90], attached hereto as **Exhibit 2**.) Judge Scheindlin, in her discretion, has continued to set the matters for separate trials. This Court should not now take notice of "facts" regarding the guaranty litigation before Judge Scheindlin that are, at best, an argumentative and incomplete characterization of the actual record from those actions.

6. For the foregoing reasons, the Debtors respectfully request that the Court decline to take judicial notice of the purported facts set forth in the second paragraph of the Motion.

Dated: February 15, 2016
Chicago, Illinois

/s/ Jeffrey J. Zeiger, P.C.

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Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MEEHANCOMBS GLOBAL CREDIT OPPORTUNITIES MASTER FUND, LP, et al.,

Plaintiffs,

v.

CAESARS ENTERTAINMENT CORPORATION, et al.,

Defendants.

----------x

14 Civ. 7091 (SAS)
14 Civ. 7973 (SAS)
15 Civ. 1561 (SAS)
15 Civ. 4634 (SAS)

Conference

New York, N.Y.
November 10, 2015
11:02 a.m.

Before:

HON. SHIRA A. SCHEINDLIN

District Judge

APPEARANCES

DRINKER BIDDLE & REATH LLP
Attorneys for MeehanCombs Plaintiffs
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JAMES MILLAR

GRANT & EISENHOFER LLP
Attorneys for Danner Plaintiffs
BY: GORDON Z. NOVOD
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Attorneys for Danner Plaintiffs
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JASON C. RUBINSTEIN

(In open court)

THE COURT: Mr. Cryan.

MR. CRYAN: Good morning.

THE COURT: Mr. Toof.

MR. TOOF: Good morning, your Honor.

THE COURT: Who do you two represent?

MR. TOOF: BOKF.

THE COURT: Same?

MR. CRYAN: Yes, your Honor.

THE COURT: Mr. Chrichlow.

MR. CHRICHLOW: Good morning, your Honor. And I represent UMB.

THE COURT: Is it Dine?

MS. DINE: Dine, your Honor. Good morning.

THE COURT: You represent?

MS. DINE: UMB.

THE COURT: Ms. Kinburn.

MS. KINBURN: Good morning, your Honor. I also represent UMB.

THE COURT: Mr. Pierce.

MR. PIERCE: Good morning, your Honor. I'm here on behalf of MeehanCombs.

THE COURT: Mr. Millar.

MR. MILLAR: Good morning, your Honor. On behalf of MeehanCombs as well.

THE COURT: Mr. Novod.

MR. NOVOD: Good morning, your Honor. I'm here on behalf of Mr. Danner.

THE COURT: Mr. Berger.

MR. BERGER: Good morning, your Honor. On behalf of Mr. Danner.

THE COURT: Ms. Farmer.

MS. FARMER: Yes. I'm here on behalf of Mr. Danner as well, your Honor.

THE COURT: Mr. Shore.

MR. SHORE: Good morning, your Honor. Here on behalf of Wilmington Trust.

THE COURT: Plaintiff, right?

MR. SHORE: Yes.

THE COURT: New plaintiff?

Mr.

MR. ZAKIE: Zakie.

THE COURT: How do you say it?

MR. ZAKIE: Zakie, but I'll answer to anything.

THE COURT: Zakie.

MR. ZAKIE: Also here on behalf of Wilmington Trust.

THE COURT: Mr. Sibley.

MR. SIBLEY: Good morning, your Honor. On behalf of Wilmington Trust.

THE COURT: Mr. Clayton.

MR. CLAYTON: Good morning, your Honor. CEC.

THE COURT: Sorry?

MR. CLAYTON: The defendant CEC.

THE COURT: Mr. Khardori.

MR. KHARDORI: Good morning, your Honor.

THE COURT: Also CEC?

MR. KHARDORI: Yes, also CEC.

THE COURT: Mr. Seiler.

MR. SEILER: Good morning, your Honor. CEC.

THE COURT: Mr. Rubinstein.

MR. RUBINSTEIN: Good morning, your Honor. Also CEC.

THE COURT: Got through the hard part. There's somebody on the phone just listening. Good morning who is on the phone. Is it Mr. Goldstein?

MR. GOLDSTEIN: Yes. On the phone.

THE COURT: And you're listening on behalf of Wilmington Trust?

MR. GOLDSTEIN: That's correct.

THE COURT: There's three attorneys present also for Wilmington Trust but you're welcome to listen in.

So there's a lot of lawyer power here and there's very little substance on my agenda. There are items I want to discuss but this is not a day of arguing of substance as we did the last time.

The issue today, the big issue for me, and I tried to

do this once already and I did not succeed in getting a commitment, but I'm going to succeed today, and that's trial dates. I said it the last time. I didn't get it the last time. I don't know how you got away from me but you did. Particularly UMB and BOKF where the motion practice is done. Motion practice is complete. There's nothing left to do but have a trial date.

It's possible, and I'd have to begin to find out what Wilmington Trust wants to do about discovery, or can they fold into one group or the other. In other words, are they more like BOKF and UMB, or do they think they are more like MeehanCombs and Danner. I don't know where they are. I don't know whether they have to do independent discovery. And then MeehanCombs and Danner, the only thing to take care of there is the reply brief where CEC has asked to file a single 35-page -- not a reply, I take it back, that's a response, right. Response to the pending motion.

MR. CLAYTON: Yes, your Honor.

THE COURT: You've asked for 35 pages to respond to both. And I think, in reviewing the transcript a moment ago, you had traded pages for the reply anyway. So you would have 20 pages for the reply, right?

MR. PIERCE: That's exactly right.

THE COURT: So you do not oppose --

MR. PIERCE: We do not oppose.

THE COURT: -- their request for a single 35-page response.

And then when is that due, Mr. Clayton?

MR. CLAYTON: Friday. This Friday, your Honor.

THE COURT: When is the reply due?

MR. PIERCE: I must apologize to your Honor.

MR. MILLAR: December 2.

MR. PIERCE: December 2.

THE COURT: All right. So that request is granted. You can do the 35-page joint response and the reply brief comes in December 2, 20 pages. So that's off the agenda.

Let me spend a minute with -- well a couple minutes with Wilmington Trust. Who wants to speak for that case?

MR. SHORE: I will, your Honor.

THE COURT: Your name again?

MR. SHORE: Chris Shore.

THE COURT: What's your desire in terms of discovery or trying to fold in with the existing cases. I have four others.

MR. SHORE: The answer is due Thursday. We don't anticipate motion practice. We'll hear, I assume, from CEC on that.

THE COURT: Is that right?

MR. CLAYTON: At the moment we intend to answer, your Honor.

THE COURT: Okay.

MR. SHORE: We would intend to just fold into existing discovery with discovery requests that request the information that was provided to the various plaintiffs in the other lawsuits. Wilmington Trust is a new trustee appointed just this past January. So they're not going to have any material discovery to provide except through the old trustee. So there might be an issue with that. We would anticipate that we could move through discovery then very quickly and tee up the issues for summary judgment. We are similarly situated to everybody in respect of the guarantee STRIPS in the May and June 2014 transactions. We have --

THE COURT: Well by then I will have ruled on a lot of those issues.

MR. SHORE: I understand. And then we would just fold in to those rulings. I don't anticipate that we would participate in the proceedings themselves other than monitoring as we have been. And then, depending upon your Honor's ruling in the various iterations of the presentation, we would then fold into the resolution of the facts as well. We have just now teed up the possibility of having your Honor rule for us consistent with how you're going to rule on the other plaintiff actions.

THE COURT: Well, with respect to UMB and BOKF the summary judgment motion has been decided. As to any issues

that are identical, that's going to be the same ruling if it's identical facts. The pending motion is a different issue and I don't know whether you overlap with the pending motion also in Danner and MeehanCombs.

MR. SHORE: We don't overlap with that. The one issue on the TIA, with respect to the takeout of the notes, we are more similarly situated to UMB. Our complaint is predicated upon your Honor's rulings in those various actions. We would just then need a subsequent ruling that would bring that up and allow the plaintiff, Wilmington Trust, to assert a judgment against CEC. Otherwise the resolution of the UMB action or the Danner and MeehanCombs actions won't result in a judgment for Wilmington in the absence of an action.

THE COURT: But UMB and BOKF have to have a trial to get a ruling.

MR. SHORE: I understand. As I said, we would be monitoring that.

THE COURT: You don't think you'd be trying to participate in it?

MR. SHORE: Particularly speaking, except to the extent your Honor would set a trial out in the second quarter, I think we're probably going to have some lag in the discovery and the summary judgment that wouldn't necessarily catch us up to that.

MR. CLAYTON: Your Honor, if I may. Our interest here

is we don't want to have multiple trials. So as long as -- we will have some limited discovery of them. I don't think that's going -- it's not going to be significant. It's not going to change the deadline. If I'm understanding that they will be bound by the result of the trial, then that takes care of our problem. We don't want to have a situation where they now request an additional trial.

THE COURT: I don't know whether they have any unique issues. I can't bind them if they have a different issue. But if the issues that they spot are in the end identical, I think that's probably right. I'm not inclined to do things twice either, which I have already warned in terms of the motion practice. If the motion practice raises the same issue that's been briefed and decided, I mean it is decided as to BOKF and UMB and will be decided as to Danner and MeehanCombs. There really is no additional motion other than for the record to say I move on the same grounds. And then I say and I make the same rulings. And then they have the rulings. The same will work out for the trial.

MR. CLAYTON: Our concern, and I think I'm hearing that their intent is they will be bound by the result of the trial on common issues. And that takes care of our concern. We don't want them coming back and saying we now want our own trial on an issue that has been decided in a previous trial. That's all.

And I think I'm hearing that they're agreeing to be bound by results in motion practice and results at any trial.

MR. SHORE: That's correct. But it would be bilateral. CEC would also be bound and wouldn't be saying they want a separate trial with us to retry issues that have already been decided.

MR. CLAYTON: We're going to live with the rules -- we have lived with the rules of collateral estoppel, and those are the rules that are going to apply to us. That puts us at a disadvantage, but that's the way the law works and we have to accept that.

THE COURT: I guess you've both gotten your statements for the record that you need so we can move on.

And moving on means looking for a trial date which is why I did not grant the joint request to extend expert discovery by three weeks because first we're going to get a trial date then we'll figure out what it takes to get to that trial date.

When is expert discovery supposed to close now without any extension?

MR. CRYAN: January 27, 2016.

THE COURT: If that were not to move, and I'm sure it will since everybody agrees, but let's assume for the moment that it doesn't move, what's left to do after January 27?

MR. CRYAN: Just the pretrial filings, your Honor.

MR. CHRICHLOW: Your Honor, David Chrichlow on behalf of UMB. I just want to make sure. We want clarity. We're happy to go to trial. But your Honor keeps saying that the dispositive motion practice for UMB and BOKF is over. We agree with you with respect to the TIA issue.

But I think your Honor, and I'd just like to remind you what the opinion says, there is another legal issue about the interpretation of the guarantee release provision and whether the plain language of the contract has been satisfied. And your Honor said that after the end of fact discovery, your opinion said, with full summary judgment or bench trial coming subsequently, it may be that the contract interpretation issue related to the release provision, which the parties have not briefed for this motion, will be dispositive.

So there is one other legal issue. I don't know whether the way the current schedule works you anticipate the opportunity to file summary judgment before trial. If you're saying that you don't want to see that, we're prepared to go forward for trial but --

THE COURT: I don't want to see that but -- but, let me finish, but the Second Circuit doesn't allow me to say that. If there is a summary judgment motion that was intentionally split off, in other words, I knew it, I allowed it, and you wish to move, I don't have the power to say you can't move. I can try to dissuade you. But I can't forbid it.

On the other hand, I remember analyzing that question, even though it wasn't briefed, because of letters or because it was tangential to the issues I was deciding last time around, and I'm pretty sure of what the ruling is or, in my own mind, the analysis. And so if you're going to do that, it's going to be the world's fastest briefing schedule. Literally. It's going to be ten days, ten days, and ten days. I'm not going to have one of these three-month schedules on that single issue. I know the issue already. I think we've already talked about it in letters. And if you insist on making the motion you have the right to it. It's not going to delay this trial.

MR. CHRICHLOW: I'm not suggesting it should, your Honor.

THE COURT: Good. Then if you want to make that motion we'll set the schedule right now.

Or are we not at the close of fact discovery?

MR. CHRICHLOW: We are at the close of fact discovery and the question was whether we wanted to do that now, whether we wanted to do it --

THE COURT: Now this is ringing a bell. You were going to get back to me. I think I said at the last conference too. I can't forbid you that right because it's not a repetitive motion. It was carved out intentionally.

If you want to do it. I don't think I'm going to dissuade you if you want to do it. And I don't have the power

to say no. I could try to be persuasive. I think I tried it already and may have failed. So do you want to do it or not?

MR. CHRICHLOW: I'm going to consult with my cocounsel. We'll make a determination.

THE COURT: Well you said that at the last conference.

MR. CHRICHLOW: No, your Honor. I'm sorry.

THE COURT: You did. You said at the last conference, I recall, you said I need to consult, I need to talk to my client. I need to talk to the other counsel and I'll let the court know. I think you'll see that in the transcript.

MR. CHRICHLOW: Your Honor, I would respectfully disagree. That was about a jury trial issue. We never got this far. I was never able to talk to you about the difference in the and/or issue. Mr. Silfen got up and said he thought you left an issue open on the TIA. And you were very clear. TIA briefing is over. We didn't get this far last time.

We did consult about a jury trial issue. I think that may be the cause of confusion. I never -- because I didn't have --

THE COURT: Okay. How long do you want to consult? You know what, I could just set the schedule now.

MR. CHRICHLOW: That's fine.

THE COURT: If you don't want to make the motion that will be nice and if you do want to make a motion that's fine.

MR. CHRICHLOW: That would be helpful.

THE COURT: Because it's a simple motion. I remember the and/or issue. In fact, I remember sitting in chambers going over it and I knew the answer then.

MR. CHRICHLOW: Thank you, your Honor.

THE COURT: No. No. So let's talk about the motion. Who wants to make -- your represent who?

MR. CHRICHLOW: I represent UMB.

THE COURT: Who represents BOKF? You want to make this motion too?

MR. CRYAN: Your Honor, I think that the motion would benefit from a ruling that your Honor is about to issue in the other -- the MeehanCombs and Danner action. So I'm surprised at setting the date right now in the absence of that ruling.

THE COURT: Is that what raised the and/or issue?

MR. CRYAN: It doesn't -- it intersects with it in a way that I think would be --

THE COURT: I don't think it raises the straight sort of contract interpretation ruling.

MR. CRYAN: I think that's fair.

THE COURT: So do this thing. You want to do it. Let's do it awfully fast. It's really straightforward. I remember so clearly going over that in my mind, writing the previous decision.

Today is the 10th of November. Right. So the moving brief should be in on the 20th of November. Ten days.

I said I would do it, and I'm going to do it.

The next one goes across Thanksgiving so it has to be two weeks, December 4.

And reply December 11.

That's it. That's it.

And it's just on that issue. Is that right, Mr. Chrichlow?

MR. CHRICHLOW: That's all I'm talking about. A straight legal issue on contract interpretation.

THE COURT: Yes. I remember it. And/or. November 20, December 4, December 11. That's the schedule.

Yes, Mr. Clayton.

MR. CLAYTON: Your Honor, if I may. Our understanding had been that we would not face these repeated summary judgment --

THE COURT: No. I definitely carved this out. I let them move just on the TIA. I remember that.

I don't want multiple. I usually say you have one shot at summary judgment. You win, that's great. You lose, you go to trial. I usually say that. But I remember explicitly carving this out because there was the thought that the TIA issue would be dispositive. So this never got briefed. I don't even know that it needs to. Frankly, I would have thought -- if you want to confer, could you ask? Could you say could I have a moment. Do you want to have a moment?

MR. TOOF: We're all set, your Honor. Sorry about that.

THE COURT: If you need to do that please just raise your hand.

MR. CHRICHLOW: I'm sorry, your Honor.

THE COURT: That's all right.

I think this could be done on letters, it was so straightforward. Hopefully you're not going to be using the limits on the pages. This should really be ten, ten, and five. This is a straightforward motion.

MR. CLAYTON: We think it's a little more complicated.

THE COURT: Fifteen, fifteen, and five. Let's not overdo it. Because there are two words at stake here, and/or. Pretty straightforward. And it's summary judgment.

MR. SEILER: Can I consult with Mr. Clayton for a moment.

THE COURT: Yes. That's a good idea.

(Pause)

MR. CLAYTON: Your Honor, if I may, this issue deals with several different indentures. And I think we would like, because there are -- it impacts in the bankruptcy as well. We plan to present some affidavits on this motion, and I think we need a little more time, if we may, than what your Honor is --

THE COURT: You may not. The time is set. Do you want more pages, which I think is wasteful, I have to listen to

you on that. But I think the schedule is just fine. You have two weeks to figure it out. You know the case inside out. This is not tricky.

MR. CLAYTON: Your Honor, there's factual --

THE COURT: Well, Mr. Clayton, this is the schedule. There's really not much you can do. You can say the judge is miserable so and so, we don't like her.

MR. CLAYTON: I will not say that.

THE COURT: Well, good.

MR. CLAYTON: I will not say that.

THE COURT: Except back in the office but it's okay.

MR. CLAYTON: Your Honor, I'm not saying that back in the office. But on this situation there has been testimony. There's been deposition testimony on this issue.

THE COURT: I'm sure there has but I may never get there. I may never turn to extrinsic evidence if I don't find an ambiguity. So I'm going to keep this as lean and clean and straightforward as I can.

The dates have been set, November 20, December 4, December 1. If you think my page limits are off, I started with 10 and went to 15, you think it has to grow to 20, all right.

MR. CLAYTON: Actually, your Honor, if I may, I would ask for 25 or 30.

THE COURT: No. No.

MR. CLAYTON: If I can explain why.

THE COURT: You certainly can but the answer is going to be 20. That's it. I'm maxed out; 20, 20, and 10. That's it.

MR. CLAYTON: We believe, obviously, that we're right on the construction of the language, but we also believe that if we're not -- if your Honor does not find for us on that basis there's factual material and background material that has to come in. And my concern is that the time limit that's been set here, because we've not heard about this motion previously --

THE COURT: Yes, you did. We all heard about it. I have seen letters on that and/or issue going way back.

MR. CLAYTON: Yes. But it was not on the agenda for coming down here today.

THE COURT: No.

MR. CLAYTON: And if we're going to put in material on that we need to put in some factual material and declarations. It's a multibillion dollar issue.

THE COURT: Yes. The dates have been set. The page limits have been set. November 20, December 4, December 11; 20, 20, and 10. Maybe they'll surprise you and not even make the motion. I have no idea. But that's the schedule.

Now we need to talk about a trial date, and then I'm going to turn to expert discovery.

So right now the expert discovery closes January 27. And the parties have agreed among themselves on a three-week extension. I don't know that I'm granting that. But that would take us to February 17. And then we would have to get pretrial submissions in. So that would clearly lead to a March trial. I'm sure you've all looked at your calendars for March knowing that the hope was to set a trial date today. So who is going to startling me why they absolutely are not able to be here any time in March. Is anybody going to have the nerve, is the polite word, to say that?

Going once. Twice. All right. I'm looking at my March calendar.

We've all agreed this is a jury, right? This is a jury case?

How long a trial do we expect? I understand it's very difficult to predict but if we're talking UMB and BOKF together, can somebody make even the wildest of a prediction? One week? Two weeks? Somewhere between one and two weeks?

MR. CHRICHLOW: Your Honor, two weeks, I would think, we ought to be able to get it. I think the plaintiffs' case is going to be introduced through just a couple of witnesses, maybe missing one or two. But that would be short. I imagine most of the time will be taken up with the defense.

THE COURT: Okay. March 14 for trial.

Do you still have an appeal in the Seventh Circuit on

the stay of all this?

MR. CLAYTON: We made our 1292(b) after your Honor certified the --

THE COURT: I didn't mean that. I said in the Seventh Circuit.

MR. CLAYTON: Oh, in the Seventh Circuit.

THE COURT: Is it still pending there? It is still pending there?

MR. CLAYTON: Yes.

THE COURT: And it was argued?

MR. CLAYTON: I don't believe it's been argued.

THE COURT: I forgot.

MR. CLAYTON: But it's been set for expedited treatment by the Seventh Circuit.

THE COURT: I totally forgot what's going on here. What was that about 1292? What did you do?

MR. CLAYTON: We made our 1292(b) motion after your Honor certified. The plaintiffs in these cases, one I think took no position the others opposed. And we're waiting for the circuit to rule on that. And the Marblegate appeal is proceeding --

THE COURT: I understand that what the Seventh Circuit does might fact my trial date. How about what the Second Circuit does?

MR. CLAYTON: If neither action, either in the

Marblegate case or the 1292(b), would necessarily affect the trial date. If the Second Circuit grants the 1292(b), we might come back to your Honor and talk about what the implications of that are. If the Marblegate, based on the resolution of Marblegate, that could change dramatically the picture in these cases.

THE COURT: Has that been argued?

MR. CLAYTON: No. I think briefing is -- the briefing stretches out, I believe, into early to mid January. And, your Honor, from our perspective, I know your Honor has thought about this, but from our perspective because that's going to be the first time the Second Circuit rules on these issues, from our perspective, based on the timing we're talking about, I think there is a good argument that this trial ought to wait until we see what the circuit says in Marblegate. Because if the circuit -- depending on, number one, how the circuit rules on some of the core issues that we've argued and Marblegate has argued, the Trust Indenture Act claim may be dismissed here and in addition --

THE COURT: We're going to try more than the Trust Indenture Act claim anyway. The plaintiffs here, I assume -- lots of plaintiffs lawyers here. I assume you want this trial date regardless of what's going on in the Seventh or Second circuit. I'm just asking them as a group. Is that true? You all want trial dates?

MR. CHRICHLOW: Yes, your Honor.

THE COURT: Anybody else want to speak up? You want a trial date too?

MR. CRYAN: Yes, your Honor.

MR. CLAYTON: From the practical perspective, one issue that we've been thinking about is, for example, how will this court instruct the jury on the core questions under the Trust Indenture Act. And the ruling of the Second Circuit in Marblegate is going to affect that.

THE COURT: There are more claims than just the TIA anyway.

MR. CLAYTON: Yes.

THE COURT: So if the TIA claim were to be knocked out by a legal ruling from circuit, if there was a verdict on the non-TIA claims it wouldn't affect it.

MR. CLAYTON: Depending on what that verdict is, that is correct.

THE COURT: So it still moves the case forward to have a trial.

MR. CLAYTON: Although, your Honor, it may be -- there may be evidentiary issues in that from our perspective, depending on the evidence that the plaintiffs want to put on, if some of the evidence they want to put on is germane to the TIA claims.

THE COURT: And not to the others.

MR. CLAYTON: Correct. We would object to that. We would ask, if the TIA count is later dismissed because of what the circuit does, we might find ourselves in the position of saying that there would be a need for a new trial on that basis.

THE COURT: You can always make an argument.

MR. CLAYTON: Absolutely. I'm just saying that --

THE COURT: I understand. But the other choice is to wait a whole year. One never knows when the circuit will rule. I've had cases where I've waited two-and-a-half or three years for them to get it worked out.

MR. CLAYTON: We certainly don't have a timetable as to when they're going to rule.

THE COURT: No, you don't.

So now having fixed the trial for March 14. Now, I have to see if I can grant that three-week adjournment. I guess it could be done. If you wrapped up expert discovery on February 17. The question is could you still get the joint pretrial order in and all the potential pretrial motions, motions in limine. I'm not sure if they depend on one another. I don't know why I can't have a joint pretrial order date and a motion in limine date that has nothing to do with the expert discovery to schedule. And then if there are any additional motions that grow out of the expert area, fine. But for all the nonexpert issues that you might want to do, I don't see

that one depends on the other. So since both parties, I think, have requested this extension I can now do it.

You can extend expert discovery until February 17. But, these motions will take time as to decide. So I think any motions in limine other than relating to experts should be filed by February 5. If you see anything else that you want to move on, that has to be in February 5.

Now with respect to the joint pretrial order. Generally the plaintiffs have to submit their version first. That should be done by February 12. And then the defendant comes forth with its views. And then the joint pretrial order gets submitted to the court. So if the plaintiffs have theirs February 12 and the defendant gives the plaintiff their version February 22, then the joint pretrial order should be in February 29.

Now going back to the motions in limine. If motions in limine are May 5, responses should be in by the 19th. If there's any replies, they have to be in by the 26th. That's as tight as it can be for me to get them all decided in time to start the trial.

So did you get all of those dates?

MR. CRYAN: Yes, your Honor.

MR. CLAYTON: I'm assuming that we're talking about one trial for everybody so that if MeehanCombs and Danner motions -- this is their trial date too?

THE COURT: Mr. Pierce.

MR. PIERCE: Your Honor, I don't think it makes sense to try Danner and MeehanCombs along with BOKF and UMB. Different transactions. Different indentures. Different indenture release provisions. Entirely different arguments.

THE COURT: I have that concern too. It is a jury. I don't want to confuse them. There really are different instruments and different issues.

MR. CLAYTON: Well they are Trust Indenture Act claims they are attacking.

THE COURT: But they're not required to split the claims up and try the TIA claims in one trial and the other claims in a different trial. And I do think it would be confusing for the jury to try to cope with different issues, different indentures, different terms.

MR. CLAYTON: They are going to be coping. There are going to be several different indentures.

THE COURT: That's true even as it is. Fair point. But it only complicates it further to have more plaintiffs and more acts and more terms.

I agree with Mr. Pierce. But I can't give you a trial date should you lose the motion.

MR. PIERCE: Understand.

THE COURT: It just has to follow the others. The others are now ahead of you in a sense.

MR. PIERCE: We understand, your Honor.

MR. CLAYTON: Your Honor will they agree to be bound by common issues?

MR. PIERCE: Just as counsel for CEC said, we're prepared to live with the law of collateral estoppel.

MR. CLAYTON: Unfortunately, your Honor, collateral estoppel doesn't work. It works against us because we're the party in both cases. If they're going to be bound, they're going to be bound then that --

MR. PIERCE: If CEC doesn't have rights under collateral estoppel to bind us, I don't understand why I'm being asked to waive those rights.

THE COURT: Because he's saying it doesn't seem fair to try the identical issue twice. So to the extent that it's identical. I know much of your case is not identical.

MR. PIERCE: Right.

THE COURT: But to the extent that it is, if you have the same identical issue under the TIA, he's saying do you really get a second shot at a different jury to have a different result. He understands that as a matter of law you might. But he's saying as a matter of practicality in this very complex case where you want to move toward a verdict as fast as you can, he knows he's bound, since he's a party and the issue will be fully and fairly tried. But he's asking you to basically agree to that to the extent that it's identical.

Where it's different he understands. It's different facts, you have the right to a jury. But if you know it's identical --

MR. PIERCE: Your Honor, if we know it's identical, then we'll agree to that. But the devil is in the details.

THE COURT: I understand. What is identical is what is this and what is that. I remember that. So you have to look at that. But the TIA claim may be, in some part of it, identical.

MR. PIERCE: I don't think it will be but if they want to make that argument.

THE COURT: But you just set to the extent that.

MR. PIERCE: To the extent that issues of fact are identical, then we will agree to be bound.

MR. CLAYTON: Thank you, your Honor. Just so our position is clear. We do believe that it's unfair to us to have a second bite at the apple for them. So our request is for one trial.

THE COURT: If it's different, it's different. It's not a second bite at the apple. There are different issues in their trial. But to the extent there are common issues -- and I agree with Mr. Pierce, the devil is in the details. But he says to the extent they are really common, really common, there is no factual difference, he just said twice on this record he agrees to be bound.

MR. CLAYTON: We're going to present the factual

background testimony. The context is all -- even though not all of that will present particular issues as defined by collateral estoppel, that's all going to be pretty much identical here. We don't want to have to do that twice. I think it's unfair for us to bring a whole set of witnesses back to put on a second presentation at the same time. The whole point of all of these parties concentrating themselves in these related actions and in this courtroom is so that we do it once. So I respectfully submit I think it's unfair to us.

THE COURT: When you take related actions, it's usually for pretrial purposes.

MR. CLAYTON: Understood.

THE COURT: You can't compel different cases to have a single trial. This is not a MDL or a class with one trial. We coordinate the pretrial. We don't necessarily compel people to join up for trial. If we could, we would. But I think it's too complex to try all these cases together.

MR. PIERCE: For the record, we agree strongly.

THE COURT: Obviously. You have said so.

MR. CLAYTON: I just want to note our position, your Honor.

THE COURT: Mr. Shore.

MR. SHORE: I would just, because this issue affects us as well, it really would get handled in the context of a pretrial order in which there will be a contention that there

is a fact which has already been preclusively determined. And a motion in limine will come in and say here are the set of facts which CEC contends are identical or we contend are identical. And your Honor would have to rule at that point. And then we could all decide what evidence we will put on following that.

THE COURT: Except, as Mr. Clayton pointed out, he is bound by the rules of collateral estoppel. A plaintiff who is not a party is not bound but can say, in common sense, to the extent I see it as identical I'm not going to insist on a second bite of the same evidence to be decided in a separate trial. So that would be not matter of ruling but a matter of negotiating, I think.

MR. SHORE: I understand. But the concern that was raised with respect to I might have to try the same issue again, there will be an opportunity to have that resolved by the court prior to the trial as to what goes forth.

THE COURT: I can't deny you that right.

What he's asking is would you agree to that. And you need to think that through.

Obviously one would think the plaintiffs here would like to reach verdicts and judgments some day. And they can make their own trouble by not being agreeable, so to speak. It can drag. It has dragged. And it's not really the fault of the court because there's a lot of lawyers here. And a lot of

lawyers means a lot of motions, and a lot of conferences, and a lot of issues. If want to make it longer than it has to be, that's up to you. Many of you are not used to being plaintiffs lawyers anyway, judging from your firms. So you need to think like a plaintiff's lawyer. You'll tell them how to do that. The goal is to get judgment. That's the goal.

MR. CLAYTON: One small issue.

THE COURT: Not to make every conceivable motion that God invented. It's to get a judgment. That's the goal.

MR. CLAYTON: We heard the response, I think, of the MeehanCombs people. I think the issue is whether the Danner people are agreeing as well that they will be bound by common --

MR. BERGER: Yes, we do, your Honor.

THE COURT: I think the gentleman on the phone got so tired of us he hung up. So -- but the reporter got the "yes, we do," right? You said it?

MR. BERGER: I'll say it again. Yes, we do.

THE COURT: Thanks, Mr. Berger.

MR. BERGER: You're welcome.

THE COURT: I think we have covered the agenda unless the MeehanCombs and Danner cases want a backup trial date to follow the other trial date to the extent the issues are different with all the pretrial scheduling that goes with it.

MR. BERGER: Your Honor, we're always happy when the

court gives us a trial date; so, absolutely.

MR. PIERCE: Same.

THE COURT: Well, Mr. Clayton, why not do this back to back and live with this case and nothing else for a month or two of your life and that's it. Why not April 1?

MR. CLAYTON: Your Honor, I just don't think -- I don't think that we can do that. I need talk to people about the schedule. It is going to be hard for me to bring a witness in.

I would also, you know, submit again, if they're really talking about doing it back to back, I understand there are some separate issues, but if they're really talking about doing it back to back, let's just do it once because I'm going to put two witnesses on who will talk about factual background.

THE COURT: But I've already decided it will be too complex for the jury.

Look, did I not offer a nonjury trial to everybody? I could try this. I mean I think I could sort out different instruments and all the rest of it. But somebody didn't agree to it, and I don't know who, and you don't have to tell me who. It's fine.

MR. PIERCE: It was CEC.

THE COURT: I didn't know. I have no memory whether it's plaintiffs or defendants. I really didn't know.

That would have been an efficient way to get it all

done at once. You're entitled to a jury, and I respect your choice. That's fine too. But that's why I think it's too complicated to do all the different indentures in one trial.

MR. CLAYTON: I'd like to be able to -- there are a few witnesses who I would like to talk to. We'll bring them in for March. But I'd like to be able to talk to those people and understand what their circumstances are. I think it's going to be unlikely we can bring them back in.

THE COURT: It's not a dinner party. I really don't worry about the preferences of witnesses in cases like this. There are a lot of witnesses. I can't accommodate everybody's interests. They may have family vacations. They may have children with this celebration or that celebration. I can't possibly honor everybody's personal request. So the thing to do is set a trial date so that people block the time.

MR. CLAYTON: Your Honor, I think we would want something later. We would want something -- if we're going to have March 14, I think we would want the second trial early May.

MR. PIERCE: We like April 1.

THE COURT: I know you do. I have no doubt about it.

MR. CLAYTON: I don't understand why there's a difference from their perspective April 1 versus May. It's a hardship on us. We have a trial team who will be presenting a trial and it's a hardship on us recalibrating and putting on

another -- your Honor knows, all of the lawyers in this courtroom know what happens when a jury trial occurs. And I think we need more time than that to recycle. And also, by the way, we will have -- we'll learn things from the first trial that we'll be able to simplify things and we don't want to bring people and cycle them back that quickly. And there's nothing happening in the month of April that is -- I haven't heard any prejudice from the plaintiffs' side as to something happening in the month of April.

THE COURT: They only thing is to march toward a judgment. That's their goal. I understand the goals, the competing goals.

MR. CLAYTON: I would respectfully request something in May, your Honor.

THE COURT: I think Mr. Clayton has a point so I'll put it down for May 9.

Now let me add to the MeehanCombs Danner plaintiffs. If after the conference -- and there's a lot to think about after a conference, a lot of stuff happens and you can't maybe absorb it all -- if after you think about all of this you say rather than waiting until May 9 maybe we can do it all together, I'll be interested in listening because Mr. Clayton thinks so.

No need to react right now, Mr. Pierce. If you come to that conclusion, you talk to the Danner -- you folks are

Danner, right?

MR. BERGER: Yes.

THE COURT: Talk to the other Danner team, the MeehanCombs team, if you reach that conclusion, I'm not adverse to doing it if that makes sense. So think about that after this conference.

MR. PIERCE: Your Honor, if I may?

THE COURT: Right now you have the May 9 date.

MR. PIERCE: The one thing I will say that would impact our decision on what these trials should look like if CEC -- when they said -- when CEC reacted to your Honor's question about a jury, if I recall the statement correctly is that they were not prepared to give up their right to a jury trial yet. I don't know if CEC has reached a final determination on that. If they decide they are willing to try this case to your Honor that may affect things profoundly.

THE COURT: Try this what? Nonjury?

MR. PIERCE: Yes.

THE COURT: They can rethink too. But you can rethink whether you would fold into the jury trial. They can rethink nonjury. My job is to set dates, and I have.

MR. PIERCE: Understood.

THE COURT: Now as far as pretrial submissions. If you could do me the favor of using the dates that were set in the UMB and BOKF trial, in other words, all the pretrial

materials in relation to the trial date, you could just work out what that would be for the May 9 one, that would be helpful so I don't have to sit here and figure it out right now. It can't be too hard once you have the transcript.

So we leave two issues open. Whether it's going to be nonjury or if you think you can fold into the jury. Either of those are possibilities. But absent that, we have schedules. We have a lot of schedules. We have a transcript too. All right. That was my agenda. Anybody else want to raise anything else?

No. All right. Thank you all.

(Adjourned)

Exhibit 2

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January 13, 2016

By ECF and Hand Delivery

The Honorable Shira A. Scheindlin
United States District Court Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, NY 10007

Re: ***MeehanCombs Global Credit Opportunities Master Fund, LP, et al. v. Caesars Entm't Corp., et al.*****, No. 14-7091-SAS ("MeehanCombs");**

Frederick Barton Danner, et al. v. Caesars Entm't Corp., et al.**, No. 14-cv-7973-SAS ("Danner")**

Dear Judge Scheindlin:

On behalf of Plaintiffs in each of the above-referenced actions, we write to request a conference before the Court to address procedural issues related to the trials currently scheduled to begin on March 14 (for the BOKF and UMB cases[1]) and May 9, 2016 (for the MeehanCombs and Danner cases).

Based on Your Honor's rulings on the most recent round of summary judgment motions,[2] the MeehanCombs and Danner Plaintiffs believe the Court and parties would be best served by trying all four of the guarantee actions (*i.e.*, MeehanCombs, Danner, BOKF, and UMB) together starting on March 14. Plaintiffs' decision is driven by the fact that the factual issues to be tried as part of the BOKF and UMB cases may encompass most if not all of the issues material to the MeehanCombs and Danner Plaintiffs. This results principally from the provision included in the BOKF and UMB indentures that purportedly releases the parent guarantee for those bonds upon the election of the Issuer and Notice to the Trustee in the event that the parent guarantee in the Existing Notes, which include the indentures at issue in the MeehanCombs and

[1] *BOKF N.A. v. Caesars Entm't Corp., et al., No. 15-1561-SAS* ("BOKF") and *UMB Bank, N.A. Caesars Entm't Corp., et al., No. 14-4634-SAS* ("UMB"), respectively.

[2] Mem. Op. and Order, Jan. 5, 2016 [*BOKF* ECF No. 76; *UMB* ECF No. 81]; Op. and Order, Dec. 29, 2015 [*MeehanCombs* ECF No. 88; *Danner* ECF No. 84].

Danner Actions, is released. *See* Mem. Op. and Order, Jan. 5, 2016 [*BOKF* ECF No. 76; *UMB* ECF No. 81], at 2-3. Because this release provision is separate from the provisions at issue in BOKF and UMB's most recent motion for summary judgment, CEC can raise this provision (and thus, the issues governing whether the MeehanCombs and Danner Plaintiffs are entitled to relief based on the August 2014 transactions) even if BOKF and UMB prevail on the "and/or" issue. *Id.* at 5.

In light of the foregoing, the MeehanCombs and Danner Plaintiffs respectfully request that their claims be tried together with those of BOKF and UMB as part of the March 14 trial.[3] Counsel for BOKF and UMB have advised that they do not object to a joint trial provided there is no delay of the March 14 trial date, and the MeehanCombs and Danner Plaintiffs are prepared to adhere to all of the pre-trial deadlines previously set by the Court. CEC has previously advocated for a joint trial of all four cases. Hr'g Tr., Nov. 10, 2015, 25:23 – 29:21.

[3] At the November 10, 2015 status conference before the Court, Your Honor invited the MeehanCombs and Danner Plaintiffs to revisit the joint trial issue with the Court after further analysis of the issues. Hr'g Tr., Nov. 10, 2015, 34:17 – 35: 6 ("THE COURT: I think Mr. Clayton has a point so I'll put it down for May 9. Now let me add to the MeehanCombs plaintiffs. If after the conference – and there's a lot to think about after a conference, a lot of stuff happens and you can't maybe absorb it all – if after you think about all of this you say rather than waiting until May 9 maybe we can do it all together, I'll be interested in listening because Mr. Clayton thinks so. . . . Talk to the other Danner team, the MeehanCombs team, if you reach that conclusion, I'm not adverse to doing it if that makes sense. So think about that after this conference.").

DrinkerBiddle&Reath LLP

Counsel for the MeehanCombs, Danner, BOKF, and UMB Plaintiffs are available to attend the proposed conference at any time convenient for the Court.

Respectfully submitted,

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cc: All Counsel of Record (via CM/ECF)