UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOKF, N.A., Plaintiff, v. CAESARS ENTERTAINMENT CORPORATION, Defendant.	No. 1:15-cv-01561 (JSR)
UMB BANK, N.A., Plaintiff, v. CAESARS ENTERTAINMENT CORPORATION, Defendant.	No. 1:15-cv-04634 (JSR)
WILMINGTON TRUST, NATIONAL ASSOCIATION, Plaintiff, v. CAESARS ENTERTAINMENT CORPORATION, Defendant.	No. 1:15-cv-08280 (JSR)
TRILOGY PORTFOLIO COMPANY, LLC, *et al.*, Plaintiffs, v. CAESARS ENTERTAINMENT CORPORATION and CAESARS ENTERTAINMENT OPERATING COMPANY, INC., Defendants.	No. 1:14-cv-07091 (JSR)

FREDERICK BARTON DANNER, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

CAESARS ENTERTAINMENT CORPORATION and CAESARS ENTERTAINMENT OPERATING COMPANY, INC.,

Defendants.

No. 1:14-cv-07973 (JSR)

EXPERT DECLARATION OF JAMES GADSDEN

1. I have been asked by counsel for defendant Caesars Entertainment Corp. ("CEC")[1] in these actions for my opinion regarding the custom and practices in drafting and negotiating provisions of indentures. In particular, I was asked to review the indentures that govern certain notes issued by CEC's subsidiary Caesars Entertainment Operating Company, Inc. ("CEOC"). My analysis considers the indentures, as amended, at issue in the *BOKF,*[2] *UMB,*[3] and *Wilmington Trust*[4] cases (referred to as the "Trustee Cases Indentures"[5]), as well as the indenture, as amended, at issue in the *Trilogy*[6] and *Danner*[7] cases (the "Individual Cases

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1 This declaration uses the current references of the parties to the indentures, and it relies upon the text of the Indentures as supplemented.

2 *BOKF, N.A. v. Caesars Entertainment Corp.*, 15-cv-01561 (JSR).

3 *UMB Bank, N.A. v. Caesars Entertainment Corp.*, 15-cv-04634 (JSR).

4 *Wilmington Trust, National Association v. Caesars Entertainment Corp.*, 15-cv-08280 (JSR).

5 Indenture, dated as of June 10, 2009, among CEOC, as Issuer, CEC, as Parent Guarantor, and UMB Bank, National Association, as Trustee, pursuant to which the 11.25% Senior Secured Notes due 2017 were issued, as supplemented; Indenture, dated as of February 14, 2012, among CEOC, as Issuer, CEC, as Parent Guarantor, and UMB Bank, National Association, as Trustee, pursuant to which the 8.50% Senior Secured Notes due 2020 were issued, as supplemented; Indenture, dated as of August 22, 2012, among CEOC, as Issuer, CEC, as Parent Guarantor, and UMB Bank, National Association, as Trustee, pursuant to which the 9.00% Senior Secured Notes due 2020 were issued, as supplemented; Indenture, dated as of February 15, 2013, among CEOC, as Issuer, CEC, as Parent Guarantor, and UMB Bank, National Association, as Trustee, pursuant to which the 9.00% Senior Secured Notes due 2020 were issued, as supplemented; Indenture dated as of April 16, 2010, among CEOC, as Issuer, CEC, as Parent Guarantor, and BOFK, N.A., as Trustee, pursuant to which the 12.75% Second-Priority Senior Secured Notes due 2018 were issued, as supplemented; and Indenture, dated as of February 1, 2008, among CEOC, as Issuer, CEC and certain other named entities, as Note Guarantors, and Wilmington Trust, National Association, as Trustee, pursuant to which the 10.75% Senior Notes due 2016 were issued, as supplemented.

6 *Trilogy Portfolio Company, LLC, et al.*, *v. Caesars Entertainment Corp., et al.*, 14-cv-07091 (JSR).

7 *Danner v. Caesars Entertainment Corp., et al.*, 14-cv-07973 (JSR).

Indenture"[8]; collectively with the Trustee Cases Indentures, the "Indentures"). At times I discuss the Indentures together and at other times I discuss them separately, as is described in further detail below.

2. Among other things, the Indentures created and provided for the release of guarantees by CEC on certain debt of CEOC. Until the guarantees were released, CEC guaranteed CEOC's obligations under the Indentures. In these actions, Plaintiffs seek to require CEC to satisfy the guarantees that CEC asserts were released in 2014 as a result of several discrete events that CEC contends were independently sufficient to release the guarantees.

I. Introduction

3. My opinions are as follows: (1) it would not be commercially reasonable to require the satisfaction of all three clauses of Section 12.02(c)(i)-(iii)[9] in the Trustee Cases Indentures to release the guarantee, based, *inter alia*, on an understanding of the practical operation of those clauses; (2) the guarantee was provided primarily to facilitate financial reporting for CEOC, and accordingly, a release of the guarantee should not be understood as impairing a right that ensured payment on the notes under the terms of any of the Indentures; and (3) the guarantee is not one of the "core terms" of any of the Indentures.[10]

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[8] Indenture, dated as of June 9, 2006, among CEOC, as Issuer, CEC, as Parent Guarantor, and The Law Debenture Trust Company of New York pursuant to which the 6.50% Unsecured Notes due 2016 were issued.

[9] In the Indenture at issue in the *Wilmington Trust* case, this provision is located at Section 11.02(c)(i)-(iii), and certain other provisions are also numbered in a way that is not consistent with the indentures at issue in the *BOKF* and *UMB* cases. For convenience, when discussing specific provisions of the Trustee Cases Indentures, I will refer to the relevant sections of the indentures at issue in the *BOKF* and *UMB* cases, but my opinions concerning the Trustee Cases Indentures apply also to the indenture at issue in the *Wilmington Trust* case, and I have confirmed that this indenture includes any provisions described in this declaration as appearing in the Trustee Cases Indentures.

[10] These opinions are consistent with those I have offered in three declarations in these matters, including one dated July 24, 2015 that was filed in the *BOKF* and *UMB* actions (Dkt. #42,

4. The primary support for my opinions includes the Indentures themselves, as well as SEC regulations, reasonable market practices, and my own judgment, which is based on my relevant experience and on reviews I conducted of other indentures in the market.

5. The opinions I offer in this declaration are informed by my professional background, which includes decades of experience reviewing indentures for high-yield debt securities[11] and advising parties about such indentures and their rights thereunder, as well as my role in drafting model indentures and commentaries on the subject of indentures. Specifically, I have been a partner in the law firm Carter Ledyard & Milburn LLP since 1984 practicing in the areas of corporate trust, structured finance and bankruptcy and reorganization. I am a past Chair of the Committee on Trust Indentures and Indenture Trustees of the American Bar Association's Section of Business Law. I was significantly involved in drafting the *Revised Model Simplified Indenture*, the *Model Negotiated Covenants and Related Definitions*, and the *Annotated Trust Indenture Act*, each published in *The Business Lawyer*. A very significant part of my practice has involved representation of indenture trustees as well as issuers of debt under indentures. I have also made a detailed study of indenture terms, including provisions at issue in this litigation in connection with my professional activities and my several engagements as an expert witness on market custom and practice on indenture drafting. My resume is attached as **Appendix A**. The material that I considered in forming the opinions discussed in this declaration (including the Indentures, as well as indentures for other issuers' debt) may be found in **Appendix B**.

BOKF; Dkt. # 44, *UMB*), a second dated November 13, 2015 that was filed in the *Trilogy* and *Danner* actions (Dkt. #78, *Trilogy*; Dkt. #71, *Danner*), and a third dated December 4, 2015 that was filed in the *BOKF* and *UMB* actions (Dkt. #67, *BOKF*; Dkt. #73, *UMB*), as well as with those I have offered in an expert report submitted in the *BOKF*, *UMB*, *Trilogy*, and *Danner* actions on December 18, 2015.

[11] Although the notes issued under the Individual Cases Indenture initially had a low investment grade rating, I believe that my analysis is equally applicable to that indenture in each instance where I have provided an opinion addressing all of the Indentures.

6. Summary of Opinion (1). It makes no commercial sense to read the guarantee release provisions in Section 12.02(c)(i)-(iii) of the Trustee Cases Indentures conjunctively, be it as a matter of the words and structure of these provisions; as a matter of understanding these provisions within the context of the larger indenture documents of which they are a part; or as a matter of business reality. (A parallel release provision in the Individual Cases Indenture uses the word "or" to link the second and third enumerated release conditions.) Section 12.02(c) provides that "upon" each of the three events in clauses (i)-(iii) occurring, the guarantee is released; the use of "and" to link the second and third clauses is consistent with this, and does not alter this meaning in derogation of the obvious purpose of the Trustee Cases Indentures. And, critically, it is absurd to require the events contemplated by the three clauses to all occur in order to release the guarantee – in some instances this would be unlikely, and in others it would be impossible. For instance, if CEOC defeased the notes – that is, satisfied its obligations on them by depositing in trust funds sufficient to cover outstanding payments to the noteholders, which would meet the requirements of the third clause – then it would be irrational to require any further action (*i.e.*, a sale of stock under the first clause, or a sale of assets or merger under the second clause) before deeming the guarantee to be released.

7. Summary of Opinion (2). A reading of the Indentures, including a review of the covenants that are included (*i.e.*, those restricting potentially credit-impairing actions by CEOC) and of the covenants that are not included (*i.e.*, those restricting potentially credit-impairing actions by CEC) makes it clear as a commercial matter that the principal purpose of the guarantee was to facilitate financial reporting. So too does the fact that one of the guarantee release provisions (Section 12.02(c)(i) in the Trustee Cases Indentures) tracks the SEC regulation that facilitates financial reporting for subsidiaries that are wholly owned by parent corporations

that guarantee their debt. That provision states that the guarantee is released once the issuer no longer satisfies one of the regulation's criteria for consolidated financial reporting (as a substitute for the preparation of separate audited financial statements for the issuer).

8. Summary of Opinion (3). The Indentures also confirm that it would not be commercially reasonable to consider the guarantee to be a "core term" as that concept has been developed in this litigation. Rather than requiring unanimous or supermajority consent of noteholders to release the guarantee (as is required for the modification of other provisions in the Indentures), the Indentures permit that release without requiring the consent of any noteholder. Along the same lines, the Indentures do not include any remedy upon an act by CEC affecting its creditworthiness as guarantor (*i.e.*, breach of a covenant or a cross-default provision). This is not consistent with the treatment of a core term of an indenture.

II. Background: Relevant Principles and Market Conventions

9. Drafting of Indentures. Although the specific terms of indentures are negotiated, indentures tend to be very similar to one another. This is a product of: (1) the use of model indentures; (2) the practice of using precedents from prior similar transactions as a drafting base; (3) the concentration of responsibility and expertise for drafting in law firms that represent issuers and underwriters, and (4) the desire of investors for conformity in the terms among indentures, which simplifies the process of comparing the rights associated with different securities.

10. Regulation S-X. Regulation S-X (17 C.F.R. Part 210) sets out the requirements for the filing of financial statements in forms filed with the SEC. Among other things, Regulation S-X requires the inclusion of audited financial statements of the issuers of securities, in addition to guarantors. As is relevant here, Rule 3-10 of Regulation S-X permits the filing of only consolidated financial statements for the issuer's parent entity – with condensed

consolidating financial information provided for the issuer and any other guarantor – where the parent's guarantee is "full and unconditional" and any other guarantors are 100% owned by the parent. Regulation S-X does not mandate that a guarantee can never be released or limited; the consequence of failure to meet the requirements of the rule is that the relief from filing separate audited financial statements for the issuer is no longer available. It is common for guarantees that are characterized as "full and unconditional" in indentures to be accompanied by release provisions, which in turn reflects the market's understanding that guarantees can be "full and unconditional" while in place, but also subject to release upon specified events or circumstances. Otherwise, "full and unconditional" would mean "permanent" (which it does not), and the guarantee release provisions that are commonly inserted in indentures would not be given effect.

11. Reporting Covenants. Section 314(a) of the Trust Indenture Act ("TIA") requires that each obligor (i.e., the issuer and any guarantor(s)) file with the indenture trustee the financial reports that the obligor is required to file with the SEC. If the issuer is not required to file reports with the SEC, indentures require the issuer to deliver to the trustee and make available to noteholders reports containing the information the issuer would file if it were required to file reports with the SEC. Following the pattern of Regulation S-X, indenture covenants permit the provision of the parent reports to fulfill the issuer's reporting obligation if the parent files reports that qualify under Rule 3-10. Where the parent is already preparing audited consolidated financial statements, providing the guarantee of the issuer's indenture obligations allows the group to avoid the time and expense of a separate audit of the issuer's financials. Recognizing that the parent guarantee has been provided primarily to facilitate reporting, some indentures provide that, if the issuer is at some point no longer a wholly owned

subsidiary of the parent – in which case the issuer must prepare and file its own financial reports – the parent's guarantee is automatically released.

12. Restrictive Covenants. Indentures for high-yield debt typically contain restrictive covenants limiting the transactions that the issuer and its "Restricted Subsidiaries" (its subsidiaries subject to the covenants in the indentures) can engage in that would affect their ability to meet their obligations under the indenture. Restrictions are often placed on incurring debt, providing guarantees of other debt without guaranteeing the indenture obligations, issuing stock, granting liens, paying dividends, redeeming stock, paying subordinated debt, engaging in transactions with affiliates, selling assets except substantially for cash and where the proceeds are used to pay down debt, or permitting limitations to be placed on the ability of the subsidiary to pay dividends to the issuer, among other things. Absent comparable covenants applicable to a parent guarantor, there are no limitations under the terms of an indenture on the parent's ability to engage in such transactions.

13. Covenant packages in indentures have been developed and are understood to operate as an integrated whole with covenants operating consistently and rationally with one another to accomplish specific goals. The operation of one covenant in the indenture is often best or only understood by observing how it operates with other provisions of the indenture.

14. Modifications and Amendments to Indentures. Indentures universally contain detailed provisions concerning amendments (referred to as "supplements") to the indenture that follow the pattern found in Article IX of each of the Indentures in these cases. Some indenture terms require consent from all noteholders affected by the modifications. Certain changes can be made by action of the issuer and the trustee without any consent from

noteholders. The permissible purposes for amendments are listed in Section 9.01[12] of each Indenture. This list, which is typical of indentures, includes amendments that do not require noteholder consent, including adding covenants to the Indenture for the benefit of the holders, adding events of default, curing ambiguities, or making any other change that does not adversely affect the rights of any holder.

15. In addition to modifications requiring 100% noteholder consent and modifications that require no noteholder consent, one or more intermediate categories of changes may be made with the consent of the holders of different majorities (*e.g.*, 50% or 66.67%) of the notes. Pursuant to Section 9.02 of each of the Indentures, most provisions can be changed with the consent of a simple majority of noteholders. Some indentures also have a category of changes for which the consent of two-thirds of the holders or some other super-majority is required. This approach is common in secured indentures where a higher, but not unanimous, threshold is often required for the release of collateral.

16. Guarantee Release Events. Events of release from guarantees are a ubiquitous feature of indentures. Neither indenture drafters nor investors have, since the enactment of the TIA in 1939 or the promulgation in 2000 of Rule 3-10 of Regulation S-X, understood them to prevent guarantee release provisions from being effective. Guarantee release events often include (1) payment of the securities; (2) satisfaction and discharge of the obligations under the indenture; (3) defeasance of the notes; and (4) termination of the circumstances that caused the creation of the guarantee (frequently, the release of a guarantee of senior debt).

[12] The Individual Cases Indenture omits the period in the section numbers.

17. Events of Default. Events of default are an obviously important part of any indenture, defining the circumstances that are important enough to the noteholders that they should have the right to demand immediate payment of the principal of and interest on their notes and enforce remedies against the issuer of the notes and guarantors, if any. Failure to pay principal and interest when due (corresponding to the most significant element of Section 316(b) of the TIA), as well as the bankruptcy of the issuer, are almost universally events that give the noteholders the right to pursue remedies under the indenture. An indenture may include other events that are or become "events of default" with or without any requirement of notice to the issuer, or of a cure period. Events or circumstances that investors consider important to their bargain are made events of default so that the noteholders,[13] or the indenture trustee on their behalf, will have the right to pursue remedies if a defined event or circumstance occurs.

18. The Indentures. The Indentures are consistent with common market practice for TIA-qualified indentures for high yield issues. All of the notes that CEOC issued pursuant to the Trustee Cases Indentures were issued in "A-B exchanges": CEOC initially offered each series of notes pursuant to an offering memorandum that was not registered with the SEC, with an undertaking to file a registration statement and exchange registered notes on identical terms with the unregistered notes. The financial statements of CEC incorporated by reference in each offering memorandum and subsequently included in each prospectus included the condensed consolidated financial information for CEC and its subsidiaries required to comply with Rule 3-10 of Regulation S-X. The notes issued pursuant to the Individual Cases Indenture were issued pursuant to a registered offering at the outset, but were similarly

[13] Indentures typically include threshold proportions of noteholders who are required to act together to enforce defaults other than the failure to pay principal or interest on an investor's own note when due.

accompanied by an offering memorandum and prospectus that included condensed consolidated financial information for CEC and its subsidiaries that was required to comply with Rule 3-10 of Regulation S-X.

III. Opinion (1) – Section 12.02(c)(i)-(iii) of the Trustee Cases Indentures Should be Read Disjunctively

A. The Language of the Indentures

19. I was asked to assess whether it would be commercially reasonable to interpret the release provisions in clauses (c)(i), (ii) and (iii) of Section 12.02 of the Trustee Cases Indentures conjunctively, such that CEC's guarantee of CEOC's payment obligations under these indentures is released only if all three conditions specified in those clauses are satisfied. For the reasons I discuss below, I believe that such an interpretation would be commercially unreasonable. I further believe that the only commercially reasonable interpretation of Section 12.02(c)(i)-(iii) is disjunctive, such that the guarantee is released upon the occurrence of any one of the three conditions. My conclusions are supported by other provisions of the Trustee Cases Indentures where the word "and" is used disjunctively.

20. Section 12.02(c) of the Trustee Cases Indentures provides:

> The Parent Guarantee shall terminate and be of no further force or effect and [CEC] shall be deemed to be released from all obligations under this Article XII upon:
>
> > (i) [CEOC] ceasing to be a Wholly Owned Subsidiary of [CEC];
> >
> > (ii) [CEOC's] transfer of all or substantially all of its assets to, or merger with, an entity that is not a Wholly Owned Subsidiary of [CEC] in accordance with Section 5.01 [14] and such transferee entity assumes [CEOC's] obligations under this Indenture; and

[14] The section is captioned "When Issuer May Merge or Transfer Assets."

> (iii) [CEOC's] exercise of its legal defeasance option or covenant defeasance option under Article VIII[15] or if [CEOC's] obligations under this Indenture are discharged in accordance with the terms of this Indenture.
>
> In addition, the Parent Guarantee will be automatically released upon the election of [CEOC] and Notice to the Trustee if the guarantee by [CEC] of the Credit Agreement, the Existing Notes or any Indebtedness which resulted in the obligation to guarantee the Notes has been released or discharged.

21. The following characteristics of each of the enumerated clauses in Section 12.02(c) directly inform my conclusion that interpreting these clauses conjunctively, so as to provide that the guarantee is released only upon the occurrence of all three conditions, is not commercially reasonable.

- Section 12.02(c)(i). Under this clause, the guarantee is released if CEOC is no longer a Wholly Owned Subsidiary of CEC.[16] I describe below the rationale for the inclusion of this clause. In short, the SEC's rules did not require CEOC to prepare and file separately audited financial statements and permitted CEOC to rely on CEC's audited financials and supporting schedules so long as CEOC was 100% owned by CEC and CEC guaranteed the notes.

- Section 12.02(c)(ii). This clause operates in conjunction with Section 5.01 of each Trustee Cases Indenture to release the guarantee when CEOC or its assets are acquired by a third party. The guarantee remains in place if CEOC transfers its assets to or is merged into another Wholly Owned Subsidiary of CEC. Section 5.01 of each Trustee Cases Indenture prohibits CEOC from merging with or into another entity or disposing of all or substantially all of its assets to any entity unless (1) CEOC is the surviving entity in the transaction or (2) the surviving entity (the "Successor Issuer") assumes all of CEOC's obligations under the indenture and has the financial strength to comply with the debt incurrence or Fixed Charge Coverage Ratio covenants under the indenture (Section 5.01(a)(ii) and (iv)).

- Section 12.02(c)(iii). This clause operates in conjunction with Article VIII of each Trustee Cases Indenture to release the guarantee when payment of the notes

[15] The article is captioned "Discharge of Indenture; Defeasance."

[16] This term is defined in the Trustee Cases Indentures as ownership of 100% of the Capital Stock other than directors' qualifying shares required to be held by Foreign Subsidiaries.

is otherwise assured by liquid collateral. The situations covered by Article VIII are (1) discharge of the indenture and (2) legal or covenant defeasance.[17]

- Discharge. Under section 8.01(a)(i), the Trustee Cases Indentures are discharged when (1) either (a) all of the notes have been delivered to the Trustee for cancellation or (b) the notes are due or will become due within a year; and (2) CEOC has deposited with the Trustee funds in an amount sufficient to pay the entire indebtedness on the notes. After the deposit is made, the Trustee Cases Indentures are discharged and CEOC's obligations are limited to those specified in Article VIII, the ministerial actions under Article II relating to the transfers of the notes and CEOC's obligations to the Trustee under Article VII of the Trustee Cases Indentures.

- Defeasance. Similarly, under Section 8.02(a)(i), CEOC can exercise its legal defeasance or covenant defeasance option only if CEOC irrevocably deposited in trust with the Trustee cash and U.S. Government Obligations in an amount sufficient to pay the principal of and interest on the notes when due. When the relevant notes are defeased, CEOC terminates all of its obligations for those notes and the governing indenture, with the same limited exceptions recognized by Section 8.01(b). In substance, although the notes technically remain outstanding, they have been paid in full. Under that circumstance, the guarantee, like CEOC's payment obligation, is terminated.

B. Analysis of the Release Provisions

22. The following paragraphs illustrate the reasons why it would be commercially unreasonable to read the three enumerated clauses in Section 12.02(c) conjunctively.

23. Section 12.02(c)(iii). Clause (c)(iii) provides for a release of the guarantee if CEOC's defeasance options under the Trustee Cases Indentures are exercised or if CEOC's obligations under these indentures are otherwise discharged. If this third release condition is satisfied, it would be commercially unreasonable to also require CEC to dispose of a

[17] Through legal defeasance, CEOC terminates all of its obligations under the notes, subject to limited ongoing obligations identified in Sections 8.01 and 8.02; covenant defeasance excuses CEOC from performing covenants under Articles IV and V of the Trustee Cases Indentures. In either case, the obligations of any Subsidiary Pledgor (subsidiaries that have pledged their property to secure the notes) are terminated pursuant to Section 8.01(b).

portion of CEOC's stock (so that CEOC ceased to be a Wholly Owned Subsidiary) *and* transfer all or substantially all of CEOC's assets, or merge CEOC with an entity not wholly owned by CEC, in order to release or terminate the guarantee. Following the discharge or defeasance of the notes, without the satisfaction of the other two release conditions, the noteholders would already be assured of payment by the deposit of cash or U.S. Government Obligations (as defined in the indentures) that fully collateralize the payment obligations.

24. Plaintiffs in the *UMB* and *BOKF* cases have argued that a conjunctive reading of Section 12.02(c)(i)-(iii) is appropriate because (among other things) even if the notes are defeased, noteholders face "residual risk" because "[t]he U.S. could experience a significant economic downturn resulting in a devaluation of the deposited securities, or the financial institution holding the deposit [the trustee for the notes] could suffer some unforeseen harm."[18] In my opinion, these possibilities are not sufficient to conclude that a conjunctive interpretation of Section 12.02(c)(i)-(iii) is commercially reasonable. Defeasance represents a dramatic improvement in the Noteholders' position – they have received U.S. Government credit on an obligation with a coupon that was bargained for based on CEOC's credit. The suggestion of a risk of non-payment on the defeased notes due to intervening events overlooks the fact that CEOC has deposited in trust (protected from any preference recovery in a subsequent bankruptcy) a combination of U.S. Government Obligations and cash in U.S. dollars that, according to a certificate provided by a nationally recognized accounting firm, is sufficient to pay all amounts due on the Notes to maturity or redemption. As such, no "devaluation" of the deposited government securities could change the dollar-for-dollar match of the necessary debt service on the Notes. Of course, inflation could always reduce the value of the dollars that they

[18] Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment, dated May 10, 2016, at 36. (Dkt. #147, *BOKF*; Dkt. #152, *UMB*.)

receive in the future, but holders invariably accept this risk when they invest in fixed rate obligations. Holders are protected from the risk of the trustee's insolvency by the defeasance trust that places the deposited securities beyond the reach of the trustee's creditors. All material risks that could lead to acceleration of the Notes other than bankruptcy of CEOC will have been eliminated, and even in such a bankruptcy, the Noteholders would have the continued right to the payment stream on the notes. Moreover, the Trustee Case Indentures reinstate CEOC's obligation to pay if an order restrains payment. This provides a bridge to the time when the assets in the defeasance trust again become available to pay the Notes. The plaintiffs have not pointed to any scenario in which the defeasance structure would prevent noteholders from obtaining the amounts they are owed.

25. Section 12.02(c)(ii). Likewise, if CEOC transferred all or substantially all of its assets to, or merged with, an entity that was not a Wholly Owned Subsidiary of CEC, it could do so only if the Successor Issuer met the financial tests and other requirements of Section 5.01. In that event, it would not be commercially reasonable to read the Trustee Cases Indentures as providing that the guarantee remains in place upon such an asset sale or merger unless CEC also disposes of some portion of its stock in CEOC so that CEOC was no longer a Wholly Owned Subsidiary *and also* defeases or discharges CEOC's note obligations. If the transaction by which a Successor Issuer assumed CEOC's obligations under the Trustee Cases Indentures is a merger of CEOC into the Successor Issuer, CEC will no longer hold any stock in CEOC. CEOC will have been merged out of existence and CEC will have received the merger consideration. If the transaction is a sale of substantially all of the assets of CEOC to the Successor Issuer, there is no economic substance to the stock that CEC will continue to hold in CEOC until that now assetless corporation is dissolved. No purpose would be served by

requiring that CEOC dispose of some portion of the CEOC stock for the guarantee to be released.

26. As described above, the Trustee Cases Indentures protect against merger by CEOC into a weaker entity in § 5.01(a)(iv), which permits CEOC to transfer all or substantially all of its assets to or to merge into another entity only if (1) the Successor Issuer would be able to incur at least $1 in debt under the Fixed Charge Coverage Ratio test, which is a measure of financial strength comparing an entity's EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) to its Fixed Charges (obligations to pay interest and dividends); or (2) the Fixed Charge Coverage Ratio of the Successor Issuer and its subsidiaries is greater than the Fixed Charge Coverage Ratio of CEOC and its subsidiaries.

27. While Section 5.01(b)(ii)(1) in the Trustee Cases Indentures requires that the Indenture Trustee be reasonably satisfied with the form of the supplemental indenture and other documents by which the Successor Issuer assumes the liabilities under the Indenture, the Indenture Trustee is given no discretion in determining the financial strength of the Successor Issuer. The absence of such discretion reflects common market practice by which noteholders necessarily accept the risk that the financial condition of a successor issuer may vary from the original issuer except where and to the extent that financial tests like those discussed above are included in the relevant portions of the indenture.

C. Use of "And" Elsewhere in the Indentures

28. My analysis finds further support from the inclusion in the Trustee Case Indentures of several other provisions in which it is clear that "and" is used disjunctively.

29. For example, many of the Trustee Cases Indentures' definitions enumerate a list of things falling within the definition joined by the word "and." Thus, the definition in the Trustee Cases Indentures of "Permitted Investments" includes 22 subparts, many of which are

mutually exclusive of one another, including "(1) any Investment in the Issuer or any Restricted Subsidiary;" "(2) any Investment in Cash Equivalents or Investment Grade Securities;" "and" "(6) advances to employees, taken together with all other advances made pursuant to this clause (6), not to exceed $25.0 million at any one time outstanding . . . ."

30. Unquestionably, this definition is intended to mean that each of the listed items meets the definition. The definition could not be understood to require that something is a Permitted Investment only if it is an Investment in the Issuer or any Restricted Subsidiary *and* an Investment in Cash Equivalents or Investment Grade Securities *and* an employee advance in an amount of less than $25 million. These three subparts and most of the other 22 subparts of the definition, are mutually exclusive.

31. Similarly, the definition in the Trustee Cases Indentures of "Permitted Liens" includes 28 subparts linked by the word "and," even though many of the subparts are mutually exclusive of each other – *e.g.*, "leases and subleases of real property which do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Restricted Subsidiaries" (subpart (13)) and "grants of software and other technology licenses in the ordinary course of business" (subpart (19)).

32. Similar uses of the word "and" in a manner clearly intended to convey a disjunctive connection between the relevant clauses can be found in numerous other definitions contained in the Trustee Cases Indentures. These include certain definitions in Section 1.01 (in particular, the definitions of "Asset Sale," "Cash Equivalents," "Excluded Contributions," "Hedging Obligations," "Investment Grade Securities," and "Unrestricted Subsidiary") and in the operation of Section 4.03(b), which enumerates the exceptions to the limitation on the incurrence of indebtedness or the issuance of disqualified stock and preferred stock.

33. Section 12.02(b) of the Trustee Cases Indentures describes the conditions for the release or termination of a guarantee (a "Subsidiary Guarantee") given by certain Wholly Owned Restricted Subsidiaries (as defined in the Indentures) of CEOC's obligations under these Indentures. This section also illustrates that the Trustee Cases Indentures use "and" disjunctively.

34. Like Section 12.02(c), Section 12.02(b) contains a series of separately enumerated clauses joined by "and." As with the release conditions of Section 12.02(c), it would be commercially unreasonable to read these release conditions (two of which mirror the release events in Section 12.02(c)) conjunctively. For example, Section 12.02(b)(iv) is satisfied by the discharge or defeasance of the notes. Once this condition is satisfied, a holder of notes should be indifferent to the persistence of the Subsidiary Guarantee and to whether the other release conditions of Section 12.02(b) are satisfied, for the reasons explained in paragraphs 23 and 24, *supra*, which deal with the release of the parent guarantee.

35. The unreasonableness of reading "and" conjunctively is also illustrated by Section 12.02(b)(iii). It provides that a Subsidiary Guarantee required by Section 4.11 of a Trustee Cases Indenture (because the subsidiary guaranteed any First Priority Lien Obligations, as defined in the indentures) is released upon the "the release or discharge of the pledge by such Guarantor of the Credit Agreement or other Indebtedness (including the Existing Second Lien Notes) or the guarantee of any other Indebtedness which resulted in the obligation to guarantee the Notes[.]" That is, once the subsidiary's guarantee of any CEOC indebtedness that required the delivery of the Subsidiary Guarantee is released, the entire reason for providing the Subsidiary Guarantee has been eliminated and the Subsidiary Guarantee is also released. In circumstances where clause (iii) occurs, it would be unreasonable to expect that the Subsidiary

Guarantee would remain in place unless the notes were also discharged or defeased *and* CEOC also disposed of its interest in the subsidiary through a permitted merger or sale of assets.

IV. Opinion (2) – The Indentures Contain a Guarantee that Primarily Facilitates Financial Reporting

36. It is my opinion that a reasonable market participant would have understood that the guarantee in every Indenture was provided primarily to facilitate financial reporting. Moreover, such an investor would not have viewed a release of the guarantee as impairing any right that ensured payment on the notes issued under the terms of any of the Indentures, given that the Indentures permitted CEC to terminate the guarantee through steps entirely within CEC's control.

37. My opinion is based on principles and conventions that are familiar and important to the market for high-yield notes described above, including: (1) the SEC rules and regulations governing the provision of financial information concerning affiliated obligors; and (2) the role of restrictive covenants and events of default in indentures. It is also based on a review that I conducted of indentures which were drafted during the same period when the Indentures were drafted.[19]

A. Financial Reporting Guarantees vs. Credit Support Guarantees

38. There are several features that distinguish indentures with a parent guarantee oriented primarily toward facilitating financial reporting (a "financial reporting guarantee") from those with a parent guarantee oriented toward primarily providing credit support (a "credit support guarantee").

[19] This review originally comprised 89 indentures that included parent guarantees, which were identified as exhibits to filings made with the SEC for periods ending after December 31, 2008 and on or before December 31, 2013 and was later expanded to include 16 additional indentures from the period January 1, 2005 to December 31, 2008.

39. In particular, first, when the relief from separately filing financial reports is no longer available or used, the financial reporting guarantee is released, whereas a credit support guarantee would remain in place. With a financial reporting guarantee, a release event based on the issuer no longer being a wholly owned subsidiary of the guarantor is present because Rule 3-10 permits reliance on the parent's financials only if the issuer is a 100% owned subsidiary of the parent. (Given the different definition of "wholly owned subsidiary" in the Individual Cases Indenture, I make this first point solely in regard to the Trustee Cases Indentures.)

40. Second, if the indenture includes covenants restricting the ability to take steps that affect creditworthiness, then with a financial reporting guarantee, such restrictive covenants need not be made applicable to the guarantor, whereas with a credit support guarantee, one would expect to see such restrictive covenants applying to the guarantor (as well as to the issuer and its subsidiaries). If an indenture is structured in this manner (*i.e.*, without the restrictive covenants applying to the parent), it indicates that the guarantee was put in place to facilitate financial reporting rather than to provide credit support.

41. Third, with a financial reporting guarantee, "cross-defaults" applicable to the guarantor need not be included, whereas in credit support guarantees such cross-defaults would be found. One may find indentures with a parent guarantee in which events of default include actions on the part of the parent that would affect its creditworthiness. This is characteristic of a guarantee oriented primarily toward credit support. In the absence of such provisions, the acceleration of other indebtedness of the parent guarantor, unpaid judgments against the parent guarantor, and even the bankruptcy of the parent guarantor are not events that give holders of the notes the right to accelerate their claims and pursue remedies. Again, the

absence of such provisions suggests that the guarantee is in place to facilitate financial reporting obligations, not to provide credit support for the notes.

B. Analysis of the Indentures

42. CEC's guarantee in the Trustee Cases Indentures reflects the terms of Rule 3-10, insofar as it is described as a "full and unconditional" guarantee – a term that commonly appears in indenture guarantees, regardless of whether there are release provisions. The phrase "absolute and unconditional," used in Section 508 of the Individual Cases Indenture, is effectively synonymous. In my opinion, investors would not understand this language as overriding the express terms of Section 12.02(c) of the Trustee Cases Indentures and Section 1503 of the Individual Cases Indenture, which provide for the release of the guarantee through a variety of circumstances, as they expect those separate explicit and detailed provisions to be given effect.

43. Section 12.02(c) of the Trustee Cases Indentures and Section 1503 of the Individual Cases Indenture set forth circumstances under which the guarantee is released. Each of those circumstances is under the control of CEC and CEOC. (Each is also common in indentures.) As to Section 12.02(c) of the Trustee Cases Indentures, those circumstances are detailed above. As to Section 1503 of the Individual Cases Indenture, those circumstances include (1) CEC or CEOC's transfer of all or substantially all of its assets to or merger into another entity, provided that the transferee assumes the obligations under the Guarantee; (2) CEC's liquidation, provided that if any other entities acquire all or substantially all of CEC's

assets, they assume the obligations under the Guarantee; or (3) CEOC ceasing "for any reason" to be a "wholly owned subsidiary" of CEC, as defined in SEC Regulation S-X.[20]

44. It is my opinion that the Trustee Cases Indentures and the Individual Cases Indenture included – and would have been understood by reasonable investors to include – a guarantee by CEC primarily for the purpose of facilitating CEOC's financial reporting, not primarily for the purpose of providing credit support, given the events that could terminate CEC's liability. This is borne out by the three features I focused on above as allowing an investor to distinguish between indentures that include financial reporting guarantees from indentures that include credit support guarantees.

45. First, and solely as to the Trustee Cases Indentures, the initial release provision for the guarantee in Section 12.02(c)(i) states that when any amount of stock in CEOC is transferred away from CEC, the guarantee is released. At this point, the relief for CEOC from separately filing financial reports would no longer be available under Rule 3-10 of Regulation S-X.

46. Second, Article IV of the Trustee Cases Indentures includes covenants restricting the ability to incur debt, pay dividends, sell assets and engage in transactions benefitting affiliates – all steps that affect creditworthiness. Similarly, the terms of the notes issued pursuant to the Individual Cases Indenture (as established in the Officer's Certificate dated June 9, 2006) included covenants restricting CEOC or its subsidiaries from becoming liable on any indebtedness secured by liens on their property, including the equity interests in its subsidiaries (§ 1007), or engaging in sale and lease-back transactions (§ 1008). But by their

[20] That definition is "a subsidiary substantially all of whose outstanding voting shares are owned by its parent and/or the parent's other wholly owned subsidiaries." 17 CFR 210.1-02(aa).

terms, these restrictive covenants in the Trustee Cases Indentures and Individual Cases Indenture apply only to CEOC (the issuer) and its subsidiaries, and they do not prohibit CEC, the guarantor, from taking such actions.

47. Plaintiffs in *Trilogy* have pointed to provisions in the Individual Cases Indenture (in particular, provisions in Sections 1503 and 1504) that they contend constrained CEC's ability to "'consolidate or merge' with another company, 'sell, lease, or convey' its assets, or purchase, lease or accept the assets of another company."[21] But Section 1503 provides CEC with flexibility by identifying the circumstances under which CEC can be relieved of its obligations under the indenture. Section 1503 does not require a successor to CEC to meet any financial criteria for the transfer to be permitted and imposes no financial covenants applicable to CEC's successor as guarantor, which is unsurprising given that no financial covenants are applicable to CEC under the indenture. Moreover, with respect to Section 1504, the only limitation on CEC's ability to merge is that the successor must be a validly organized corporation under U.S. law, must assume CEC's obligations under the indenture, and giving effect to the transaction, there must not be an Event of Default or an event that could mature to an Event of Default under the Indenture. The merger is not conditioned on any tests of the financial condition of the surviving entity, and no financial covenants are applicable to the survivor.

48. Third, while the Trustee Cases Indentures identify many events of default in section 6.01, as does the Individual Cases Indenture in Section 501, the Indentures do not include events of cross-default that are based upon developments adverse to CEC, including a bankruptcy of CEC.

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[21] *See* Reply Memorandum of Law in Further Support of Plaintiffs' Motion for Partial Summary Judgment, dated December 2, 2015, at 10. (Dkt. # 83, *Trilogy*.)

49. In my opinion, CEC's guarantee would not have been regarded by reasonable market participants (including holders of the notes) as providing a financial recourse for payment of the notes on which they could rely. That opinion is based on the terms governing release of the guarantee (including the ease with which those provisions – particularly Section 12.02(c)(i)-(iii) of the Trustee Cases Indentures – could have been satisfied), the similarity between the guarantee and other guarantees supplied by parent companies primarily for reporting purposes, and the absence of covenants and events of default applicable to CEC that would have constrained CEC's ability to undertake actions affecting its ability to provide payment on its guarantee of the notes.

V. Opinion (3) – The Guarantee is Not a Core Term of the Indentures

50. Drafters of indentures and reasonable market participants show what terms they consider essential to their bargain by the protections that they build into the indentures.

A. Amendments and Modification

51. The rules in the Indentures about modification are summarized in Section II of this declaration. The strongest protection drafters of an indenture can give to any term is providing that it cannot be modified without the consent of each noteholder who is to be bound by the modification. All of the Indentures apply this heightened level of protection to the terms governing noteholders' right to payment of principal and interest on their due dates – in other words, the provisions specifying principal amount, interest rate, interest payment dates and maturity date. (As another example, the Indentures require 100% consent of the noteholders to modify provisions governing the percentage of noteholder approval required to approve other actions.) As discussed in Section II, indentures universally require 100% noteholder consent to modify these particular provisions – this is sometimes characterized as the prohibition against non-unanimous amendments to "core terms." This reflects the market's understanding of the

protection provided by TIA Section 316(b) and conforms to what is expected in other transactions involving joint extensions of credit. The same unanimity requirement also appears in other agreements not governed by the TIA, such as syndicated bank loan agreements, participation agreements, and indentures for debt issued without registration under the Securities Act of 1933. The level of consent required to modify a particular term reflects how important it is to the parties' bargain. Those terms that can be changed only with the consent of each noteholder are those considered as essential to the parties' bargain.

B. Guarantee Release Events

52. Parent guarantees are often drafted so that they can be released (if at all) only when the notes are either paid in full or a substitute source of payment is provided through a Successor Issuer or defeasance of the notes. In contrast, some indentures permit the release of a parent guarantee in some circumstances without any substitute collateral and without consent of any noteholder. The Trustee Cases Indentures (at Section 12.02(c)) and the Individual Cases Indenture (at Section 1503) are examples of the latter kind of indenture. In my experience, where the drafters of an indenture intend for a parent guarantee to be an essential term, they do not draft the parent guarantee so that it can be eliminated by unilateral action of the issuer or the parent.

C. Restrictive Covenants

53. Drafters may use covenants to reinforce core terms in an indenture. As described in Section II of this declaration, high-yield debt indentures typically contain restrictive covenants limiting the transactions that the issuer and its Restricted Subsidiaries can engage in that would affect their ability to meet the obligations under the indenture. Article IV of the Trustee Cases Indentures and Article X of the Individual Cases Indenture, as modified by the Officer's Certificate dated June 9, 2006, contain such covenants. These restrictive covenants

constrain transactions at the issuer or subsidiary level that would impair their ability to pay debt service. The absence from the Indentures of such covenants at the parent level, and the resulting absence of limitations therein on the ability of CEC to engage in the same sorts of transactions, evidences a parent guarantee that the parties have deemed to be nonessential to noteholders. Conversely, the intent of the drafters of the Indentures for CEC's guarantee to function as an essential term that was core to the indenture would have been shown by, among other things, the incorporation of covenants into the indenture that restricted CEC's behavior.

D. Defaults and Cross-Defaults

54. Along the same lines, drafters use default provisions to protect core indenture terms. Indentures make non-payment an event of default that gives the noteholders the right to enforce remedies. The Indentures at issue here do so, at Section 6.01 (Trustee Cases Indentures) and Section 501 (Individual Cases Indenture). Where there is a parent guarantor, indentures may include cross-defaults tied to the parent guarantor. Typical cross-defaults include the right to accelerate the debt and pursue remedies if the guarantor takes action or suffers consequences that would affect its creditworthiness. The Indentures do not include cross-default provisions tied to the actions of CEC. In the absence of such provisions, the acceleration of other indebtedness of the parent guarantor, unpaid judgments against CEC and even the bankruptcy of CEC are not events that would give holders of the notes governed by the Indentures the right to accelerate their claims and pursue remedies. The absence from the Indentures of cross-default provisions implicating CEC is also consistent with a parent guarantee that the drafters and negotiators of the Indentures deemed to be inessential to the noteholders.

55. The significance to noteholders of a parent guarantee may be reflected (as with other indenture provisions) by the level of consent required to modify the term, the circumstances under which it may be eliminated without the consent of the noteholders, and the

extent to which covenants and events of default extend to the parent. The guarantee in the Indentures lacks these indicia of a "core term," and in my opinion the particular characteristics of the guarantee indicate that it would not have been considered a "core term" by a reasonable market participant.

56. Based on the foregoing analysis, in my opinion, the guarantee found in Article XII of the Trustee Cases Indentures and Article XV of the Individual Cases Indenture herein lacks the features of a "core term." To summarize, that opinion is based on Section 12.02(c) of the Trustee Cases Indentures and Section 1503 of the Individual Cases Indenture, which permit the guarantee to be released without the consent of any noteholder through a variety of means, as well as the absence of (1) covenants applicable to CEC that would constrain its ability to undertake actions affecting its ability to pay on the notes, and (2) events of default tied to CEC.

E. Analysis Of Comparable Indentures Supports this Opinion

57. As I have explained, the Individual Cases Indenture and the Trustee Cases Indentures contain no covenants binding on CEC as guarantor or events of default based on CEC's conduct as guarantor, and by their terms, they permit the guarantee to be released in specified circumstances without the consent of the holders. By contrast, other indentures that I analyzed in connection with my work for CEC – which were entered contemporaneously with the Indentures – include such protections. Specifically, contemporaneous indentures contain parent guarantor covenants and events of default protecting the noteholders, and contain no guarantee release events unless they involve payment or substitute support for the notes.

58. These contemporaneous indentures[22] offer examples of the protections that may be used to reinforce parent guarantees, and of the importance that may be placed on parent guarantees as evidenced by covenants and events of default. Without describing each of these covenants, generally speaking, they reinforce the parent guarantee by limiting the parent's ability to take on additional debt; to dispose of its assets or funds; to restrict itself from obtaining funds from its subsidiaries; or to engage in conduct that could jeopardize its continued business operations or its existence (such as by altering its corporate form). Protections of this nature, particularly when used in combination with each other, attempt to ensure that the parent's financial condition remains robust and that the noteholders have a meaningful recourse to the parent's finances in the event that the issuer cannot satisfy its payment obligations.

59. In other instances, the issuer is made subject to restrictive covenants that do not extend to the parent guarantor (as is true of the Indentures herein), but the parent guarantee is subject to stringent release conditions or is not releasable (unlike the case with the Indentures).

60. In short, the importance placed on recourse against the parent guarantor in contemporaneous indentures is shown by covenants and events of default made applicable to the parent guarantor that are absent from the Indentures herein. It is also shown in certain cases by the absence of provisions (like those which are found in the Indentures) specifying a variety of conditions under which the guarantee may be readily released.

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[22] The indentures described in this section were identified in a search of indentures filed as exhibits to filings made with the SEC between January 1, 2005 and January 1, 2007, available through the Intelligize database employing "Parent Guarantor" as a search term. These are identified as Group II in Appendix B.

VI. Prior Testimony and Compensation

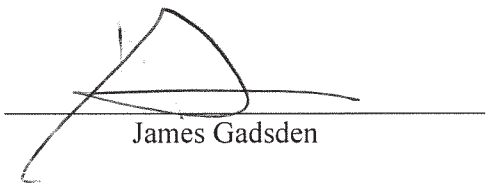
61. Prior Testimony. Within the last four years, I was qualified as an expert witness and testified in *iHeartCommunications v. Benefit Street Partners LLC*[23] and in adversary proceedings in *In re K-V Discovery Solutions, Inc.*[24] and *In re Residential Capital, LLC*.[25] I also prepared an expert report that was offered in evidence in *Marblegate Asset Management, LLC v. Education Management Corp.*[26] Finally, I have submitted an affidavit in *Wilmington Savings Fund Society, FSB, v. Caesars Entertainment Corp.*[27] and the declarations and report described in footnote 10 above.

62. Compensation. My firm is being compensated at an hourly rate of $875 for my work, at rates ranging from $225 to $300 for colleagues who assisted me, and for out-of-pocket expenses. This compensation is not dependent on the opinions I reach or the results of the cases.

63. I reserve the right to amend, revise, or modify the opinions expressed in this declaration based on any additional information that becomes available to me.

64. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2015



James Gadsden

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[23] Cause No. 2016 CI 04006 (285th Judicial District, Bexar Cnty., TX).

[24] Case No. 12-13146 (ALG) (Bankr. S.D.N.Y.); *Silver Point Finance LLC v. Deutsche Bank Trust Company Americas*, Ad. No. 13-01361 (ALG) (Bankr. S.D.N.Y.).

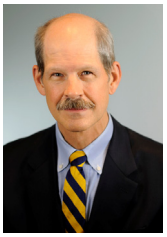
[25] *In re Residential Capital, LLC*, Case No. 12-12020 (MG) (Bankr. S.D.N.Y.); *Residential Capital, LLC v. UMB Bank, N.A.*, Ad. No. 13-01343 (MG); *Official Committee of Unsecured Creditors v. UMB Bank, N.A.*, Ad. No. 13-01277 (MG) (ALG) (Bankr. S.D.N.Y.).

[26] 14 Civ. 08584 (KPF) (S.D.N.Y.).

[27] C.A. No. 100049-VCG (Del. Ch.).

APPENDIX A

James Gadsden



Position: Partner; Chair, Insolvency and Creditors' Rights Practice Group

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Education:

B.A., 1971	University of Rochester (with distinction in Political Science)
J.D., 1974	Columbia Law School (James Kent Scholarship; Harlan Fiske Stone Scholar)

Practice: Mr. Gadsden has a corporate and litigation practice involving structured finance, restructuring and bankruptcy and corporate trust matters. In addition to representing issuers of high-yield and asset backed securities and borrowers on syndicated lending facilities, he frequently represents corporate trustees for corporate and municipal debt in connection with the issuance of the debt and defaults and restructurings, including chapter 11 bankruptcy cases. He is a past Chair of the Committee on Trust Indentures and Indenture Trustees of the American Bar Association's Section of Business Law. He contributed the chapter on Corporate Trust Opinions to the Legal Opinions in Corporate Transactions treatise published by *Practicing Law Institute* in 2014.

He was a member of the drafting committee for the ABA's Revised Model Simplified Indenture published in *The Business Lawyer* in 1999, the Model Negotiated Covenants published in *The Business Lawyer* in 2006 and the Annotated Trust Indenture Act published in *The Business Lawyer in 2012*. He has represented parties in litigation and acted as an expert witness in litigation involving indenture interpretation issues.

He is also active in the Working Group on Legal Opinions Foundation, was the Reporter for the Special Report on the Preparation of Substantive Consolidation Opinions by the Committee on Structured Finance and the Committee on Bankruptcy and Corporate Reorganization of The Association of the Bar of the City of New York, was the Chair of the Subcommittee of the Committee on Commercial and Uniform State Laws that prepared the City Bar's Report recommending that New York enact the Uniform Voidable Transactions Act, and is a frequent author and speaker.

Awards/Honors: 2010-2015 *Super Lawyers*®

AV® Preeminent™ rated by Martindale-Hubbell®

Admitted: 1975 New York

1975 U.S. Court of Appeals, Second Circuit

1999 U.S. Court of Appeals, Third Circuit

1975 U.S. District Courts, Southern and Eastern Districts of New York

2001 U.S. District Court, Northern District of New York

2012 U.S. District Court, Eastern District of Michigan

Affiliations: The American Law Institute (Sustaining Member)

American Bar Association (Section of Business Law, Committee on Trust Indentures and Indenture Trustees, Chair 2002-2006; Business Bankruptcy, Commercial Finance, UCC and Legal Opinions Committees)

Working Group on Legal Opinions Foundation

The Association of the Bar of the City of New York (Member, Committee on Commercial and Uniform State Laws, Former member, Committees on Bankruptcy and Corporate Reorganization, Structured Finance, Banking Law and Admiralty)

American Bankruptcy Institute

American Bar Foundation (Sustaining Life Fellow)

International Bar Association (Member, Section of Insolvency, Restructuring and Creditors' Rights)

Member of the mediation panels of the U.S. District Court, Southern District of New York and U.S. Bankruptcy Courts, Southern and Eastern Districts of New York and District of Delaware

Illustrative Matters

Client	*Description*
American Bar Association	Amicus Curiae in Southern Pacific Funding Corporation litigation.
The Bank of New York Mellon	Indenture trustee in the New Gulf Resources, Allen Systems, Dendreon, Overseas Shipholding, Metro Affiliates, Energy Conversion Devices, Ambac Financial Group, Charter Communications, Calpine, Mrs. Fields, Safety-Kleen, Owens Corning, G-I Holdings, and Kaiser Group bankruptcy cases and escrow agent in Cellnet bankruptcy case; Amylin Pharmaceuticals, Realogy and Countrywide covenant litigation.
Bank of New England	Expert Witness.
Cisco Systems, Inc.	Lessor in Rhythm NetConnections, Global Crossing, WorldCom/MCI and Genuity bankruptcy cases.
Creditors' Committee of Cybergenics Corporation	Litigation counsel for the Creditors' Committee asserting fraudulent claims.
Caesars Entertainment Corporation	Expert Witness.
iHeartcommunications	Expert Witness.
Seaco SRL	Shipping container securitizations; syndicated loans.
Sunshine Oilsands Ltd.	$200 million senior secured note issue.
JP Morgan Chase Bank	Indenture trustee for defaulted industrial revenue bond issues.
K-V Discovery Solutions, Inc.	Expert Witness
Loral Space and Communications Ltd. bankruptcy case	Special Counsel to the Board of Directors of Loral Orion, Inc. in chapter 11 case.
Residential Capital, LLC	Expert Witness.
Trinity Biotech plc	$115 million debt offering.
Bankers Trust Company	Indenture trustee in Almacs bankruptcy case.
U.S. Bank, N.A.	Tender option bond transactions.

Avnet Inc.	$450 million trade receivables securitization.
Orient-Express Hotels Ltd.	Single asset commercial mortgage backed securitization.
Sea Containers Ltd.	Special counsel in Chapter 11 case.
	$350 million shipping container securitization; joint venture with Genstar Container Corporation.
Recoton Corporation bankruptcy case	Mediator of adversary proceedings in Chapter 11 case.
PSINet Consulting Solution	Plan oversight committee.

Published: Report by the Committee on Commercial and Uniform State Laws and Committee on Bankruptcy and Corporation Reorganization in Support of Enactment of the Uniform Voidable Transactions Act in New York, New York City Bar April 2016 (Subcommittee Chair).

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"Corporate Trust Opinions, Legal Opinions in Corporate Transactions," *Practicing Law Institute*, 2014

"Disqualified Lenders: The LightSquared Controversy Over the Acquisition of Its Debt by the Executive Chairman of Its Competitors Illustrates the Importance of Careful Drafting to Avoid Costly Pitfalls and Unintended Risks," *Client Advisory,* December 30, 2013

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APPENDIX B

Documents Considered

CEOC Indentures

A. Indenture, dated as of June 10, 2009, among Harrah's Operating Escrow LLC and Harrah's Escrow Corporation, as Joint Issuers, Harrah's Entertainment, Inc., as Parent Guarantor, and U.S. Bank National Association, as Trustee, pursuant to which the 11.25% Senior Secured Notes due 2017 were issued, and supplements dated June 10, 2009, September 11, 2009, and April 12, 2013.

B. Indenture, dated as of February 14, 2012, among Caesars Operating Escrow LLC and Caesars Escrow Corporation, as Joint Issuers, Caesars Entertainment Corporation, as Parent Guarantor, and U.S. Bank National Association, as Trustee, pursuant to which the 8.50% Senior Secured Notes due 2020 were issued, and supplements dated March 1, 2012, and April 12, 2013.

C. Indenture, dated as of August 22, 2012, among Caesars Operating Escrow LLC and Caesars Escrow Corporation, as Joint Issuers, Caesars Entertainment Corporation, as Parent Guarantor, and U.S. Bank National Association, as Trustee, pursuant to which the 9.00% Senior Secured Notes due 2020 were issued, and supplements dated October 5, 2012, December 13, 2012, February 20, 2013, and April 12, 2013.

D. Indenture, dated as of February 15, 2013, among Caesars Operating Escrow LLC and Caesars Escrow Corporation, as Joint Issuers, Caesars Entertainment Corporation, as Parent Guarantor, and U.S. Bank National Association, as the Trustee, pursuant to which the 9.00% Senior Secured Notes due 2020 were issued, and supplement dated March 27, 2013.

E. Indenture, dated as of April 16, 2010, among Harrah's Operating Escrow LLC and Harrah's Escrow Corporation, as Joint Issuers, Harrah's Entertainment, Inc., as Parent Guarantor and U.S. Bank National Association, as Collateral Agent, pursuant to which the 12.75% Second Priority Senior Secured Notes due 2018 were issued, and supplements dated May 20, 2010 and April 12, 2013.

F. Indenture, dated as of June 9, 2006, among Harrah's Operating Company, Inc., Harrah's Entertainment, Inc. ("Guarantor") and U.S. Bank National Association ("Trustee") and Officers' Certificate Pursuant to Section 301 and 303 of the Indenture dated as of June 9, 2006 executed by Jonathan S. Halkyard and Michael D. Cohen on behalf of Harrah's Operating Company, Inc. and Harrah's Entertainment, Inc.

G. Indenture, dated as of February 1, 2008, among Harrah's Operating Company, Inc., as Issuer, Harrah's Entertainment, Inc., as Parent Note Guarantor, and U.S. Bank National Association, as Trustee, pursuant to which the 10.75% Senior Notes due 2016 and 10.75%/11.5% Optional PIK Interest Senior Notes due 2018 were issued.

H. Indenture, dated as of September 28, 2005, among Harrah's Operating Company, Inc., as Issuer, Harrah's Entertainment, Inc., as Guarantor, and U.S. Bank National Association, as Trustee, pursuant to which the 5.75% Senior Notes due 2017 were issued.

Offering Memoranda

- Offering Memorandum, dated as of May 27, 2009, for $1,375,000,000 in principal amount 11.25% Senior Secured Notes due 2017, issued by Harrah's Operating Escrow LLC and Harrah's Escrow Corporation, as the Escrow Issuers.

- Offering Memorandum, dated as of September 8, 2009, for $720,000,000 in principal amount 11.25% Senior Secured Notes due 2017, issued by Harrah's Operating Company, Inc.

- Offering Memorandum, dated as of February 9, 2012, for $1,250,000,000 in principal amount 8.5% Senior Secured Notes due 2020, issued by Caesars Operating Escrow LLC and Caesars Escrow Corporation, as Escrow Issuers.

- Offering Memorandum, dated as of August 15, 2012, for $750,000,000 in principal amount 9% Senior Secured Notes due 2020, issued by Caesars Operating Escrow LLC and Caesars Escrow Corporation, as Escrow Issuers.

- Offering Memorandum, dated as of December 6, 2012, for $750,000,000 in principal amount 9% Senior Secured Notes due 2020, issued by Caesars Operating Escrow LLC and Caesars Escrow Corporation, as Escrow Issuers.

- Offering Memorandum, dated as of February 4, 2013, for $1,500,000,000 in principal amount 9% Senior Secured Notes due 2020, issued by Caesars Operating Escrow LLC and Caesars Escrow Corporation, as Escrow Issuers.

- Offering Memorandum, dated as of April 13, 2010, for $750,000,000 in principal amount 12.75% Second Priority Senior Secured Notes due 2018, issued by Harrah's Operating Escrow LLC and Harrah's Escrow Corporation, as Escrow Issuers.

- Offering Memorandum, dated as of January 9, 2008, for $4,932,417,000 aggregate principal amount of 10.75% Senior Notes due 2016 and $1,402,583,000 aggregate principal amount of 10.75%/11.5% Senior Toggle Notes due 2018, issued by Harrah's Operating Company, Inc.

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- Jonathan C. Lipson, Governance in the Breach: Controlling Creditor Opportunism, 84 S. Cal. L. Rev. 1035 (2011).

- John C. Coffee, Jr. and William A. Klein, Bondholder Coercion: The Problem of Constrained Choice in Debt Tender Offers and Recapitalizations, 58 U. Chi. L. Rev. 1207 (1991).

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Other Reference Material

- American Bar Foundation, Commentaries on the Model Debenture Indenture Provisions (1971).
- Committee on Trust Indentures and Indenture Trustees, ABA Section of Business Law, *Model Negotiated Covenants and Related Definitions*, 61 Bus. Law. 1439 (2006).
- SEC Division of Corporate Finance, Financial Reporting Manual.
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- David E. Webb, Documentation for High Yield Debt (Euromoney 2001).
- Release Nos. 33-7878, 34-43124; International Series No. 1229; -- FR-55; File No. 57-7-99 Financial Statements and Periodic Reports for Related Issues and Guarantors, 65 Fed. Reg. 51692 (8/24/2000).
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- *An Analysis of Current Reporting Issues*, SEC COMMENTS AND TRENDS (Ernst & Young), Sep. 23, 2014.
- *Rod Miller* et al., *Protecting the Bondholder's Place in the Queue – the Role of Subordination, Anti-layering, Liens, Guarantees, and Time*, in UNDERSTANDING HIGH-YIELD BONDS 63, (PEI, September 25, 2014).

Other Indentures

Group I

A. Indenture, dated as of December 8, 2009, among Acuity Brands Lighting, Inc., as Issuer, Acuity Brands, Inc., as Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 6.00% Senior Notes due 2019 were issued.

B. Indenture, dated as of May 22, 2012, among AerCap Aviation Solutions B.V., as the Company, AerCap Holdings N.V., the Parent Guarantor, and Future Subsidiary Guarantors pursuant to which the 6.375% Senior Unsecured Notes due 2017 were issued.

C. Supplemental Indenture, dated as of November 20, 2012 to May 11, 2010 Indenture, among AK Steel Corporation, as the Company, and AK Steel Holding Corporation, as Parent Guarantor, pursuant to which the 5.00% Exchange Senior Notes due 2019 were issued.

D. Supplemental Indenture, dated as of March 22, 2012 to May 11, 2010 Indenture, among AK Steel Corporation as the Company, AK Steel Holding Corporation, as Parent Guarantor, pursuant to which the 8.375% Senior Notes due 2022 were issued.

E. Indenture, dated as of November 20, 2012, among AK Steel Corporation, as the Company, AK Steel Holding Corporation, as Parent Guarantor, and Future Subsidiary Guarantors, pursuant to which the 8.750% Senior Secured Notes due 2018 were issued.

F. Indenture, dated as of May 11, 2010, among AK Steel Corporation, as the Company, AK Steel Holding Corp., as Parent Guarantor, pursuant to which Debt Securities were issued.

G. Indenture, dated as of October 4, 2013, among Allegion Holding Company Inc., as Issuer, Allegion Plc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5.750% Senior Notes due 2021 were issued.

H. Indenture, dated as of October 16, 2009, among Anheuser-Busch Inbev Worldwide Inc., as the Company, Anheuser-Busch Inbev Nv/Sa, as Parent Guarantor, and Subsidiary Guarantor, pursuant to which Debt Securities were issued.

I. Indenture, dated as of November 17, 2009, among Antero Resources Finance Company, as Issuer, Antero Resources LLC, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 9.375% Senior Notes due 2017 were issued.

J. Indenture, dated as of August 1, 2011, among Antero Resources Finance Corporation, as Issuer, Antero Resources Corporation, as Parent Guarantor, and Future Subsidiary Guarantors, pursuant to which the 7.250% Senior Notes, Series A due 2019 were issued.

K. Indenture , dated as of November 19, 2012, among Antero Resources Finance Corporation, as Issuer, Antero Resources LLC, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 6.0% Senior Notes, Series A due 2020 were issued.

L. Indenture , dated as of November 5, 2013, among Antero Resources Finance Corporation as Issuer, and Antero Resources Corporation, as Parent Guarantor, pursuant to which the 5.373% Senior Notes, Series A due 2021 were issued.

M. Indenture, dated as of April 2, 2012, among Aon Corporation, as the Company, and Aon Plc, as Parent Guarantor, pursuant to which Debt Securities were issued.

N. Indenture, dated as of April 2, 2012, among Aon Corporation, as the Company, and Aon Plc, as Parent Guarantor, pursuant to which the 7.375% Senior Notes due 2012 were issued.

O. Indenture, dated as of March 7, 2013, among Aramark Corporation, as Issuer, Aramark Holdings Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5.75% Senior Notes due 2020 were issued.

P. Indenture, dated as of December 17, 2013, among Aramark Holdings Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5.75% Senior Notes due 2020 were issued.

Q. Indenture, dated as of December 22, 2010, among Atkore International, Inc., as the Company, Atkore International Holdings, Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which Notes were issued.

R. Indenture, dated as of June 5, 2015, among Berry Plastics Corporation, as Issuer, Berry Plastics Group Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5.125% Second Priority Senior Secured Notes due 2023 were issued.

S. Indenture, dated as of May 10, 2011, among CCO Holdings LLC and CCO Holdings Capital Corp, as Co-Issuers, and Charter Communications Inc., as Parent Guarantor, pursuant to which the 6.500% Senior Notes due 2021 were issued.

T. Indenture, dated as of May 16, 2011, among CCO Holdings LLC and CCO Holdings Capital Corp, as Co-Issuers, Charter Communications Inc, as Parent Guarantor, pursuant to which Senior Debt Securities were issued.

U. Indenture, dated as of September 27, 2010, among CCO Holdings, LLC and CCO Holdings Capital Corp., as Co-Issuers, Charter Communications Inc. as Parent Guarantor, and Future Subsidiary Guarantors, pursuant to which the 7.25% Senior Notes due 2017 were issued.

V. Indenture, dated as of April 28, 2010, among CCO Holdings, LLC and CCO Holdings Capital Corp., as Co-Issuers, Charter Communications, Inc., as Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 7.875% Senior Notes due 2018 and the 8.125% Senior Notes due 2020 were issued.

W. Indenture, dated as of November 5, 2014, among CCO Holdings, LLC and CCO Holdings Capital Group and CCOH Safari, LLC, as Co-Issuers, and Charter Communications, Inc., as Parent Guarantor, pursuant to which Debt Securities were issued.

X. Indenture, dated as of January 11, 2011, among CCO Holdings, LLC and CCO Capital Corp, as Co-Issuers, Charter Communications Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 7.00% Senior Notes due 2019 were issued.

Y. First Supplemental Indenture, dated as of November 5, 2014 to November 5, 2014 Indenture, among CCOH Safari, LLC., as Issuer, and Charter Communications, Inc., as Guarantor, pursuant to which the 5.500% Senior Notes due 2022 were issued.

Z. Indenture, dated as of December 17, 2010, among CDW LLC and CDW Finance Corporation, as Co-Issuers, CDW Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 8 % Senior Secured Notes due 2018 were issued.

AA. Supplemental Indenture, dated as of May 6, 2011 to May 6, 2011 Indenture, among Celanese US Holdings LLC, as Issuer, Celanese Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5 7/8% Senior Notes due 2011 were issued.

BB. Supplemental Indenture, dated as of November 13, 2012 to May 6, 2011 Indenture, among Celanese US Holdings LLC, as Issuer, Celanese Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 4.625% Senior Notes due 2022 were issued.

CC. Indenture, dated as of May 6, 2011, among Celanese US Holdings LLC, as Issuer, and Celanese Corporation, as Parent Guarantor, pursuant to which Senior Debt Securities were issued.

DD. Indenture, dated as of September 24, 2010, among Celanese US Holdings, LLC, as Issuer, Celanese Corporation, as the Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 6.8 % Senior Notes due 2018 were issued.

EE. Indenture, dated as of November 4, 2011, among Chiron Merger Sub, Inc., as Initial Issuer, Kinetic Concepts, Inc. and KCI USA, Inc., as Joint and Several Issuers, Chiron Guernsey LP Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 10.5% Second Lien Senior Secured Notes due 2018 were issued.

FF. Indenture, dated as of November 4, 2011, among Chiron Merger Sub., Inc., as Initial Issuer, Kinetic Concepts, Inc. and KCI USA, Inc., as Joint and Several Issuers, Chiron Guernsey LP, Inc., and Subsidiary Guarantors, pursuant to which the 12.5% Senior Notes due 2019 were issued.

GG. Indenture, filed as of September 3, 2010, among Compton Petroleum Finance Corporation, as Issuer, Compton Petroleum Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 10% Senior Mandatory Convertible Notes due 2011 were issued.

HH. Indenture, filed as of August 30, 2010, among Compton Petroleum Finance Corporation, as Issuer, Compton Petroleum Finance Corporation, as the Parent Guarantor, Subsidiary Guarantors pursuant to which the 10% Senior Mandatory Convertible Notes due 2017 were issued.

II. Indenture, filed as of October 8, 2010, among Compton Petroleum Finance Corporation, as Issuer, Compton Petroleum Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 10 % Senior Mandatory Convertible Notes due 9/2017 were issued.

JJ. Indenture, dated as of September 16, 2011, among Cubesmart L.P., as Issuer, Cubesmart, as Parent Guarantor, and Subsidiary Guarantor, pursuant to which Debt Securities were issued.

KK. Indenture, dated as of September 10, 2012, among Directv Holdings LLC and Directv Financing Co., as Co-Issuers, Directv, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which Securities were issued.

LL. Indenture, dated as of September 14, 2012, among Directv Holdings LLC and Directv Financing Co., as Co-Issuers, Directv, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which Unsecured Debt Securities were issued.

MM. Indenture, dated as of March 8, 2012 among Directv Holdings LLC and Directv Financing Co., as Co-Issuers, Directv, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 2.400% Senior Notes due 2017, the 3.80% Senior Notes due 2011, and the 5.150% Senior Notes due 2014 were issued.

NN. Indenture, dated as of May 18, 2011, among Dycom Investments, Inc., as Issuer, and Dycom Industries, Inc., as Parent Guarantor, pursuant to which Debt Securities were issued.

OO. Indenture, dated as of May 22, 2009, among El Pollo Loco Inc., as Issuer, EPL Intermediate, Inc., as Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 11 3/4% Senior Secured Notes due 2012 were issued.

PP. Supplemental Indenture, dated as of October 22, 2013 to May 31, 2011 Indenture, among Exopack Holding Corp., as the Company, Exopack Intermediate Holdings S Ar. L., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 10% Senior Notes due 2018 were issued.

QQ. Indenture, dated as of May 31, 2011, among Exopack Holding Corp., as the Company, and Subsidiary Guarantors, pursuant to which the 10% Senior Notes due 2018 were issued.

RR. Indenture, dated as of January 15, 2013, among Far East Energy (Bermuda), Ltd., as the Company, Far East Energy Corporation, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5% Senior Secured Notes due 2016 were issued.

SS. Indenture, dated as of May 21, 2013, among Freescale Semiconductor, as Issuer, Freescale Semiconductor Holdings, Ltd., as Parent, Holdings II, Holdings II, Holdings IV, Holdings V, as Parent Guarantors, and Subsidiary Guarantors, pursuant to which the 5.00% Senior Secured Notes due 2021 were issued,

TT. Indenture, dated as of November 1, 2013, among Freescale Semiconductor, as Issuer, Freescale Semiconductor Holdings, Ltd., as the Parent, Holdings II, Holdings II, Holdings IV, Holdings V, as Parent Guarantors, Subsidiary Guarantors, pursuant to which the 6.000% Senior Secured notes Due 2022 were issued.

UU. Indenture, dated as of June 10, 2011, among Freescale Semiconductor Inc., as Issuer, Holdings I, Holdings II, Holdings II, Holdings IV, Holdings V, as Parent Guarantors, and Subsidiary Guarantors, pursuant to which the 8.05% Senior Notes due 2020 were issued.

VV. Indenture, dated as of April 13, 2010, among Freescale Semiconductor, Inc., as Issuer, Freescale Semiconductor Holding I, Ltd, Freescale Semiconductor Holding II, Ltd, Freescale Semiconductor Holding III, Ltd, Freescale Semiconductor Holding IV, Ltd, Freescale Semiconductor Holding V, Ltd , as Parent Guarantors, and Subsidiary Guarantors, pursuant to which the 9 1/4% Senior Secured Notes due 2018 were issued.

WW. Indenture, dated as of February 19, 2010, among Freescale Semiconductor, Inc., as Issuer, Freescale Semiconductor Holding I, Ltd, Freescale Semiconductor Holding II, Ltd, Freescale Semiconductor Holding III, Ltd, Freescale Semiconductor Holding IV, Ltd, Freescale Semiconductor Holding V, Ltd, as Parent Guarantors, and Subsidiary Guarantors, pursuant to which the 10 1/8% Senior Secured Notes due 2018 were issued.

XX. Indenture, dated as of October 30, 2013, among GLP Capital, L.P and GLP Financing II, Inc., as Co-Issuers, Gaming And Leisure Properties, Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which Senior Notes were issued.

YY. Indenture, dated as of April 20, 2011, among Goodyear Dunlop Tires Europe B.V., as Issuer, Goodyear Tire and Rubber Company, as the Company and Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 6 3/4% Senior Notes due 2019 were issued.

ZZ. Indenture, dated as of November 24, 2009, among Graham Packaging Company, L.P., and GPC Capitol Corp. I, as Issuers, Graham Packing Holdings Company, as the Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 8 1/4% Senior Notes due 2017 were issued.

AAA. Supplemental Indenture, dated as of April 2, 2013 to September 29, 2010 Indenture, among Graphic Packaging International, Inc., as the Company, Graphic Packaging Holding Company, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 7.875% Senior Notes due 2018 were issued.

BBB. Indenture, dated as of September 29, 2010, among Graphic Packaging International, Inc., as the Company, Graphic Packaging Holding Company, as Parent Guarantor. and Subsidiary Guarantors, pursuant to which the 7.875% Senior Notes due 2018 were issued.

CCC. Indenture, dated as of August 01, 2011, among HCA Inc., as Issuer, and Subsidiary Guarantors, pursuant to which the 8.00% Senior Notes due 2018 were issued.

DDD. Indenture, dated as of April 5, 2013, among Intelsat (Luxembourg) S.A., as Issuer, Intelsat S.A., as Parent Guarantor, and Future Subsidiary Guarantors, pursuant to which the 6 3/4% Senior Notes due 2018, the 7 3/4% Senior Notes due 2021, and the 8 1/8% Senior Notes due 2023 were issued.

EEE. Indenture, dated as of June 5, 2013, among Intelsat Jackson Holdings S.A., as Issuer, Holdings, Intelsat Investment Holdings, Intelsat Holdings, Intelsat Investments, Intelsat Luxembourg, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5.5% Senior Notes Due 2023 were issued.

FFF. Indenture, dated as of April 27, 2009, among JBS USA LLC and JBS USA Finance, Inc., as Co-Issuers, JBS S.A., JBS USA Holding, Inc., JBS Hungary Kft. As Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 11.625 % Senior Notes due 2014 were issued.

GGG. Indenture, dated as of April 5, 2011, among Kennedy-Wilson Inc., as the Company, Kennedy-Wilson Holdings, Inc., as Parent Guarantor. and Subsidiary Guarantors, pursuant to which the 8.750% Senior Notes due 2019 were issued.

HHH. Third Supplemental Indenture dated as of December 11, 2011 to January 20, 2011 Indenture, among Laredo Petroleum, Inc., as the Company, and Laredo Petroleum Holdings, Inc., as the new Parent Guarantor, pursuant to which the new Parent Guarantor assumed liability.

III. Indenture, dated as of January 20, 2011, among Laredo Petroleum, Inc., as the Company, Laredo Petroleum, LLC, as the Parent, and Subsidiary Guarantors, pursuant to which the 9 1/2% Senior Notes due 2019 were issued.

JJJ. Second Supplemental Indenture, dated as of June 3, 2013, among McMoRan Exploration Co., as the Company, Freeport-McMoran Copper & Gold Inc., as Parent Guarantor, providing for merger and release of Guarantees.

KKK. First Supplemental Indenture, dated as of November 14, 2007, among McMoRan Exploration Co., as the Company, and the Subsidiary Guarantors, pursuant to which the 11.875% Senior Notes due 2014 were issued.

LLL. Indenture, dated as of November 14, 2007, among McMoran Exploration Co. as the Company.

MMM. Indenture, dated as of August 9, 2013, among MPT Operating Partnership, L.P. (OpCo) [MPT Finance Corporation (Finance Corporation)], as Issuers, Medical Properties Trust, Inc., as Parent Guarantor, and Future Subsidiary Guarantors, pursuant to which Debt Securities were issued.

NNN. Indenture, dated as of October 10, 2013, among MPT Operating Partnership, L.P. (OpCo) [MPT Finance Corporation (Finance Corporation)], as Issuers, Medical Properties Trust, Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which Debt Securities were issued.

OOO. Supplemental Indenture, dated as of October 10, 2013 to October 10, 2013 Indenture, among MPT Operating Partnership, L.P. (OpCo) [MPT Finance Corporation (Finance Corporation)], as Issuers, Medical Properties Trust, Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 5.750% Senior Notes due 2020 were issued.

PPP. Indenture, filed July 22, 2011, among Niska Gas Storage US, LLC, Niska Gas Storage US Finance Corp., Niska Gas Storage Canada Ulc, Niska Gas Storage Canada Finance Corp., as Issuers, Niska Gas Storage Partner LLC, as Parent Guarantor, pursuant to which Debt Securities were issued.

QQQ. Indenture, dated as of November 8, 2012, among Northern Tier Energy LLC, as Issuer, Northern Tier Finance Corporation Northern Tier Energy LP, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 7.125% Senior Secured Notes due 2020 were issued.

RRR. Indenture, dated as of March 9, 2011, among Northstar Realty Finance Limited Partnership, as Issuer, Northstar Realty Finance Corp., as Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 7.50% Exchangeable Senior Notes due 2031 were issued.

SSS. Indenture, dated as of June 12, 2012, among Northstar Realty Finance Limited Partnership, as Issuer, Northstar Realty Finance Corp., as the Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 8.875% Exchangeable Senior Notes due 2032 were issued.

TTT. Indenture, dated as of June 19, 2013, among Northstar Realty Finance Limited Partnership, as Issuer, Northstar Realty Finance Corp., as Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 5.373% Exchangeable Senior Notes due 2033 were issued.

UUU. Indenture, dated as of Filed February 27, 2009, among NRP (Operating) LLC, as Issuer, Natural Resource Partners, L.P., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which Debt Securities were issued.

VVV. Supplemental Indenture, dated as of January 22, 2013 to January 22, 2013 Indenture, among Nustar Logistics, L.P., as Partner, Nustar Energy, L.P., as Parent Guarantor, and Affiliate Guarantor, pursuant to which the 7.625% Fixed-to-Floating Rate Subordinated Notes due 2043 were issued.

WWW. Indenture, dated as of January 22, 2013, among Nustar Logistics, L.P., as Partner, Nustar Energy, L.P., as Parent Guarantor, and Affiliate Guarantor, pursuant to which Subordinate Debt Securities were issued.

XXX. Indenture, dated as of June 8, 2011, among Prologis, L.P., as the Company, Prologis, Inc., as Parent Guarantor and General Partner, pursuant to which Senior Debt Securities were issued.

YYY. Indenture, dated as of July 15, 2009, among Regal Cinemas Corporation, as the Company, and Regal Entertainment Group, as Parent Guarantor, pursuant to which the 8.625% Senior Notes due 2019 were issued.

ZZZ. Indenture, dated as of September 5, 2012, among Rockwood Specialties Group, Inc., as Issuer, Rockwood Holdings, Inc., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 4.625% Senior Notes due 2020 were issued.

AAAA. Supplemental Indenture, dated as of May 18, 2012, to the May 18, 2012 Indenture, among Sally Holdings LLC and Sally Capital Inc., as Co-Issuers, the Parent and Subsidiary Guarantors, and Wells Fargo Bank, National Association, as Trustee, pursuant to which the 5.75% Senior Notes due 2022 were issued.

BBBB. Second Supplemental Indenture, dated as of October 29, 2013, to the May 18, 2012 Indenture, among Sally Holdings LLC and Sally Capital Inc., as Co-Issuers, the Parent and Subsidiary Guarantors, and Wells Fargo Bank, National Association, as Trustee, pursuant to which the 5.50% Senior Notes due 2023 were issued.

CCCC. Indenture, dated as of December 20, 2011, among Sally Holdings, LLC and Sally Capital Inc., as Co-Issuers, and Sally Beauty Holdings, Inc., and Sally Investment Holdings, Inc., as Parent Guarantors, pursuant to which the 6 7/8% Senior Notes due 2019 were issued.

DDDD. Second Supplemental Indenture, dated as of May 4, 2012 to December 20, 2011 Indenture, among Sally Holdings, LLC and Sally Capital Inc., as Co-Issuers, and Sally Beauty Holdings, Inc. and Sally Investment Holdings, Inc., as Parent Guarantors, Pursuant to which the 6 7/8% Senior Notes due 2019 were issued.

EEEE. Indenture, dated as of November 8, 2011, among Sally Holdings, LLC, as the Company, Sally Capital Inc., as Co-Issuers, and Sally Beauty Holdings, Inc. and Sally Investment Holdings, Inc. as the Parent Guarantors, Pursuant to which the 6 7/8% Senior Notes due 2019 were issued.

FFFF. Indenture, dated as of November 8, 2011, among Sally Holdings, LLC, as the Company, Sally Capital Inc., as the Co-Issuers, and Sally Beauty Holdings, Inc. and Sally Investment Holdings, Inc., as Parent Guarantors, pursuant to which the 6 7/8% Senior Notes due 2019 were issued.

GGGG. Indenture, dated as of November 5, 2013, among Seagate HDD Cayman, as the Company, and Seagate Technology Plc, as Parent Guarantor, pursuant to which the 3.75% Senior Notes due 2018 were issued.

HHHH. Indenture, dated as of May 22, 2013, among Seagate HDD Cayman, as the Company, and Seagate Technology Plc, as Parent Guarantor, pursuant to which the 4.75% Senior Notes due 2023 were issued.

IIII. Indenture, dated as of May 18, 2011, among Seagate HDD Cayman, as the Company, Seagate Technology Plc, as Parent Guarantor, pursuant to which the 7.00% Senior Notes due 2021 were issued.

JJJJ. Indenture, dated as of May 14, 2015, among Seagate HDD Cayman, as Issuer, Seagate Technology Plc, as Parent Guarantor, and Future Subsidiary Guarantors, pursuant to which the 4.875% Senior Notes due 2027 were issued.

KKKK. Indenture, dated as of September 20, 2006, among Seagate Technology HDD Holdings, as Issuer, and Seagate Technology, as Parent Guarantor, pursuant to which the 6.375% Senior Notes due 2011 and 6.800% Senior Notes due 2016 were issued.

LLLL. Indenture, dated as of June 17, 2013, among Summit Midstream Holdings, LLC, as the Company, Summit Midstream Finance Corp, as Issuer, Summit Midstream Partners, L.P., as the Parent Guarantor, and Subsidiary Guarantors, pursuant to which Initial Notes, Exchange notes and Additional Notes were issued.

MMMM. Third Supplemental Indenture, dated as of October 3, 2011 to August 1, 2011 Indenture, among HCA Inc., as Issuer, and Hca Holdings, Inc., as Parent Guarantor, pursuant to which the 8.00% Senior Notes due 2018 were issued.

NNNN. Indenture, dated as of April 8, 2015, among TA Mfg Limited, as Issuer, Esterline Technologies Corp., as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 3.625% Senior Notes due 2023 were issued.

OOOO. Indenture, dated as of April 15, 2011, among Taseko Mines Limited, as Issuer and Parent Guarantor, and Gibraltar Mines Ltd. and Aley Corporation, as the Subsidiary Guarantors, pursuant to which Debt Securities were issued.

PPPP. Indenture, dated as of October 26, 2009, among Terra Capital, Inc., as Issuer, Terra Industries, Inc., as the Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 7.75% Senior Notes due 2019 were issued.

QQQQ. Indenture, dated as of April 19, 2011, among Texas Competitive Electric Holdings Company LLC and TCEH Finance Inc., as Co-Issuers, and Energy Future Competitive Holdings Company, as the Parent Guarantor, pursuant to which the 11.5% Senior Secured Notes due 2020 were issued.

RRRR. Indenture, dated as of October 6, 2010, among Texas Competitive Electric Holdings Company LLC, as Issuer, Energy Future Competitive Holdings Company, as the Parent Guarantor, and Subsidiary Guarantors, pursuant to which the Senior Secured Second Lien Notes due 2021 were issued.

SSSS. Supplemental Indenture, dated as of May 11, 2012, to the May 11, 2012 Indenture, among Thompson Creek Metals Company, Inc., as the Company, and Future Parent Guarantor, pursuant to which the 12.5% Senior Notes due 2019 were issued.

TTTT. Indenture, dated as of May 11, 2012, among Thompson Creek Metals Company, Inc., as the Company, pursuant to which Debt Securities were issued.

UUUU. Indenture, dated as of May 20, 2011, among Thompson Creek Metals Company, Inc., as Issuer, and Parent Guarantor, and Subsidiary Guarantors, pursuant to which the 7.375% Senior Notes due 2018 were issued.

VVVV. Indenture, dated as of November 30, 2011, among Travelport LLC, as the Company, Travelport Limited, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which the Second Priority Senior Secured Notes due 2016 were issued.

WWWW. Indenture, dated as of August 15, 2013, among Trinity Acquisition Plc, as Issuer, Willis Group Holdings Public Limited Company, as Parent Guarantor, and other Guarantors, pursuant to which Debt Securities were issued.

XXXX. Indenture, dated as of September 16, 2014, among W.R. Grace and Co.-Conn., as Issuer, W.R. Grace and Co., as Parent Guarantor, and Future Subsidiary Guarantors, pursuant to which Debt Securities were issued.

YYYY. Indenture, dated as of November 26, 2013, among Wesco Distribution, Inc., as Issuer, and Wesco International, Inc., as Parent Guarantor, pursuant to which the 5.375% Senior Notes due 2012 were issued.

ZZZZ. Indenture, filed as of October 29, 2012, among Willis North America, Inc., as Issuer, Willis Group Holdings Public Limited Company, as Parent Guarantor, and other Guarantors, pursuant to which Unsecured Debentures, Notes or other evidences of indebtedness were issued.

AAAAA. Indenture, filed as of June 3, 2009, among WPP Finance (UK), as Issuer, WPP Plc, as Parent Guarantor, and Subsidiary Guarantors, pursuant to which Debt Securities were issued.

BBBBB. Indenture, dated as of June 30, 2009, among XM Satellite Radio Inc., as the Company, XM Satellite Radio Holdings, Inc., as the Parent Guarantor, and Subsidiary Guarantor, pursuant to which the 11.25% Senior Secured Notes due 2013 were issued.

Group II

A. Indenture dated as of June 30, 1998, among AMB Property, L.P., ("Issuer"), AMB Property Corporation ("Parent Guarantor"), State Street Bank And Trust Company Of California, N.A. ("Trustee"), pursuant to which Floating Rate Senior Notes due 2013 and 11 1/4% Senior Notes due 2016 were issued.

B. Indenture, dated as of July 1, 2005, among Willis North America Inc. (the "Issuer"), Willis Group Holdings Limited, TA I Limited, TA II Limited, TA III Limited, Trinity Acquisition Limited, a TA IV Limited, and Willis Group Limited ("Guarantors"), and JPMorgan Chase Bank, N.A. ("Trustee").

C. First Supplemental Indenture, dated as of July 1, 2005, between Willis North America Inc. ("Issuer"), Willis Group Holdings Limited ("Parent Guarantor"), TA I Limited, TA II Limited, TA III Limited, Trinity Acquisition Limited, TA IV Limited, and Willis Group Limited (collectively, including the Parent Guarantor, the "Guarantors") and JPMorgan Chase Bank, N.A., as trustee ("Trustee").

D. Indenture dated as of October 24, 2005 by and among RPM United Kingdom G.P., RPM International Inc. ("Parent Guarantor"), and The Bank of New York Trust Company, N.A., ("Trustee"), pursuant to which 6.70% Senior Notes due 2015 were issued.

E. Indenture dated as of December 12, 2005, among Transmeridian Exploration Inc. ("Issuer"), Transmeridian Exploration Incorporated, TMEI Operating, Inc. and Transmeridian (Kazakhstan) Incorporated , as Guarantors and The Bank Of New York ("Trustee"), pursuant to which Senior Secured Notes due 2010 were issued.

F. Indenture dated as of November 18, 2005 among Crown Americas LLC and Crown Americas Capital Corp. ("Issuers"), the Guarantors, and Citibank, N.A. ("Trustee"), pursuant to which the 7-5/8% Senior Notes due 2013 were issued.

G. Indenture dated as of March 24, 2005 among Progress Rail Services Corporation and Progress Metal Reclamation Company (the "Issuers"), Progress Rail Services Holdings Corp. ("Parent Guarantor"), the Initial Subsidiary Guarantors and The Bank of New York ("Trustee"), pursuant to which 7.75% Senior Notes due 2012 were issued.

H. Indenture dated as of June 30, 1988 among AMB Property, L.P., AMB Property Corporation ("Parent Guarantor") and State Trust Bank and Trust Company of California, N.A. ("Trustee")

I. Seventh Supplemental Indenture dated as of August 10, 2006 among AMB Property, L.P., AMB Property Corporation ("Parent Guarantor") and State Trust Bank and Trust Company of California, N.A. ("Trustee").

J. Indenture dated as of July 3, 2006 among Intelsat (Bermuda), Ltd. ("Issuer"), Intelsat, Ltd. ("Parent Guarantor"), and Wells Fargo Bank, National Association ("Trustee"), pursuant to which 11 1/4% Senior Notes due 2016 and Floating Rate Senior Notes due 2013 were issued.

K. Indenture, dated as of August 1, 2006 among Verso Paper Holdings LLC and Verso Paper Inc. (the "Issuers"), the Guarantors, and Wilmington Trust Company, as Trustee, pursuant to which 11 3/8% Senior Subordinated Notes due 2016 were issued.

Prospectuses

– Prospectus dated June 29, 2007 pursuant to which Verso Paper Holdings LLC offered to exchange 9 1/8% Series B Second Priority Senior Secured Fixed Rate Notes due 2014, Series B Second Priority Senior Secured Floating Rate Notes due 2014, and 11 3/8% Series B Senior Subordinated Notes due 2016.

– Prospectus dated September 14, 2011 pursuant to which Charter Communications, Inc. and CCO Holdings, LLC offered to exchange 7.00% Senior Notes due 2019.

– Prospectus Supplement, dated January 4, 2011, to Prospectus dated January 4, 2011, pursuant to which CCO Holdings, LLC, and CCO Holdings Capital Corp. issued 7.00% Senior Notes due 2019.

– Prospectus Supplement dated June 2, 2006 for issuance of 6.50% Senior Notes due 2016.