UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
	)	
Debtors.	)	(Jointly Administered)

DEBTORS' REPLY IN SUPPORT OF THEIR MOTION FOR ENTRY OF AN ORDER (I) ENFORCING THE AUTOMATIC STAY, (II) VOIDING ACTIONS TAKEN IN VIOLATION OF THE AUTOMATIC STAY, (III) FOR CONTEMPT AND SANCTIONS AGAINST THE NRF AND THE NRF TRUSTEES, AND (IV) GRANTING RELATED RELIEF
(THE "EXPULSION REPLY")

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

The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this reply (this "Expulsion Reply") to NRF's objection [Dkt. No. 1141] (the "Expulsion Objection") to the *Debtors' Motion for Entry of an Order (I) Enforcing the Automatic Stay, (II) Voiding Actions Taken in Violation of the Automatic Stay, (III) For Contempt and Sanctions Against the NRF and the NRF Trustees, and (IV) Granting Related Relief* [Dkt. No. 644] (the "Expulsion Motion").[1]

Preliminary Statement

1. Caesars Entertainment Operating Company, Inc. ("CEOC") was subject to an involuntary bankruptcy petition filed on January 12, 2015 in the Delaware Bankruptcy Court. NRF was therefore subject to the automatic stay on January 12, 2015. See 11 U.S.C. § 362(a). At that time, CEOC was an "Employer" under three separate collective bargaining agreements relevant here (although there is a genuine issue of disputed fact between the Debtors and the NRF on these issues),[2] and also under the relevant provisions of ERISA. CEOC's rights under those CBAs were assets of its bankruptcy estate on January 12. Those CBAs, in turn, required CEOC and its subsidiaries, if not CEOC itself, to contribute to the NRF.

2. The NRF's purported Expulsion violated the automatic stay. If the Expulsion Notices in fact expelled CEOC together with its subsidiaries from the NRF, then this expulsion would liquidate withdrawal liability against CEOC and would render CEOC liable for that claim.

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[1] Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Expulsion Motion.

[2] See *Agreement* dated November 1, 2011, between Boardwalk Regency Corp. and Local 54, affiliated with UNITE HERE International Union (the "Boardwalk Regency CBA") § 21.1; *Agreement* dated Nov. 1, 2011**,** between Bally's Park Place, Inc. and Unite Here Local 54 (the "Bally's Park Place CBA") § 21.1; *Agreement* dated June 1, 2008, between Harrah's Laundry Las Vegas (n/k/a Parball Corp.) and Culinary Workers Union Local 226, Art. 28 (the "Harrah's Laundry CBA," and, together with the Boardwalk Regency CBA and the Bally's Park Place CBA, the "CBAs").

See 29 U.S.C. §§ 1301(b), 1381(a). Conversely, if the Expulsion Notices only expelled CEOC's subsidiaries and not CEOC, then CEOC would now be required, in their stead, to make contributions to the NRF under both the CBAs and ERISA. See 29 U.S.C. §§ 1002(5), 1145. Under either scenario, the NRF's Expulsion violated the automatic stay.

3. The NRF raises four principal arguments in opposition. First, the NRF argues the Expulsion Motion can be denied based on the "undisputed facts" asserted by the NRF's own objection. Second, the NRF asserts that its Expulsion Notice did not violate the automatic stay because CEOC was not a "participating employer" in the NRF, and thus did not have any right impaired by the NRF's disputed Expulsion. (Expulsion Obj. p. 8; accord id. pp. 10 & n.19, 12). Third, the NRF claims the Expulsion Notices did not violate 362(a)(3) because the Expulsion Notices were not specifically directed to CEOC, (see id. pp. 8–9), and, in any event, the public interest in preserving the integrity of multiemployer pension plans impliedly exempts the NRF's actions from the automatic stay. Fourth, the NRF argues that, even if the Expulsion Notices violated the automatic stay as to CEOC, they remain effective as to all other controlled group members. Additionally, the NRF asserts that the Court cannot impose sanctions because its actions were not "willful" and because the Court cannot impose sanctions at the request of a corporate debtor.

4. Each argument fails here. First, the "undisputed" facts on which the NRF relies are not, in fact, undisputed. Though the NRF agreed by the Standstill Agreement that it would file a "Dispositive Motion" to resolve the Expulsion Motion solely on "matters of law," the NRF failed to do so. (See Standstill Agmt. § 1(a)).[3] As called for under the Standstill Agreement

[3] The "Standstill Agreement" means that certain *Standstill Agreement* dated as of March 20, 2015, attached as **Exhibit 1** to the *Order Establishing Certain Briefing Dates and*

approved by the Court, a discovery schedule should therefore be set with respect to the factual disputes raised by the Expulsion Objection to allow the parties and the Court to address the Expulsion Motion on a complete record. (See [Dkt. No. 1020], ¶ 7.)

5. Second, the NRF wrongly asserts that the Expulsion did not impact CEOC's property rights because "CEOC has never been a participating Employer in the NRF," (Obj. at pp. 8, 10, 12.) But the CBAs of three of the four subsidiaries on the receiving end of the Expulsion Notices (all of which the NRF possesses) establish that CEOC is an "Employer" with an independent obligation to contribute to the NRF. And, without question, CEOC was an "employer" under the relevant ERISA provisions establishing controlled group liability on January 12, 2015. See 29 U.S.C. §§ 1002(5), 1145, 1301(b)(1). The NRF has thus put itself in a box. Either CEOC was not actually expelled by the Expulsion Notices and retains the obligation to make the ordinary course monthly contributions called for by the CBAs, in which case the NRF should not be pressuring the Caesars Controlled Group for withdrawal liability payments; or, CEOC was expelled by the Expulsion Notices, in which case the NRF's protestations to the contrary are nothing more than a transparent attempt to dodge the automatic stay after the fact. The NRF's actions to date, most obviously including its Quarterly Payment Demand to CEC and CERP, make clear that the NRF believes it has expelled CEOC from the NRF, in violation of the automatic stay.

6. Third, even if CEOC were not itself an Employer with the independent obligation to contribute to the NRF, the NRF cannot evade the automatic stay by line-editing CEOC's name from the Expulsion Notices where the effect is the same as if the Expulsion Notices had been sent to CEOC itself. Even if CEOC were not itself an Employer, the expulsion of CEOC's four

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Deadlines as Set Forth in the Standstill Agreement With the NRF and the NRF Trustees [Dkt. No. 1020].

employer subsidiaries subjected CEOC to more than $460 million of previously-contingent withdrawal liability claims. The Expulsion therefore violated the automatic stay even if CEOC were not an Employer (which is a disputed fact, as noted above). See In re Nortel Networks Corp., 426 B.R. 84, 91 (Bankr. D. Del. 2010). Nor was the NRF's Expulsion impliedly exempt from the automatic stay—although Congress certainly knows how to enact such exceptions where it chooses to do so. See 11 U.S.C. § 362(b), 29 U.S.C. § 1342(e).

7. Fourth, the NRF's Expulsion Notices were void as a matter of law for CEOC and all members of the Caesars Controlled Group. See Middle Tennessee News Co., Inc. v. Charnel of Cincinnati, Inc., 250 F.3d 1077, 1082 (7th Cir. 2001). Any alternative rule would permit the NRF to accomplish indirectly what the automatic stay prohibits it from doing directly.

8. Finally, this Court has authority to sanction both the NRF and its trustees for their knowing and willful violation of the automatic stay. Section 362(k)(1)'s authorization to award actual and punitive damages for violation of the automatic stay with respect to individuals in no way limits this Court's authority to enforce the automatic stay through appropriate remedies where, as here, parties have knowingly and willfully violated the automatic stay with respect to a corporate debtor. See 11 U.S.C. § 105(a).

I. The NRF Did Not File a Dispositive Pleading On Matters of Law as Required by the Standstill Agreement.

9. The Standstill Agreement requires that the "NRF and the NRF Trustees shall move to dispose, deny and/or dismiss, on matters of law, the Pending Proceedings," including the Expulsion Motion. (Standstill Agmt § 1(a), emphasis added.) This provision gave the NRF the ability to only address threshold legal issues without the delay that might otherwise result from prolonged discovery and fact-finding. (Mar. 25, 2015, Hr'g Tr. 58:8–13.) But the NRF did not limit its objection to "matters of law" alone. Nor did the NRF file a "Dispositive

Motion." Instead, the NRF invokes 'facts' which CEOC disputes, including, inter alia, the following: (a) whether CEOC is an "Employer" under the CBAs or a "Participating Employer" in the NRF; (b) that CEOC was not a "real party in interest" targeted by the Expulsion; and (c) that the impact of the Expulsion on the RSA is "speculative" or "conjectural." Consequently, the Debtors respectfully submit that any ruling on the Expulsion Objection should be deferred pending discovery by the Debtors with respect to the disputed facts on which the NRF seeks to excuse its violations of the automatic stay.

II. The NRF's Purported Expulsion Notices Violated the Automatic Stay.

A. NRF's Purported Expulsion Is an Action to Both Assess and Prosecute a Claim in Violation of Sections 362(a)(1) and (6) of the Bankruptcy Code.

10. The NRF first argues that it did not wrongly seek to "recover on a claim" against CEOC because "CEOC was not, and never has been, a participating Employer in the NRF." (Expulsion Obj. p. 8.) So, the argument goes, CEOC is unaffected by the Expulsion because the NRF's actions are wholly independent actions taken against non-debtor subsidiaries or affiliates—no different than a creditor's efforts to collect from a third party guarantor. (Id. p. 9.)

11. This argument fails on three levels. First, CEOC was a contributing employer under the relevant CBAs and statutes at the time of the Expulsion. Second, the NRF's deliberate omission of CEOC from its Expulsion Notices, under any reading, is irrelevant to whether the NRF violated the automatic stay on January 12 or 13. Third, the NRF's assertion that assessing withdrawal liability on January 12 or January 13 is somehow equivalent to collection from a non-debtor guarantor mischaracterizes the contingent and unitary nature of withdrawal liability.

1. CEOC Was an "Employer" as the time of the Expulsion.

12. Contrary to the NRF's repeated assertions, CEOC was an "Employer" (with the attendant contribution obligations) under the relevant CBAs and ERISA on the dates the NRF

purported to expel the "Caesars Employers." For example, Section 21.1 of the Bally's Park Place CBA defines "Employer" to include: "any . . . legal entity which substantially controls [Bally's]." Section 15.2 of that CBA, in turn, requires the "Employer" to contribute to the NRF. (Id. § 15.2.)[4] CEOC is a "legal entity which substantially controls" its wholly owned direct subsidiary.[5] Similarly, the relevant ERISA provisions make clear that CEOC is an "Employer" obligated to contribute to the NRF. See 29 U.S.C. §§ 1002(5), 1145, 1301(b)(1).[6] On their face, then, the applicable CBAs and ERISA each provide that CEOC is a contributing employer directly impacted by the NRF's Expulsion—a clear violation of the automatic stay.

2. The NRF Cannot Circumvent the Automatic Stay by Omitting CEOC from Its Expulsion Notices.

13. The NRF's defense is that it did not specifically name "CEOC" in its Expulsion Notices and, therefore, the automatic stay does not apply—regardless of whether CEOC is actually an "Employer." Courts rightly disregard this type of "artful pleading" when asked to apply the automatic stay: "The scope of this protection is not determined solely by whom a party chose to name in the proceeding, but rather, by who is the party with a real interest in the litigation." In re Kaiser Aluminum Corp., Inc., 315 B.R. 655, 658 (D. Del. 2004); accord In re Klarchek, 508 B.R. 386, 394 (Bankr. N.D. Ill. 2014); In re Moore, 318 B.R. 679, 682 (Bankr. D. Wis. 2004); see Havlik, 20 F.3d 705, 707 (7th Cir. 1994); Morris Senior Living, 2013 WL 5753834, at *7 (rejecting argument that creditor "did not violate the automatic stay because the

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4 Accord Bally's Park Place CBA § 15.2; Harrah's Laundry CBA, Art. 24.

5 CEOC also "substantially controls" its wholly-owned indirect subsidiaries Boardwalk Regency Corp. and Harrah's Laundry Las Vegas.

6 29 U.S.C. § 1145 provides: "Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement."

actions it commenced never named [debtor] as a party"). Rather, the issue remains whether the NRF's actions could impair CEOC's assets or increase CEOC's liabilities—in which case the automatic stay must apply. See Havlik, 20 F.3d at 707–08; see also Zerand-Bernal Grp., Inc. v. Cox, 23 F.3d 159, 162 (7th Cir. 1994) (observing that bankruptcy jurisdiction "force[s] into the bankruptcy court suits to which the debtor need not be a party but which may affect the amount of property in the bankrupt estate").

14. The NRF's actions speak for themselves in this regard. The NRF sought to reject ordinary contributions pursuant to the CBAs and its contributing subsidiaries and to instead assess withdrawal liability against each and every member of the Caesars Controlled Group—including CEOC. More fundamentally, the NRF consciously intended this result, as its own records now show. The "Caesars Fact Sheet," which was presented to the NRF board at its January 12 meeting to consider expulsion, stated the following:[7]

> If we terminate Caesar's participation in the fund now:
>
> Annual contributions 2015 (Showboat closed) $13.2 million goes to zero
> Withdrawal liability will be assessed on the entire control group, including the 'good Caesars', totaling $285 million, requiring annual payments of $18 million for 20 years, if we are successful in collecting.
> We can expect this to be litigated.

(Ex. A, p. 1.) In the NRF's own words, then, the Expulsion was deliberately undertaken to cause withdrawal liability to be "**assessed on the entire control group**"—including CEOC. (Id.) There could not be a more clear violation of the automatic stay. See 11 U.S.C. § 362(a)(3), (6).

15. But if the NRF is taken at its word (albeit not the NRF's "Caesars Fact Sheet") and the Expulsion Notices did not expel CEOC, then there is no claim for withdrawal liability against any member of the Caesars Control Group because CEOC would remain a contributing Employer with the obligation to contribute under the CBAs. Either CEOC has been expelled (in

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[7] The "Caesars Fact Sheet" is attached hereto as **Exhibit A**.

which case the NRF violated section 362) or CEOC has not been expelled (in which case, the NRF must stop harassing members of the Caesars Controlled Group to pay withdrawal liability and allow CEOC and its subsidiaries to resume their monthly contributions). 29 U.S.C. § 4203(a) (complete withdrawal liability only attends the withdrawal of the entire control group). Though the NRF's conduct to date indicates it is of the former view, its actions are equally a stay violation under the latter view as well.

3. Withdrawal Liability Is Not a Guaranty.

16. The NRF further attempts to excuse its violation of the automatic stay by analogizing its actions to a creditor's right to enforce a guaranty against a non-debtor. (See Expulsion Obj. pp. 8, 12.) In that fact pattern, the non-debtor is independently liable on a non-contingent, undisputed, liquidated debt. No additional process or proceeding is required to establish or liquidate liability. Rather, the guaranty is enforceable as an independent obligation of the guarantor immediately upon the debtor's underlying default. See generally In re White, 415 B.R. 697, 698 (Bankr. N.D. Ill. 2009).

17. Withdrawal liability is a different creature altogether. Withdrawal liability does not arise from an independent contractual relationship among the pension fund and controlled group members. Rather, withdrawal liability is shared by each controlled group member because the entire controlled group is, by statute, treated as a single "employer." See 29 U.S.C. §§ 1002(5), 1301(b)(1). Nor does withdrawal liability become a liquidated, non-contingent liability because a bankruptcy petition is filed. See In re Local Union 722 Int'l Br'hd of Teamsters, 414 B.R. 443, 449 (Bank. N.D. Ill. 2009) ("[F]iling for bankruptcy protection does not amount to a repudiation of obligations or a cessation of operations to trigger withdrawal liability." (internal quotation marks omitted)).

18. Withdrawal liability is liquidated and enforceable against controlled group members—including a debtor—only where withdrawal actually occurs. See 29 U.S.C. § 1383(a). Withdrawal liability is therefore, at most, contingent and unliquidated unless and until that event occurs. See In re CD Realty Partners, 205 B.R. 651, 653 (Bankr. D. Mass. 1997); Local Union 722, 414 B.R. at 449 ("This claim, for a total of $1,231,138.63, is listed as contingent, and will not become an actual claim until the Debtor either withdraws from the multiemployer pension plan or ceases operations, incurring withdrawal liability under the Employee Retirement Income Security Act of 1974 (ERISA)."); In re United Merchants & Mfg., Inc., 166 B.R. 234, 241 (Bankr. D. Del. 1994) ("Only a withdrawal can trigger the contingent right to payment for withdrawal liability.").

19. CEOC had no obligation to pay "withdrawal liability" until the NRF purported to expel CEOC's subsidiaries (and another affiliate) from the NRF on January 12. But the filing of an involuntary petition against CEOC prior to giving the Expulsion Notices automatically stayed any act by the NRF to impose withdrawal liability by expulsion.[8] The NRF—like any creditor holding a contingent, unliquidated, or disputed claim against CEOC on January 12, 2015—was obliged to seek relief from the automatic stay in order to liquidate that claim or otherwise prosecute that claim outside the bankruptcy court. See 11 U.S.C. § 362(a)(1), (6). "Post-petition attempts to assess, impose and/or liquidate a debt against a Chapter 11 debtor outside of the bankruptcy court go to the essence of the Chapter 11 claims process, and are the very reason why there is an automatic stay." Nortel Networks, 426 B.R. at 91.

[8] It should be noted that the NRF's ability to unilaterally expel contributing employers was disputed on January 12 and remains disputed at this time. As the NRF itself acknowledged, Caesars Entertainment Corporation ("CEC") had filed a declaratory action against the NRF on January 8, 2015, challenging the NRF's ability to expel any member of the Caesars Controlled Group as a matter of law. (See Expulsion Obj. p. 6.)

20. Absent relief from the automatic stay, the NRF must prosecute its claim through the process mandated by section 502 of the Bankruptcy Code, thereby preventing the piecemeal breakup that would occur if creditors like the NRF were permitted to exercise remedies on a unilateral basis. See Havlik, 20 F.3d at 708.

21. But the NRF obtained no such relief. Instead, the NRF unilaterally commenced a process to impose withdrawal liability on CEOC by expelling contributing employers on January 12—after the involuntary petition was filed against CEOC. This type of action is precisely what the automatic stay is intended to prevent. Id.; Nortel Networks, 426 B.R. at 91.

B. NRF's Purported Expulsion Wrongly Deprives CEOC of Contractual Rights in Violation of Section 362(a)(3) of the Bankruptcy Code.

22. A debtor's contract rights are estate assets. See Morris Senior Living, 2013 WL 5753834, at *7; Efoora, 472 B.R. at 485 n.3. At issue here are CEOC's rights under, among other things, the CBAs. Section 362(a)(3) prevents the NRF from exercising control over CEOC's assets in this regard. The Seventh Circuit Court of Appeals' opinion in Havlik, 20 F.3d 705 (7th Cir. 1994), is instructive. In Havlik, the debtor was party to a contract with certain of its principals, through which those principals agreed to fund the debtor's operating shortfalls. When the principals allegedly failed to fund that shortfall, creditors sued the principals to make good on their commitment to the debtor; the debtor was not a party to that action. Id. at 706. The Seventh Circuit held that the debtor's contractual right (namely, the right to enforce the principals' financial commitments) was unquestionably "property of the estate," and that an action that could usurp that right "exercised control over that property," id. at 708—even though the debtor was not actually a party to that litigation.

23. Havlik's rationale applies with full force here. CEOC's interests in the CBAs were estate assets on January 12. The NRF's purported expulsion would deprive CEOC of those

rights, thereby exercising control just as the third party lawsuit in Havlik deprived the debtor of its own contract rights. The NRF's purported expulsion goes even further—prejudicing CEOC's creditors by triggering hundreds of millions of dollars in withdrawal liability while also, potentially, causing breaches by CEOC under the CBAs. Those Expulsion Notices delivered on January 12, and 13, 2015, were therefore void as they would otherwise wrongly exercise control over assets of CEOC's estate. See 11 U.S.C. § 362(a)(3).

III. ERISA Does Not Override Section 362.

24. By its objection and elsewhere, the NRF has asserted that ERISA necessarily trumps the automatic stay because, to rule otherwise, "would eviscerate ERISA's fundamental protections for pension plans . . . ." (Expulsion Obj. p. 14.) Of course, this argument overlooks the fact that the NRF could have sought relief from the automatic stay upon a showing of cause, see 11 U.S.C. § 362(d)(1), but the NRF chose not to do so.

25. Regardless, the NRF has no statutory basis to claim that ERISA impliedly trumps the automatic stay. Congress knows how to enact exceptions from the automatic stay when and where it chooses to do so. Section 362(b) includes twenty-eight exceptions to the automatic stay—including one exception that specifically addresses claims arising under ERISA. See 11 U.S.C. § 362(b)(19)(A). Yet neither section 362(b) nor any other provision of the Bankruptcy Code exempts a multiemployer pension fund's activities from section 362(a). Nor have courts created a common law exception to the automatic stay in favor of multiemployer pension funds. In short, the Bankruptcy Code provides no basis to claim that expulsion by a multiemployer pension fund is exempt from section 362(a)'s broad reach.

26. ERISA provides no exception either. In this regard, a multiemployer pension fund's treatment under ERISA should be contrasted with an involuntary termination undertaken by Pension Benefit Guaranty Corp. ("PBGC") with respect to a single employer pension plan.

There, Congress expressly authorized PBGC to proceed with an involuntary termination notwithstanding a plan sponsor's bankruptcy filing and imposition of the automatic stay. See 29 U.S.C. § 1342(e).[9] Moreover, PBGC, as a "governmental unit," see 11 U.S.C. § 101(27), falls squarely within the police and regulatory exception to the automatic stay arising under section 362(b)(4) of the Bankruptcy Code where it undertakes an involuntary termination. See In re Century Brass Prods., No. 85-585-JAC, 1986 WL 20957, at *3 (D. Conn. Nov. 28, 1986) ("This action by the PBGC is excepted from the automatic stay under 11 U.S.C. § 362(b)(4), because it is an action to enforce a governmental unit's police or regulatory powers.").

27. No such exceptions apply to the NRF's Expulsion Notices. The NRF is a private entity, not a "governmental unit," and was not acting pursuant to any authorized "police or regulatory power." Cf. 11 U.S.C. § 362(b)(4). ERISA does not authorize the NRF to unilaterally expel a contributing employer, let alone undertake an expulsion "notwithstanding the pendency of any bankruptcy proceeding." Cf. 29 U.S.C. § 1342(e). The NRF's postpetition actions triggering withdrawal liability by expulsion are no different than any other action by any other creditor subject to the automatic stay. See Nortel Networks, 426 B.R. at 91–93.

IV. The NRF's Expulsion Notice Is Void as to All Employers Because it Violated the Automatic Stay.

28. Actions taken in violation of the automatic stay are void as a matter of law. See Middle Tennessee News Co., 250 F.3d at 1082. Similarly, notice delivered to one member of a controlled group is notice to all members of a controlled group. See Central Trans., 888 F.2d at

[9] This provision provides in full: "An application by [PBGC] under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan." 29 U.S.C. § 1342(e).

1163–64. Thus, the NRF's Expulsion Notices were void as to all controlled group members, ab initio, when delivered in violation of the automatic stay on January 12 and again on January 13.

29. Central States, Southeast & Southwest Areas Pension Fund v. Slotky, 956 F.2d 1369, 1376 (7th Cir. 1992), requires no different result. Slotky considered only whether a demand for payment on account of already-liquidated withdrawal liability violated the automatic stay under the general rule that "notice to one is notice to all." Slotky in no way addressed whether an action purporting to expel a debtor/controlled group member, such as CEOC, is exempt from the automatic stay. Instead, Slotky considered only whether a pension fund might collect liquidated controlled group liability from non-debtors. Unlike here, there was no dispute in Slotky that the applicable employer had in fact voluntarily withdrawn from the pension plan prior to the issuance of the payment demand in question. See Slotky, 956 F.2d at 1372. Nor had the debtor objected to the assessment of withdrawal liability. Id. at 1372. Put differently, the multiemployer plan in Slotky was not commencing a process when it issued its demand for payment—the debtor had initiated that process by choosing to withdraw. That is obviously not the case here, where CEOC and its subsidiaries all vigorously dispute that they can be expelled against their will from the NRF, and have repeatedly promised to keep up their contributions in the ordinary course.

30. Moreover, Slotky's consideration of the automatic stay was itself limited to analysis of section 362(a)(1). See Slotky, 956 F.3d at 1376 ("[T]here is admittedly an analogy between an outright suit against the bankrupt, which would incontrovertibly violate the stay, **§ 362(a)(1)**, and a notice and demand that kicks off a sequence of conciliation and arbitration . . . ." (emphasis added)). Slotky in no way considered application of either section 362(a)(3) or section 362(a)(6) in its opinion—and logically would not have given that

Slotky's debtor voluntarily caused its own withdrawal. But where, as here, the debtor does not concede that it has withdrawn, the questions of whether the fund violated the automatic stay by assessing withdrawal liability on a postpetition basis, cf. Nortel Networks, 426 B.R. at 91–93, or whether the fund wrongly exercised control over estate assets, cf. Havlik, 20 F.3d at 708, remain very much at issue. Thus, Slotky simply cannot be read to excuse the NRF's actions to deprive CEOC of valuable contract rights from section 362(a)(3) or to exempt the NRF's attempt to liquidate previously-contingent withdrawal liability from section 362(a)(6). Any assertion to the contrary is simply wrong.

V. Sanctions Are Appropriate Here For the NRF's and Its Trustees' Calculated Violation of the Automatic Stay.

31. "[A] bankruptcy court may punish a violation of the automatic stay pursuant to its civil contempt powers codified in § 105(a)." Paolian v. Group Serla S.A. de C.V., 433 B.R. 19, 41 (N.D. Ill. 2010); accord Morris Senior Living, 2013 WL 5753834, at *10. Here, the NRF undertook to expel the "Caesars Employers" with full knowledge that CEOC was subject to an involuntary bankruptcy filing on January 12, that expulsion would assess withdrawal liability "on the entire controlled group," and that it could "expect this to be litigated." (See Ex. A.) The NRF's aggression has required CEOC to expend significant levels of time and resources and incur significant expense in order to prevent the very real hardship to its business and its employees that would result from upending four heavily negotiated collective bargaining agreements. The Court should therefore award attorneys' fees and costs as an appropriate remedy.

Conclusion

32. For the reasons set forth herein and in the Expulsion Motion, the relief requested by the Expulsion Motion should be granted and the Expulsion Objection should be overruled or,

alternatively, the Court should permit the parties to undertake discovery on the disputed issues of material fact.

May 11, 2015
Chicago, Illinois

Respectfully submitted,

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

The NRF's "Caesars Fact Sheet"

Caesar's Fact Sheet

National Retirement Fund

2014 estimated withdrawal liability from actuaries' Dec 12 memo:

Continuing entities ('Good Caesar's')	
Harrah's Marina (Marina Associates)	$67 million
Harrah's Laundry	$9 million
Harrah's Dry Cleaning	<u>$1 million</u>
Total	$77 million

All other entities, which we believe will enter bankruptcy and be separated into a separate ownership group. This group will have no withdrawal liability once they emerge from bankruptcy:

Entities expected to enter bankruptcy ('Bad Caesar's')	
Atlantic City Showboat	$51 million
Caesar's	$67 million
Bally's Park Place	$104 million
Harrah's Chester Casino/Racetrack	<u>$10 million</u>
Total	$232 million
Total as one control group	$285 million

If we terminate Caesar's participation in the fund now:

Annual contributions 2015 (Showboat closed) $13.2 million goes to zero
Withdrawal liability will be assessed on the entire control group, including the 'good Caesars', totaling $285 million, requiring annual payments of $18 million for 20 years, if we are successful in collecting. We can expect this to be litigated.

If we don't terminate now:

Annual contributions in 2015 – could range from $0 to $13.2 million. If only the 'good Caesars' companies continue to contribute, they will pay roughly $6 million a year. UNITE HERE leadership has said that it is likely the union will ensure Caesar's continued participation, in which case withdrawal liability will never come into play. This outcome is uncertain, at best, since Caesar's ownership declined to negotiate with the NRF after the standstill agreement gave the parties an opportunity to do so.

Withdrawal liability going forward- total is reduced to $77 million (Good Caesar's companies above). We may never be able to collect the roughly $208 million from the 'bad Caesar's' companies that are expected to enter bankruptcy and be split off from the present group. Our claim would become a part of the unsecured creditors' pool. The unsatisfied liability would be transferred to all remaining employers in the fund and will need to be made up by future employer contributions and investment returns.

Actuarial projections – from the December 11 trustees' meeting:

Scenario 5a – This is consistent with a decision to terminate, provided we collect withdrawal payments from the going forward entity. It shows the effect of full withdrawal payments from the entire group, and no continued participation by any Caesar's entities. The NRF Legacy fund goes from 66% funded in 2015 to 80% funded in 2035, and in 2035 is projected to have a $669 million unfunded deficit.

Scenario 3a – This is consistent with a decision not to terminate. No withdrawal liability payments, Caesars' Laundry and Harrah's Marina (Good Caesars) continue to participate. NRF legacy goes from 66% funded in 2015, to 53% funded in 2035, and in 2035 is projected to have a $1.5 billion unfunded deficit.

Another possibility, Scenario 6a, shows the outcome if the Fund decides not to terminate and all of the currently contributing parts of Caesar's stays in the fund. In this case, the NRF legacy fund goes from 66% funded in 2015 to 63% funded in 2035, with an unfunded deficit of $1.2 billion.

Caesar's has filed an action in Federal court, claiming that the Fund does not have the right to terminate their participation in the Fund. Fund counsel believes we have the right to take that action to protect the rights of the Fund's participants.

The Fund can allow Caesar's entities to re-enter the Fund and not pay withdrawal liability after we have terminated them, because there is a time period that passes before Caesar's starts paying withdrawal liability, and during that period they can be re-admitted to the Fund and continue making contributions, presumably after some negotiation over the future withdrawal liability of the group.

January 11, 2015