

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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In re:	:	Chapter 11
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CAESARS ENTERTAINMENT	:	Case No. 15-01145 (ABG)
OPERATING COMPANY, INC., <i>et al.</i> , <sup>1</sup>	:	
	:	(Jointly Administered)
Debtors.	:	
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**INITIAL RESPONSE OF SECOND PRIORITY NOTES TRUSTEE  
BOKF, N.A. TO DEBTORS’ MOTION FOR THE ENTRY OF AN ORDER  
APPROVING APPOINTMENT OF A MEDIATOR TO MEDIATE ISSUES  
RELATED TO A CHAPTER 11 PLAN OF REORGANIZATION**

BOKF, N.A., (“BOKF”), successor trustee for the 12.75% Second-Priority Senior Secured Notes Due 2018 (the “12.75% Second Priority Notes”) in the principal amount of \$750 million, hereby files this Initial Response (the “Response”) to the *Debtors’ Motion for the Entry of an Order Approving Appointment of a Mediator to Mediate Issues Related to a Chapter 11 Plan of Reorganization* [ECF No. 3195] (the “Mediation Motion”)<sup>2</sup> and in support thereof, respectfully represents as follows:

1. “A journey of a thousand miles begins with a single step.” *Lao Tzu*. As this Court is aware, these chapter 11 cases are complex and involve many disputes. Some disputes are being litigated now and some inevitably will be litigated in the future. Confirmation of a plan seems a thousand miles away due to these unresolved disputes; however, BOKF supports the Debtors taking that first step to achieve consensus through mediation.

<sup>1</sup> The last four digits of Caesars Entertainment Operating Company, Inc.’s tax identification number are 1623. Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Disclosure Statement Scheduling Motion.

2. Mediation appears to be a reasonable and efficient solution for streamlining the process, avoiding protracted litigation and appeals, and bringing all stakeholders to the negotiating table in a meaningful way. BOKF therefore supports the appointment of a sitting or retired bankruptcy judge agreed to by the parties as mediator, provided that the mediation process is fair, balanced, structured and timed to provide the best prospects for success and obtaining consensual resolution of the issues. But, certain aspects of the Debtors' proposed path must be modified to lead to that desired result.

3. First, BOKF should be added as a "relevant key stakeholder" in the mediation process. BOKF is the plaintiff in the action pending in the United States District Court for the Southern District of New York, captioned *BOKF, N.A. v. Caesars Entertainment Corporation*, Case No. 1:15-cv-01561-SAS (the "BOKF Action"). The Debtors have argued that the *BOKF Action*, scheduled for trial on March 14, 2016, materially affects these chapter 11 cases and should be enjoined. *See, e.g.* Adv. Case No. 15-00149.<sup>3</sup> BOKF also is a defendant in litigation commenced by the Statutory Committee of Unsecured Claimholders claiming, among other things, that BOKF is barred from asserting a recourse claim against the Debtors, notwithstanding section 1111(b)(1)(A) of the Bankruptcy Code. *See* Adv. Pro. No. 15-0057. And, BOKF is participating as a party in interest in the contested matter adjudicating Wilmington Trust, N.A.'s two pending claims objections against the first lien parties. *See, e.g.*, ECF No. 3143. Therefore, BOKF must be directly involved for a successful mediation. There is also no reason to treat BOKF differently than two other indenture trustees who are allowed to participate independently. *See* Mediation Motion, ¶ 8 (listing Wilmington Trust N.A. and Law Debenture

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<sup>3</sup> The Debtors also have asserted that a chapter 11 plan in these cases is the proper platform to resolve the issues raised in the *BOKF Action*. *See* Mediation Motion, ¶ 17. BOKF disagrees, and its support of a mediation process is not meant to, and should not be construed as, a waiver of BOKF's arguments with respect thereto. Nor should BOKF's participation in the mediation process be a basis to stay the *BOKF Action* or to delay the trial in that Action.

Trust Company of New York, two indenture trustees on the Official Committee of Unsecured Claimholders as relevant key stakeholders).

4. Second, the confirmation process should be held in abeyance until the conclusion of mediation in order to ensure a focused and meaningful mediation and enhance the likelihood of a successful outcome. BOKF agrees that mediation should begin after the Examiner has filed his long-awaited unredacted report and parties have had the opportunity to evaluate it. It makes little sense, however, to require parties to engage in a hotly contested confirmation process when the very purpose of mediation is to come to a settlement on creditor treatment under a plan.<sup>4</sup>

5. For example, under the Debtors' proposed process, the parties would engage in, *inter alia*, discovery related to the Debtors' valuation of CEC's purported "contribution" included in an updated disclosure statement, expedited litigation concerning the numerous pending disputes, and accelerated filing of additional and new litigation, while simultaneously preparing several mediation statements to present before a mediator. Such dual-tracking of mediation and confirmation will not facilitate a meaningful mediation and will only serve to impede and defeat the very purpose of mediation.<sup>5</sup>

6. Third, once the Examiner's report is issued, the parties, the Court and the mediator should have the opportunity to analyze, narrow and frame the issues ripe for mediation before any determination is made on how or when the plan process should proceed. The not yet appointed mediator should not be hamstrung by the Debtors' requirement that the not yet

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<sup>4</sup> The *BOKF* Action, in contrast, involves non-estate litigation against third parties, not the Debtors or the estates. That litigation, scheduled for trial in approximately one month, will fix the liabilities of the parties and help advance and have a positive effect on these chapter 11 cases and provide a framework for discussions during the mediation.

<sup>5</sup> Similarly, and unlike the *BOKF* Action, the Court should temporarily hold in abeyance any decision on the two pending claims objections filed by Wilmington Trust, N.A. regarding section 1111(b) of the Bankruptcy Code. Those issues relate to a chapter 11 plan and directly concern claims against the Debtors and thus, are one of the many disputes that could be addressed and hopefully resolved through mediation.

established plan and solicitation process proceed concurrently. Instead, the mediator should have the opportunity to determine his schedule and the time frame and parameters of the mediation.

7. Subject to the above modifications, including adding BOKF as a “relevant key stakeholder” in the mediation process, BOKF supports the appointment of a mediator to enable the parties to take the first step on the journey toward confirmation.

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Dated: February 10, 2016  
Chicago, Illinois

Attorneys for BOKF, N.A. solely in its  
capacity as successor trustee for the 12.75%  
Second-Priority Senior Secured Notes Due  
2018

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