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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 12-11076-shl

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In the Matter of:

ARCAPITA BANK B.S.C.(C), et al.,

Debtor.

- - - - - x

U.S. Bankruptcy Court
One Boling Green
New York, New York

May 15, 2013
11:24 AM

B E F O R E :
HON SEAN H. LANE
U.S. BANKRUPTCY JUDGE

1 Hearing re: Doc. #1030 (GIBSON.) Third Application for
2 Interim Professional Compensation/Third Application of
3 Gibson, Dunn & Crutcher LLP as Attorneys for the Debtors and
4 Debtors in Possession for Allowance of Interim Compensation
5 for Services Rendered and for Reimbursement of Actual and
6 Necessary Expenses Incurred from November 1, 2012 through
7 March 31, 2013 for Gibson, Dunn & Crutcher LLP, Debtor's
8 Attorney, period: 11/1/2012 to 3/31/2013, fee:
9 \$9,982,227.25, expenses: \$253,069.43.

10

11 Hearing re: Doc. #973 (ERNST & YOUNG) Second Application
12 for Interim Professional Compensation/Second Interim
13 Application of Ernst & Young for Compensation and
14 Reimbursement of Expenses as Auditor to the Debtors and
15 Debtors-In-Possession for the Period from November 1, 2012
16 through March 31, 2013.

17

18 Hearing re: Doc. #980 (GCG) Second Application for Interim
19 Professional Compensation/ Second Interim Fee Application of
20 GCG, Inc., as Administrative Agent for the Debtors, for
21 Allowance of Compensation and for Reimbursement of Expenses
22 Incurred for the Period of July 1, 2012, Through March 31,
23 2013 for GCG, Inc., Other Professional, period: 7/1/2012 to
24 3/31/2013, fee:\$32,944.50, expenses: \$.

25

1 Hearing re: Doc. #998 (KPMG US) Third Application for
2 Interim Professional Compensation/Third Fee Application of
3 KPMG LLP (US) as Tax Consultants to the Debtors and Debtors
4 in Possession, for Interim Allowance and Compensation
5 for Professional Services Rendered and Reimbursement of
6 Actual and Necessary Expenses Incurred from November 1,2012
7 through March 31, 2013

8
9 Hearing re: Doc. #999 (LINKLATERS) Third Application for
10 Interim Professional Compensation/Third Application of
11 Linklaters LLP, as Special Counsel for the Debtors and
12 Debtors in Possession, for Interim Allowance of Compensation
13 for Professional Services Rendered and Reimbursement of
14 Actual and Necessary Expenses Incurred from November 1, 2012
15 through March 31, 2013 for Linklaters LLP

16
17 Hearing re: Doc. #1000 (KPMG LLP) Third Application for
18 Interim Professional Compensation/Third Interim Fee
19 Application of KPMG LLP, as Valuation Advisor to the
20 Debtors, for Allowance and Compensation for Professional
21 Services Rendered and Reimbursement of Actual and Necessary
22 Expenses Incurred from November 1, 2012 through March 31,
23 2013 for KPMG LLP (UK)

24
25

1 Hearing re: Doc. #1004 (TROWERS.) Third Application for
2 Interim Professional Compensation/Third Application of
3 Trowers & Hamlins as Attorneys for the Debtors and Debtors
4 in Possession for Allowance of Interim Compensation for
5 Services Rendered and for Reimbursement of Actual and
6 Necessary Expenses Incurred from November 1, 2012 through
7 March 31, 2013

8
9 Hearing re: Doc. #1019 (ALVAREZ & MARSAL) Third Application
10 for Interim Professional Compensation 1Third Application of
11 Alvarez & Marsal North America, LLC, as Financial Advisor to
12 Arcapita Bank B.S.C.(c), et al. for Interim Approval and
13 Allowance of Compensation for Services Rendered and
14 Reimbursement of Expenses Incurred During Period From
15 November 1, 2012 Through and Including March 31, 2013

16
17 Hearing re: Doc. #1023 (MOURANT.)Third Application for
18 Interim Professional Compensation 1Third Application of
19 Mourant Ozannes as Special Cayman Islands Counsel for the
20 Debtors for Allowance of Interim Compensation for
21 Services Rendered and for Reimbursement of Actual and
22 Necessary Expenses Incurred from November 1, 2012 through
23 March 31, 2013 for Mourant Ozannes

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1 Hearing re: Doc. #1025 (ROTHSCHILD INC.) Third Application
2 for Interim Professional Compensation 1Third Interim
3 Application of Rothschild Inc. and N M Rothschild & Sons
4 Limited as Financial Advisor and Investment Banker to the
5 Debtors for Allowance and Payment of Compensation for
6 Professional Services Rendered and Reimbursement of Actual
7 and Necessary Expenses Incurred from November 1, 2012
8 through March 31, 2013 for Rothschild Inc.

9
10 Hearing re: Doc. #1005 (KING & SPALDING) Application for
11 Interim Professional Compensation/Third Interim Application
12 of King & Spalding LLP and King & Spalding International LLP
13 for Allowance of Compensation for Professional Services
14 Rendered and Expenses Incurred During the Period November 1,
15 2012 Through and Including March 31, 2013 for King &
16 Spalding LLP and King & Spalding International LLP

17
18 Hearing re: Doc. #1006 (HASSAN RADHI) Application for
19 Interim Professional Compensation 1Third Application of
20 Hassan Radhi & Associates, Bahraini Counsel to Official
21 Committee of Unsecured Creditors, for Interim Approval and
22 Allowance of Compensation for Services Rendered During
23 Period From November 1, 2012 Through and Including March 31,
24 2013 for Hassan Radhi & Associates,

25

1 Hearing re: Doc. #1012 (WALKERS) Third Application for
2 Interim Professional Compensation of Walkers, Cayman Islands
3 Counsel to Official Committee of Unsecured Creditors, for
4 Interim Approval and Allowance of Compensation for Services
5 Rendered and for Reimbursement of Expenses Incurred During
6 Period From November 1, 2012 Through and Including March 31,
7 2013 for Walkers

8
9 Hearing re: Doc. #1014 (HOULIHAN.) Third Application for
10 Interim Professional Compensation of Houlihan Lokey Capital,
11 Inc., Financial Advisor and Investment Banker to the
12 Official Committee of Unsecured Creditors, for Interim
13 Allowance of Compensation for Professional Services Rendered
14 and Reimbursement of Actual and Necessary Expenses Incurred
15 From November 1, 2012 through March 31, 2013 for Houlihan
16 Lokey Capital, Inc., Consultant, period: 11/11/2012 to
17 3/31/2013, fee: \$1,000,000.00, expenses: \$78,262.34.

18
19 Hearing re: Doc. #1015 (MILBANK) Third Application for
20 Interim Professional Compensation of Milbank, Tweed, Hadley
21 & McCloy LLP for Approval and Allowance of Compensation for
22 Services Rendered and Reimbursement of Expenses Incurred
23 During Period from November 1, 2012 Through and Including
24 March 31, 2013 for Milbank, Tweed, Hadley & McCloy LLP,
25 Creditor Comm. Atty, period: 11/1/2012 to 3/31/2013,

1 fee: \$6,101,159.00, expenses: \$229,389.84.

2

3 Hearing re: Doc. #1020 (FTI.) Third Application for Interim
4 Professional Compensation of FTI Consulting, Inc. for
5 Allowance of Compensation and for Reimbursement of
6 Expenses for Services Rendered in the Case for the Period
7 November 1, 2012 through March 31, 2013 for FTI Consulting,
8 Inc., Other Professional, period: 11/1/2012 to 3/31/2013,
9 fee: \$1,226,534.20, expenses: \$27,738.51.

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11 Hearing re: Doc. #1061 Motion to Authorize/Motion for the
12 Entry of an Order Authorizing the Debtors to (A) Enter into
13 a Financing Commitment Letter and Related Fee Letter to
14 Obtain (I) Replacement DIP Financing and (II) Exit
15 Financing, (B) Incur and Pay Associated Fees and Expenses,
16 and (C) Provide related Indemnities

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25 Transcribed by: William J. Garling

1 A P P E A R A N C E S :

2 GIBSON DUNN & CRUTCHER, LLP

3 Attorneys for Debtors

4 200 Park Avenue

5 New York, NY 10166

6

7 BY: MICHAEL A. ROSENTHAL, ESQ.

8 EMAD H. KHALIL, ESQ.

9 JOSHUA WEISSER, ESQ.

10 MATTHEW J. WILLIAMS, ESQ.

11

12 MILBANK, TWEED, HADLEY & McCOY, LLP

13 Attorneys for Official Committee of Unsecured Creditors

14 One Chase Manhattan Plaza

15 New York, NY 10005

16

17 BY: DENNIS F. DUNNE, ESQ.

18 EVAN R. FLECK, ESQ.

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1 LATHAM & WATKINS, LLP
2 Attorneys for Goldman Sachs International
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3 53 at Third, 885 Third Avenue
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6 BY: MITCHELL A. SEIDER, ESQ.
7 ADAM J. GOLDBERG, ESQ.

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9 DECHERT, LLP
10 Attorneys for Standard Chartered Bank
11 1095 Avenue of the Americas
12 New York, NY 10036

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14 BY: NICOLE B. HERTHER-SPIRO, ESQ.
15 BRIAN E. GREER, ESQ.

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17 TOGUT, SEGAL & SEGAL, LLP
18 Attorneys for Fortress
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20 New York, NY 10110

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22 BY: STEVEN S. FLORES, ESQ.
23 NEIL BERGER, ESQ.

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WILLKIE FARR & GALLAGHER, LLP
Arcapita counsel to KPMG LLP (UK)
787 Seventh Avenue
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BY: ROBIN SPIGEL, ESQ.

OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street
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21 Floor
New York, NY 10004

BY: RICHARD C. MORRISSEY, ESQ.

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P R O C E E D I N G S

THE COURT: Good morning.

Please be seated.

We are here for a hearing in Arcapita Bank, B.S.C.
for a variety of matters.

MR. ROSENTHAL: Good morning, Your Honor.

Michael Rosenthal and Matt Williams of Gibson
Dunne and Crutcher on behalf of the Arcapita debtors.

MR. DUNNE: Good morning, Your Honor.

Dennis Dunne from Milbank, Tweed, Hadley, & McCoy,
here with my partner, Evan Fleck, on behalf of the official
committee of unsecured creditors.

MR. MORRISSEY: Good morning, Your Honor.

Richard Morrissey for the U.S. Trustee.

MR. FLORES: Good morning, Your Honor.

Steven Flores, Togut Segal, co-counsel to
Fortress, here with my colleague Neil Berger.

THE COURT: All right. Good morning.

MR. SEIDER: Good morning, Your Honor.

Mitchell Seider of Latham & Watkins, with me is
Adam Goldberg from Latham & Watkins on behalf of Goldman
Sachs.

THE COURT: All right. Good morning.

MR. GREER: Good morning, Your Honor.

Brian Greer of Dechert on behalf of Standard

1 Chartered Bank.

2 THE COURT: All right. Good morning to you all.

3 MR. ROSENTHAL: Your Honor, I would normally have
4 some opening remarks, but because we have the sort of a main
5 event of this hearing is the exit facility motion, I think
6 we should get straight to the main event.

7 THE COURT: All right.

8 MR. ROSENTHAL: I think it's fair to say, Your
9 Honor, that the debtors are the beneficiaries of a
10 competitive process to raise exit financing, which also
11 includes a debt component. And we have a problem that many
12 debtors would love to have which is we have two ready,
13 willing and able bidders who have submitted proposals. When
14 we -- as you know, when we originally filed the motion, the
15 Goldman proposal was in our view, and in the committee's
16 view, a better proposal. And subsequent to that time,
17 Fortress submitted a further proposal.

18 We have, as the Court knows a fiduciary out in our
19 agreement with to Goldman. I will say that it has been an
20 incredibly competitive, fulsome exhaustive process that
21 we've gone through and we appreciate the fact that we have
22 two bidders here. We think that the way to proceed is to
23 give both of these bidders a limited amount of time today to
24 submit a final and best bid.

25 THE COURT: Well, let me cut you off there. I did

1 think about what the process should be when I saw the
2 objection as well as the follow-papers that addressed it and
3 the fact that there were two parties highly interested and
4 motivated to give exit financing, which from a Bankruptcy
5 Court point of view is a wonderful problem to have, although
6 I'm sure it's not necessarily a wonderful problem if you're
7 one of the lenders. So I certainly appreciate the lender's
8 presence here today.

9 It's my understanding reading the papers that the
10 debtors want to proceed with getting exit financing today;
11 is that correct?

12 MR. ROSENTHAL: That's absolutely correct.

13 THE COURT: All right. And I assume that that's a
14 view shared by the me as well.

15 MR. DUNNE: Correct, Your Honor.

16 THE COURT: In light of that, with have a couple
17 of things on the calendar in terms of fee applications. I
18 think it makes sense, given my understanding of the process,
19 which seems to have been very fulsome that setting some sort
20 of deadline today so that we could deal with it at this
21 hearing would be beneficial for all the parties while also
22 not prematurely cutting off the process given everything
23 that has happened to date.

24 So it's 11:30. My thought would be that parties
25 provide their best and final sometime in the next 30 to 60

1 minutes depending on what parties think of the wisdom of the
2 particular time while we go ahead with the attorney's fees
3 application, the interim applications and then I can take a
4 short recess for those best and finals to come in and then
5 figure out where to go from there.

6 So my question is twofold; one is, does that
7 approach make sense to you, and two, how much time do you
8 think is appropriate?

9 MR. ROSENTHAL: The approach makes perfect sense
10 to me, Your Honor. I would think if we gave the parties say
11 until 12:15 that would be 45 minutes.

12 THE COURT: That's what I was inclined to do, to
13 split the baby between 30 minutes and 60 minutes. It will
14 probably take us 20 minutes or so at least to get through
15 the fee applications. So unless I hear some strenuous
16 objection to that process, I'm going to ask that any party
17 who's interested in providing financing, exit financing --
18 this way I've tried to create as level a playing field,
19 because I think that's what everybody wants in light of
20 where things are is to get those best and finals to the
21 debtor and to the committee at 12:15.

22 If anyone needs any conference rooms, spaces to
23 chat, whatever it is, please just let my chambers know and
24 we will set you up. Obviously I know a lot of business is
25 done in the hallway in this courthouse, to the extent that a

1 more private area would be helpful, just let us know.

2 MR. DUNNE: Your Honor, may I be heard for a
3 minute?

4 THE COURT: Certainly.

5 MR. DUNNE: For the record, Dennis Dunne, from
6 Milbank Tweed, on behalf of the official creditors
7 committee. I have two points and I'll be brief. One is
8 just to correct something that is in the pleading that was
9 filed by Fortress, which casts the kind of serious
10 allegations the committee's way by intimating that they
11 might be burdened by conflict because they may be
12 participating in the Goldman Sachs syndicate. It's all very
13 interesting and potentially disturbing except for the fact
14 that it's not true.

15 We canvassed the committee members yesterday.
16 None of them are participating in the GS facility. There
17 was no evidence to the contrary presented by Fortress. I
18 just wanted to let the Court know that given the serious
19 nature of the assertions, we undertook the investigation and
20 wanted to report to the Court that it was false.

21 Second point, we're okay with the process the
22 Court outlined. I believe we need to get to closure today,
23 but I think the one thing that's missing, I think, is the
24 amount of value that Goldman had provided to date and I
25 wanted to underscore that. They have -- they stepped up to

1 the plate on May 3rd when we were looking for best and
2 finals. They provided at that point in time, the cheapest
3 and best source of financing. We believe, from the
4 committee's perspective, that they've met the requirements
5 for substantial contribution under the law, and in the event
6 that they did not prevail, we think that they've already
7 demonstrated that type of value to the estate of their
8 actions to date.

9 THE COURT: All right. Thank you.

10 MR. SEIDER: Good morning, Your Honor.

11 Mitchell Seider of Latham & Watkins, on behalf of
12 Goldman Sachs. Your Honor, we will certainly report to our
13 client on what Your Honor is directing this morning. I do
14 want to say that from Goldman Sachs' perspective, this is an
15 auction which has already occurred and that auction closed
16 on May 3rd. The bid was submitted by the debtor in
17 conjunction with the motion to approve it today on May 5th.
18 In keeping with that motion and since that time, the Goldman
19 has been working on the party of the agreement that's
20 necessary to meet the debtor's DIP financing needs and also
21 to meet its timetable for confirmation.

22 And as Mr. Dunne has intimated, an enormous amount
23 of time and expense has been put into that. Moreover, Your
24 Honor, from Goldman Sachs' perspective, it played by the
25 rules that the debtor and the committee announced and in

1 doing so, it provided us, as Mr. Rosenthal pointed out, a
2 significant amount of value for the estates. Now, Goldman
3 Sachs finds itself in a position where it's being told,
4 well, the rules that were announced really don't apply.
5 We're going to put on a second set of rules and you're
6 welcome to come and bid in this second auction if you want
7 to.

8 We understand the Court's position on that -- and
9 I'm not here to argue with Your Honor about that -- but we
10 do need to have on the record that this is a break with the
11 rules that were set by the debtor and by the committee, with
12 which Goldman complied, with which the other bidder did not
13 comply, and which the other bidder, frankly, Your Honor, is
14 now being rewarded for disregarding by being invited back
15 after the deadline to bid again.

16 THE COURT: Well, I'm taking at face value the
17 representation that there's a fiduciary out here and, again,
18 I'm not making any value judgments and it seems pretty clear
19 from the comments directed towards your client that everyone
20 regards your client's involvement as incredibly important
21 and valuable here, but at the same time, what I'm being told
22 is in light of the fiduciary -- for the benefit of all
23 creditors, that this is something that the debtors should
24 really constrain to try to get the best deal.

25 One of the ideas of imposing a deadline is the

1 process has to end. From that weight, someone echoes your
2 concerns that you just identified in terms of the process.
3 That was already previously identified.

4 So, again, I take your comments, understand them,
5 and I certainly can see frustration. I have had this
6 something happen a few times, and I think in each instance
7 there is frustration with how the process of being reopened
8 affects the folks who have worked on the deadlines that
9 existed.

10 MR. SEIDER: One further point, if I may, Your
11 Honor. We obviously need to confer with our client as to
12 whether one is prepared to engage in this second auction and
13 secondly if it can do so within the time that Your Honor has
14 described.

15 May we have ten minutes to go out in the hall,
16 make a phone call and see if this time period is --

17 THE COURT: Well, what I was going to do is say
18 essentially anybody who needs to attend to any business
19 relating to the exit financing is free to do so. I would
20 expect them to have to leave the courtroom to do what they
21 have to do and I'll proceed with the rest of the hearing in
22 the meantime, as those matters have to be addressed in any
23 event and then we'll circle back after those matters are
24 done at about 12:15.

25 MR. SEIDER: Your Honor, I apologize if I'm

1 pushing this too far, but having submitted its bid timely, I
2 would not want Goldman Sachs to be in the position where it
3 says we have some thinking that we need to do about what we
4 might bid if we're prepared to bid again because we did not
5 come here today, Your Honor, prepared for an auction.

6 THE COURT: You didn't expect this to occur.

7 MR. SEIDER: We came to support a motion of which
8 we were obviously the beneficiary and I don't want Goldman
9 Sachs to be in a position where we come back at 12:15 and
10 are now being jammed with a deadline which is being enforced
11 for someone else's benefit when it was not enforced -- when
12 initially that deadline was not enforced for ours.

13 THE COURT: I'm not trying to put in a deadline
14 for anybody's benefit or detriment. I'm just trying to set
15 a deadline. Obviously, to the extent that this is going to
16 go forward at this hearing, I need to set a deadline for my
17 benefit, so I suppose everyone can blame me, which is fine,
18 they do it all the time. I'm open to suggestions on the
19 time. I think 45 minutes struck me as about right, but I
20 confess that I'm not really basing that on any empirical
21 evidence, which is both a blessing and a curse.

22 So, if folks want to make it an hour -- but,
23 again, I think for the purposes of addressing it at this
24 hearing, I do think that it has to be fairly prompt, lest
25 this go on all day and I think that would be to nobody's

1 benefit.

2 MR. SEIDER: Understood, Your Honor.

3 If the Court is inclined and would allow, we could
4 go outside and telephone our client and come back in a
5 couple of minutes --

6 THE COURT: Well, herself what I'm going to do.
7 I'm just going to say that it's an hour. If something
8 unexpected happens and things go sideways, I supposed we can
9 have that discussion, but I don't know if there's really a
10 good answer on the timing front at this point, frankly, so
11 let's say 12:30 and if there is a reason to change that, a
12 compelling -- and by compelling, I do really mean
13 compelling -- I would expect that the parties who are in
14 interest in this question would discuss it first before
15 coming back to me to change that.

16 MR. SEIDER: Understood. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. FLORES: Your Honor, just one quick question.

19 Steven Flores, Togut Segal, co-counsel to
20 Fortress. We are happy to get this done today. Fortress
21 has also put a lot of time and effort into this. I do have
22 one request, in order to hopefully level the playing field
23 and speed things up, there was a portion of Goldman's bid
24 that has been redacted. If possible, we had like to get
25 that information.

1 THE COURT: Well, I'm not -- you're asking me to
2 get into the details of this. I don't know what that
3 information is, the parties do, and I'm going to rely on the
4 parties and the process up to this point to decide whether
5 that's appropriate or not. I think it's awfully late in the
6 game for me to insert myself into that -- it's late in the
7 game for me to insert myself into the timing, but it --
8 there's really no other way around it, so I'm inserting
9 myself on that question, but as to the substance and what
10 information should be shared or shouldn't be shared, I'm
11 going to leave that to the parties who were very competently
12 represented, that is debtor's counsel and the committee, as
13 well as counsel for all the lenders as to what's appropriate
14 to share and what's not. I think that's a whole other side
15 issue.

16 MR. FLORES: Thank you, Your Honor.

17 THE COURT: Thank you.

18 All right. So certainly, if anybody needs to
19 excuse themselves, I'm not at all offended and certainly
20 contemplate that folks who need to attend to some business.

21 And, again, the last thing I will say before
22 everyone leaves, I very much appreciate everyone's presence
23 here today. I'm sure it's not an ideal circumstance to
24 respond so quickly, but I think it is certainly clearly for
25 the benefit of the case and you all know how important that

1 is in this building, so thank you very much.

2 UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.

3 UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.

4 UNIDENTIFIED MALE SPEAKER: Thank you.

5 MR. ROSENTHAL: Now I can go back and give an
6 introduction and tell you a little bit about where we are on
7 the case and then we can go into fee applications.

8 THE COURT: All right.

9 MR. ROSENTHAL: Again, I don't want to spend too
10 much time, but the planning process is moving forward, the
11 solicitation process began when it was scheduled to begin.
12 Planned objections and the voting deadline are May 30th, so
13 we're coming up to that. Documentation is underway for any
14 innumerable number of documents required to implement the
15 structure of the plan and the various agreements that were
16 reflected in term sheets and I think it's fair to say that
17 all of the professionals are working hand in hand and
18 together to try to get this done as efficiently as possible.
19 But it's a pretty monumental task, frankly. There's a lot
20 to do.

21 THE COURT: Remind me when the confirmation
22 hearing is scheduled for?

23 MR. ROSENTHAL: Confirmation is June 11th.

24 THE COURT: June 11th.

25 All right. And I did see, and I think I just

1 signed, yesterday, the stipulated proposed schedule to brief
2 the subordination issue.

3 MR. ROSENTHAL: Correct.

4 THE COURT: So I've had -- I appreciate that
5 because it allowed me to as those issues in advance in terms
6 of my preparation for confirmation.

7 Do you parties think it is appropriate to deal
8 with that at the confirmation hearing itself or at some
9 hearing before we get to confirmation, just to avoid other
10 parties who were not interested in that issue having to
11 essentially learn quite a bit about the subordination
12 question?

13 MR. ROSENTHAL: My sense, Your Honor, is if you
14 have time to address it, separate and apart from
15 confirmation, that might be helpful, and my partner,
16 Mr. Milbank has been working on this and I'm not sure if any
17 of the tide lawyers are here, but can we get book to the
18 Court on that and see if you have time?

19 THE COURT: Yeah, why don't you do that and I have
20 to look at my schedule as well, so -- but I'm fairly
21 confident -- I'm sorry, which date did you say?

22 MR. ROSENTHAL: June 11th.

23 THE COURT: June 11th.

24 (Pause)

25 It may be that we would start that on the 10th;

1 that's a possibility. I don't know how long folks expect
2 that proceeding to last.

3 MR. ROSENTHAL: I think it's an argument and I'm
4 not sure it would take that long, but I think that might be
5 helpful first.

6 THE COURT: Let me just float that date out as a
7 possibility. I don't think the prior week is possible.
8 There's an American Airlines disclosure statement hearing,
9 as well as a very large Chapter 13 calendar. So, I think
10 that anything before the 6th is -- that week is not
11 possible.

12 So let's think about the 10th and I'm going to let
13 the parties think about it and we can come to some sort of
14 conclusion soon.

15 MR. ROSENTHAL: Fine, fine with me.

16 THE COURT: Thank you.

17 MR. ROSENTHAL: We did file yesterday, the
18 application and affidavits required in the Cayman Islands.
19 I told the Court before that the hearing is scheduled to
20 approve the planned provisions that relate to AIHL in the
21 Cayman Islands for May 31st. That had to do with the
22 judge's schedule in the Cayman Islands. The order that
23 we're request there, which is a condition preceding to the
24 effective date of the plan, we're requesting the Court to
25 enter that conditional on this Court entering confirmation,

1 and obviously none of the transactions that would be
2 required will occur until the effective date anyway, but
3 that process is in motion and notice has been sent out,
4 again, to the AIHL creditors of the Cayman hearing.

5 And then only one further report, one of the
6 issues that was open at the time of the disclosure statement
7 hearing was related to the treatment of Standard Chartered
8 Bank. I have to stop short of saying there is a settlement,
9 but I will say that there are -- that discussions have been
10 proceeding and they've been productive and promising. We
11 hope to be able to wrap that matter up. It is already
12 contemplated. The kinds of solutions that we're talking
13 about are already contemplated in the plan, so it's just
14 substitution of the actual settlement terms. So that's a
15 favorable factor. And with that, Your Honor, I don't have
16 anything further to report as a general case update
17 (inaudible - 19:50).

18 All right. The next matters, Your Honor, are the
19 fee applications. This is the third interim fee
20 applications for the professionals and it covers the period
21 from November 1 through March 31st and consistent with the
22 Court's practice, what the professionals are asking for is
23 for approval of their fees for this -- for that period for
24 payment of authorization to pay the 80 percent portion --
25 there would still be the holdback for this fee period -- and

1 to pay the expenses, all the expenses for the period and the
2 holdback from the prior period. So we're always running one
3 period behind.

4 I will say to the Court that assuming that we get
5 to confirmation in June and we expect to go effective soon
6 thereafter, as practicable, I think this will be the last
7 interim fee hearing that the Court will hear. Hopefully,
8 we'll be before you on filings.

9 And in terms of the funding for the payments, the
10 debt, as upsize, you know, with either of these proposals,
11 provides more of the sufficient funding for the debtors and
12 not only to pay for these fees, obviously, but to emerge
13 from -- to get to the effective date and emerge from the
14 cases.

15 THE COURT: All right.

16 MR. ROSENTHAL: Your Honor, I can spend time
17 detailing what all these professionals -- what we've all
18 done on the debtor's side and the committee's side, suffice
19 it to say, I think that everyone has exerted a huge amount
20 of effort. There has been a lot of progress in this fee
21 period that began when we were still trying to figure out
22 what the plan looked like and ended with a filing of plans
23 and disclosure statements and subsequently turned into
24 negotiation of cooperation settlement term sheets. This was
25 a period where we all did a tremendous amount of intensive

1 work that has shown up, I think, from the Court's
2 perspective in a case that's required very little from the
3 Court in terms of decisions, we've tried to keep most of
4 this out of the Court and resolve it consensually and I
5 think we've been effective and I think that's a testament to
6 what the professionals have done here.

7 There have been discussions with the U.S.
8 Trustee's Office about issues that the U.S. Trustee has
9 raised. We worked with the U.S. Trustee's Office to
10 identify areas where the professionals on the debtor's side
11 and I think Milbank worked with the U.S. Trustee's Office
12 with the professionals on the committee's side were asked to
13 make some adjustments based on a number of factors related
14 to the guidelines. Those have all been factored into the
15 requests that are going to be made to the Court and I think
16 they've all been resolved. Mr. Morrissey, I think they've
17 all been resolved now.

18 So with that, Your Honor, let me turn to the
19 application that is nearest and dearest to my heart, which
20 is the Gibson Dunne one. We are requesting a -- if this
21 period, almost ten million dollars, 9.9 million dollars.
22 Obviously we're requesting a payment of 80 percent of that
23 as the fee portion and an expense reimbursement of \$253,000.

24 We have taken somewhere in the neighborhood of
25 \$180,000 in reductions. Some of that was a reduction for

1 travel time, about a hundred thousand dollars, but another
2 \$177,000 related to transitory professionals or time spent
3 or reductions that we made in discussions with the U.S.
4 Trustee's Office.

5 So we would ask the Court to approve this request
6 for \$9,917,000, roughly, and \$253,000 in expenses and
7 approve the payment of the holdback from the prior period,
8 which is approximately a million, seventy-nine thousand
9 dollars.

10 THE COURT: All right. Anyone wish to be heard on
11 the third application of Gibson, Dunne & Crutcher for
12 allowance for interim compensation?

13 MR. MORRISSEY: Good morning, Your Honor.

14 Again, for the record, Richard Morrissey, for the
15 U.S. Trustee.

16 Before I get to Gibson Dunne in particular, and
17 I'm not going to get up for each of the fee apps here, I'd
18 like to say that the attorneys, the financial advisors, all
19 the professionals here, have been very, very cooperative in
20 terms of discussing with me the issues that we've had. Some
21 issues were actually raised by applicants themselves, which
22 doesn't happen obvious, but that led to a very good
23 atmosphere in terms of negotiating reductions. And that's
24 what we did here.

25 I don't think, because there aren't any disputes

1 as I'm standing here now, that we have to go into the nitty-
2 gritty, unless the Court wants to, as to what the
3 deficiencies were, but there was a lot of spirited
4 compromise here and I think because of that, it saved a lot
5 of people, both inside and outside of this courtroom, and
6 some of the people who are listening on the phone, it saved
7 a lot of time and trouble and expense, and I think that is
8 good for one and all.

9 Now, as to the Gibson Dunne fee application, the
10 U.S. Trustee has no objection to the allowance of the third
11 interim fees and the reduced amount described by
12 Mr. Rosenthal, and the U.S. Trustee is not going to stand in
13 the way for the Court's scheme for the holdbacks, and,
14 therefore, the U.S. Trustee has no objection.

15 Thank you.

16 THE COURT: All right. Thank you very much.

17 Anyone else?

18 All right. I'm going to grant the third
19 application for interim compensation of Gibson, Dunne &
20 Crutcher as modified and explained here this morning. I
21 will make a few notes. It's obviously a sizable amount, but
22 while I have not had to rule on too many issues in this
23 case, I will say that does not mean that there have not been
24 a lot of issues in this case that we've all spent a
25 significant amount of time talking about and I think the

1 professionals here have done a fantastic job of working to
2 prevent this case from becoming, something I think could
3 easily happen, mired in legislation for a significant amount
4 of time and with tremendous expense. And certainly during
5 this fee period, there has been significant progress made on
6 (indiscernible - 27:30) issues, as well as management
7 issues, all of which were central to a successful plan here.

8 So in light of all of that, I will approve the
9 application.

10 MR. ROSENTHAL: Thank you, Your Honor.

11 If I may, I'd like to present the other debtor
12 professionals, Linklaters is next. Richard Good, I think is
13 present on the telephone if you want to ask him questions.

14 Linklaters has agreed to a reduction that included
15 a reduction of -- that was self-imposed, voluntary reduction
16 and a reduction in response to the U.S. Trustee's comments
17 of about \$17,000. As reduced, the fees are roughly \$76,000
18 and expenses of about 40 -- I'm sorry, about \$100, not very
19 much money. Their holdback amount is \$4,747.

20 THE COURT: All right.

21 MR. ROSENTHAL: So, they would request that they
22 be approved.

23 THE COURT: All right. Do you want to group any
24 of the -- given the resolution that you've had with the U.S.
25 Trustee's Office, maybe you want to present all of the

1 related professionals that the debtors are involved with in
2 one shot and make things a little more efficient.

3 MR. ROSENTHAL: Sure, if you want, Your Honor, the
4 next is KPMG UK. They made total reductions in fees and
5 some reductions in fees and expenses. And the result is
6 after their reduction, they're asking for about \$13,000 in
7 fees and about \$14,000 in expenses, and then, obviously, for
8 payment of their holdback, which is about 76, \$77,000.

9 KPM -- go ahead, I'm sorry.

10 MR. MORRISSEY: Your Honor -- again, Richard
11 Morrissey for the record.

12 This one was a little bit unusual. It has been
13 resolved, so the Court shouldn't fear in that respect. But
14 what happened there was the expenses actually exceeded the
15 fees in that case, which is highly unusual, but, again, in
16 the spirit of a lot of cooperation, the applicant provided
17 me with actual time records which explained why that was.
18 There were certain expenses which were law firm fees that
19 were incurred in a prior fee period that were not asked for
20 or not requested in the second interim fee application, so
21 they were brought forward and included here. And that's why
22 the relationship --

23 THE COURT: Skewed the percentage.

24 MR. MORRISSEY: -- skewed the percentages. And
25 with that, plus the reduction that Mr. Rosenthal just

1 referred to, the U.S. Trustee has no objection.

2 MR. ROSENTHAL: We all have this problem, Your
3 Honor, that our accounts payable runs just a little bit
4 behind, so I think this fee will confirm that's what was the
5 case with KPMG.

6 THE COURT: Okay. Let me take those two since
7 those have been presented.

8 Any other comments or parties who want to weigh in
9 on the application of Linklaters, LLP or KPMG, LLP?

10 All right. I will approve both of those
11 applications, as appropriate, given the explanations
12 provided to me, as well as the documentation supporting the
13 applications.

14 MR. ROSENTHAL: Thank you, Your Honor.

15 The next one is KPMG US. Again, after voluntary
16 reductions, they're asking for about \$52,000 in expenses, no
17 expenses during this period, and for a release of the
18 holdback of about \$20,000. There was a small reduction
19 after discussions with the U.S. Trustee.

20 King & Spalding, which is a special counsel,
21 again, a voluntary reduction of about \$22,000 and after
22 reduction, the requested fees are \$544,000 and expenses are
23 about 11,000 and they are asking for a release of their
24 20 percent holdback, which is about \$108,000.

25 And then you come to our foreign counsel, Trowers,

1 from Bahrain. They're asking -- they made a reduction of
2 \$5,000 and are asking for total fees of about \$89,000 and
3 expenses of roughly \$800 and a release of their holdback of
4 \$26,000.

5 (Indiscernible - 32:10) Mourant Ozannes from the
6 Cayman Islands, after an agreed reduction of approximately
7 \$16,000 is asking for fees of \$508,000 and expenses of
8 \$2,300 and a release of their \$61,000 holdback.

9 We then go, Your Honor, to Alvarez & Marsal.
10 A & M as reduced their fees by about \$17,000 and after that
11 reduction, they're asking for an approval of fees in the
12 amount of \$3,770,000 and expenses of approximately \$68,000,
13 release of the holdback amount of about \$434,000.

14 Now, I understand there's been some -- there's
15 some continuing discussion with the U.S. Trustee about some
16 of the Alvarez & Marsal expenses, but we're told that
17 Mr. Morrissey has agreed that all those expense issues will
18 be addressed in connection with their next fee application.

19 THE COURT: All right.

20 MR. ROSENTHAL: The next one, Your Honor, is
21 Rothschild, as you know, our investment financial advisor.
22 They are asking for -- they have a fixed compensation
23 arrangement, Your Honor, so they are asking for approval of
24 fees for this period of two million dollars and expenses of
25 about \$128,000 and for a release of their holdback from the

1 prior period of \$70,000. There were no reductions proposed
2 to those fees, just a fixed fee.

3 Garden City Group our claims noticing agent, a
4 small application, \$5,000 reduction. After reduction,
5 they're asking for about \$28,000 in fees and release of
6 their holdback of about \$560.

7 And finally, Your Honor, Ernst & Young Bahrain,
8 again, that's another fixed compensation arrangement.
9 They're asking for approval of their fees for \$143,000, no
10 expenses and a release of their holdback amount of
11 approximately \$142,000.

12 Your Honor, we -- all of these professionals on
13 the debtor's side have worked very hard for the debtors and
14 we obviously support approval of their applications.

15 THE COURT: All right. Mr. Morrissey, in other
16 comments on that group of applications collectively?

17 MR. MORRISSEY: No, Your Honor.

18 THE COURT: All right.

19 I just had two questions. I see that some of the
20 applications are marked like KPMG, LLP, US, is marked as
21 total fees requested discounted, in other words, there
22 appears to be a discount before any discussions with the
23 U.S. Trustee's Office, and I was just wondering if you could
24 just explain -- and some of them are like that and some of
25 them are not -- what the particular circumstances are in

1 connection with the discount.

2 MR. ROSENTHAL: Your Honor, I wish I had a
3 complete answer for you.

4 Ms. Spigel doesn't represent KPMG US, but her
5 understanding -- and I can confirm this for you -- is that
6 there is a -- there was a generally overall discount given
7 over the standard rates in connection with the engagement
8 and that is just reflecting that the rates that you see are
9 already discounted rates.

10 THE COURT: All right. Thank you. That's
11 helpful.

12 And my other comment is just a confirmation in
13 looking at the Ernst & Young application, there's a footnote
14 about the debtors and Ernst & Young Bahrain negotiating an
15 increase in fees and I assume that's all for work -- any
16 work going forward, not -- it doesn't impact this
17 application?

18 MR. ROSENTHAL: Yes.

19 THE COURT: All right.

20 Given the information submitted with the
21 applications and the information provided to me here today,
22 I will grant these applications of the debtors that have
23 been identified by you, Mr. Rosenthal, consistent with the
24 agreements worked out with the U.S. Trustee's Office, as
25 well as any negotiated discounts that are reflected in the

1 documents.

2 MR. ROSENTHAL: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. FLECK: Good afternoon, Your Honor.

5 Evan Fleck of Milbank Tweed, handling the client
6 on behalf of the official committee.

7 We have five applications of the professionals
8 that have been retained by the committee. I would like to
9 present them altogether as one group, with the Court's
10 permission?

11 THE COURT: Certainly.

12 MR. FLECK: Just to start, I would like to
13 indicate to the Court from the committee's perspective, the
14 committee has been very clear with the professionals
15 retained by it that professional service should be used
16 where necessary and they've established certain rules for
17 the professionals and we followed them and as a result,
18 there are certain reductions that we do on a voluntary basis
19 to reflect that. In addition, all of the issues that were
20 raised by the U.S. Trustee's Office have been resolved in a
21 satisfactory manner to Mr. Morrissey and his office.

22 With respect to the applications, themselves, Your
23 Honor, the first is from Milbank, Tweed, Hadley, & McCoy.
24 This is docket number 1015 and it's item number 15 on the
25 agenda for today's hearing. Your Honor, we are seeking

1 authorization to -- or approval of \$6,076,159 and fees
2 reimbursement of \$229,389.94 in expenses. Your Honor, the
3 expenses are higher, perhaps, than usual in particular
4 because of the international travel with respect to this
5 case, and Your Honor is aware of that.

6 THE COURT: I think we've had to patch in various
7 professionals from the sunny climates of Bahrain on one or
8 two occasions, yes.

9 MR. FLECK: With respect to our application, Your
10 Honor, that represents 8,615 hours of professional time
11 expended during this period on behalf of the committee. The
12 reduction that was asked but the office of the United States
13 Trustee is \$25,000 in our fees and we have accepted that
14 reduction. There have been no other objections informal or
15 otherwise.

16 With respect to the next application, Your Honor,
17 that is Houlihan Lokey, docket number 1,014, item number 14
18 on today's agenda. Houlihan Lokey is a financial advisor
19 and investment banker to the committee. They're on a fixed
20 compensation schedule, not hourly, and the fees for this
21 period are one million dollars, expenses of \$78,262.34. I
22 was going to tell Your Honor that Mr. Jordan of Houlihan
23 Lokey is in the courtroom and can answer any questions, but
24 I believe he's outside on the other agenda item, but we can
25 certainly call him in to the extent that that's necessary.

1 Respect to Houlihan as well as Milbank, there's
2 also requests for release of the holdback for the second
3 interim period.

4 The next application is docket number 1020 and
5 agenda number 16, that's FTI. FTI serves as a financial
6 advisor to the committee. They are requesting during this
7 period, authorization to pay \$1,221,534 and reimbursement of
8 \$27,738 in expenses. Mr. Sam Starr is on the phone and
9 could speak for any of the fees or expenses that were
10 incurred during this period. This application does reflect
11 a reduction of \$9,000 in fees in order to resolve the issues
12 that were raised by Mr. Morrissey on behalf of the United
13 States Trustee.

14 The next, Your Honor, is Walkers. Walkers is
15 Cayman counsel to the committee. This is docket number 1012
16 and item number 13 on today's agenda. Walkers is seeking
17 authorization and approval of \$190,695 in fees and the
18 reimbursement of \$141 in expenses. Barnaby Gowrie of
19 Walkers is on the telephone and available to answer any
20 questions from the Court with respect to the Walkers
21 application.

22 And lastly, is the Hassan Radhi application, Your
23 Honor. This is docket number 1006. It's agenda item number
24 12. Hassan Radhi, as Your Honor probably recalls, is the
25 committee's counsel is Bahrain. They have participated in a

1 prior hearing and have been essential to the committee's
2 understanding of issues of Bahrainian law that are key to
3 this case. They are seeking the payment of \$37,331.40 in
4 fees. They have no expenses for which they're seeking
5 reimbursement, and Mr. Al-Aradi of the Hassan Radhi firm is
6 on the telephone and available to answer any questions from
7 the Court.

8 THE COURT: All right. Thank you.

9 Anyone wish to be heard in connection with these
10 five applications related to the committee?

11 MR. MORRISSEY: Your Honor, again, Richard
12 Morrissey.

13 The U.S. Trustee has no objection to the -- to
14 these fees being allowed in the reduced amounts described by
15 Mr. Fleck, and, again, the same position on the holdbacks
16 here, and I'd like to reiterate the very high level of
17 cooperation we received from the committee's side, as well
18 as the debtor's side.

19 And one suggestion, Your Honor, which is once Your
20 Honor speaks or rules on these motions, there are several
21 people on the phone and perhaps some of them in the
22 courtroom, as well, who may be here only for the fee
23 applications and perhaps they may be excused once Your Honor
24 has finished discussing the fee applications.

25 Thank you.

1 THE COURT: All right. Anyone else who wishes to
2 be heard?

3 All right. I will approved these five
4 applications, as well, for the reduced amounts as set forth
5 here today and supported by the papers that I was given.
6 Again, I will note, as I did with debtor's counsel, the
7 crucial role of the committee in resolving many highly
8 contested and crucial matters that have been addressed
9 during this fee period and this date that could have
10 otherwise been the subject to protracted, lengthy and
11 expensive litigation.

12 MR. FLECK: Thank you, Your Honor.

13 THE COURT: Thank you.

14 All right. That brings us to 12:10 and my thought
15 would be to, at this point, unless there's anything else
16 that we need to address, other than the exit financing
17 question, to take a short recess and then have the parties
18 essentially knock on chambers doors and let me know where
19 things stand about 12:30 or shortly after that, obviously,
20 you need to communicate with folks before you let me know
21 that.

22 So, what I would ask is maybe within 10 minutes or
23 so of 12:30, you just give me a holler and let me know if
24 there's a need to spend some time trying to evaluate what is
25 best and final. Certainly, we can take a lunch break and

1 then come back and do that, just let me know what's the most
2 productive thing to do in terms of timing.

3 UNIDENTIFIED MALE SPEAKER: We will, Your Honor.
4 We'll tell you right after the conference.

5 THE COURT: All right. Thank you very much.

6 UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.

7 (Recess at 12:09 p.m.)

8 THE CLERK: All rise.

9 THE COURT: Please be seated.

10 All right. I thought it would make sense to just
11 have a brief discussion on the record in terms of process,
12 so what can you tell me.

13 MR. ROSENTHAL: Your Honor, we -- Michael
14 Rosenthal for the debtors -- we had a 12:30 deadline that
15 the Court had set. We have received -- we think the parties
16 are working -- the bidders are working. We received a
17 request from Goldman to -- for an additional hour so they
18 can get in how much with some additional people and we
19 believe that for the sake of the process, the additional
20 hour should be given, but we told them that that would be
21 the last extension and that we would, then, expect bids by
22 1:30, if that's acceptable by the Court.

23 THE COURT: So, it sounds like the debtors believe
24 it's appropriate to extend this out until 1:30 at this
25 point.

1 MR. ROSENTHAL: We do.

2 THE COURT: Does the committee agree?

3 MR. DUNNE: We do, Your Honor.

4 THE COURT: In light of that, that's exactly what
5 we will do. And then in order to have sufficient time to
6 get that information at 1:30, take a look at it, why don't
7 we reconvene at -- we can either make it 1:45 or 2:00,
8 depending on the preference of the parties.

9 MR. SEIDER: Your Honor, Mitchell Seider of Latham
10 & Watkins for Goldman Sachs.

11 May I make a suggestion, with respect to process?

12 THE COURT: Sure.

13 MR. SEIDER: What we would subject, and we have
14 spoken with Mr. Fleck and Mr. Williams about this and I
15 think they may have spoken with Fortress about it as well,
16 is that we would come back at 1:30 and we would
17 simultaneously -- "we" being Goldman Sachs and Fortress --
18 hand pieces of paper to Your Honor, to the counsel to the
19 debtor, and counsel to the committee with our final
20 proposals and then the debtor and committee would excuse
21 themselves and deliberate as they will and come back.

22 THE COURT: I am happy to be the conduit by which
23 the process has the appropriate level of playing field, so
24 that's fine -- I'm fine with that if the parties feel that
25 that serves the interests of the case.

1 UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.

2 UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.

3 THE COURT: All right.

4 So I will see you back here at 1:30 for the
5 ceremonial handing of the documents and we'll take it from
6 there.

7 (Laughter)

8 UNIDENTIFIED MALE SPEAKER: Thank you.

9 UNIDENTIFIED MALE SPEAKER: Thank you.

10 (Recess taken at 12:37 p.m.)

11 THE COURT: Please be seated.

12 All right. To pick up where we left off, it's my
13 understanding that the interested lenders were going to
14 submit their best and final offers and it was their desire
15 to do it directly to me and that's perfectly fine, so I'm
16 happy to receive them, and then after I do that, I guess we
17 could talk about what the next step is, unless folks want to
18 talk about the next step now?

19 MR. SEIDER: Your Honor, Mitchell Seider for
20 Latham & Watkins.

21 What we would envision on the next step would be
22 the debtors and its advisor and the committee and its
23 advisor, stepping out to weigh the two proposals, come back
24 and tell us what they think.

25 THE COURT: All right. With that said, if folks

1 would hand up the proposals?

2 MR. FLORES: Your Honor, just briefly, are we
3 handing just one proposal to the Court?

4 THE COURT: What did you envision?

5 MR. SEIDER: I'm happy to give Your Honor a copy
6 and copies to the --

7 THE COURT: Why don't we do three. I imagine you
8 have copies, so one to me, one to the committee and one to
9 the debtors. That would be fantastic.

10 Yes, and if everyone will keep them down for the
11 moment just to increase the level of suspense.

12 (Laughter)

13 Thank you very much.

14 And now they're all received, so if we're going to
15 do this, we'll do it the whole nine yards. So now that
16 they're received, folks can now take a look at them.

17 I don't think I need to be here for folks to read
18 the proposals. I'm going to take a look at them certainly,
19 so that for going -- for purposes of being able to go ahead
20 with the hearing, so I'm going to recess now. I imagine
21 that the recess will take at least half an hour so you can
22 take a look at things.

23 UNIDENTIFIED MALE SPEAKER: I think so, Your
24 Honor. Give us a --

25 THE COURT: So why don't we plan to do this, if I

1 hear from you earlier, I will come back out earlier, but I
2 will come back out no later than 2:30.

3 MR. SEIDER: Thank you for the additional time,
4 Your Honor.

5 THE COURT: Thank you. I appreciate your
6 participation.

7 (Recess at 1:38 p.m.)

8 THE COURT: All right. Having had a chance to
9 look at the best and final offers submitted just about an
10 hour ago, what conclusion has been reached by the debtors?

11 MR. ROSENTHAL: Your Honor, Michael Rosenthal on
12 behalf of the debtors. First, Your Honor, let me say that
13 we appreciated that both of these bidders submitted revised
14 proposals. We think that both of them have contributed a
15 significant value to these estates regardless of what we're
16 going to tell you about our decision now. This process has
17 resulted in significant improvement in the economics that
18 drops -- that drops to the bottom line of these debtors.

19 We have to incredibly close proposals. Taking
20 into consideration however the economics, some intangible
21 factors and exercising the debtor's business judgment about
22 which is the better proposal, we believe, Your Honor, that
23 the Goldman proposal is the highest and best offer and would
24 recommend that it be approved today by the Court. We think
25 that the UCC supports that recommendation.

1 THE COURT: All right. Let me hear from the
2 committee.

3 MR. DUNNE: Your Honor, we'll -- for the record,
4 Dennis Dunne from Milbank Tweed on behalf of the creditor's
5 committee. We agree with the statements on the record that
6 Mr. Rosenthal just made. We reviewed both proposals and
7 felt that on an economic basis, that Goldman's was better.

8 THE COURT: All right. Let me ask if there is any
9 dispute on that score by any of the -- well, by Fortress,
10 which had previously filed an objection. Is there an intent
11 to challenge the debtor's exercising their business judgment
12 in choosing the Goldman Sachs' revised proposal?

13 MR. FLORES: Your Honor, Steven Flores, co-counsel
14 to Fortress, and obviously this is disappointing news. What
15 Fortress would like to do is reserve its rights until it
16 receives additional information particularly about the
17 Goldman bid.

18 THE COURT: Well, I don't know how I can do that
19 if the matter is going to go forward today. And since
20 Goldman was the entity that was teed up initially, and I
21 think everyone agreed that this process, while not ideal in
22 some respects process-wise, was acceptable in terms of
23 reaching a best and final offer for the estate. Given that
24 Goldman is the same bidder, just has improved its terms, I
25 do think that I have that matter teed up for me to be

1 decided today and approved today consistent with the motion
2 in front of me and I think everyone is on notice of that.
3 So I don't know quite how I accomplish what you want me to
4 accomplish consistent with that.

5 MR. FLORES: I appreciate that, Your Honor.

6 The obvious problem we have is we don't know what
7 the Goldman proposal looks like. If I may just have one
8 moment to confer?

9 THE COURT: Sure.

10 (Pause)

11 MR. FLORES: Your Honor, thank you.

12 Steven Flores, again, co-counsel with Fortress.

13 The issue we have is we're sort of in exactly the
14 situation that we feared. We've apparently been beaten by a
15 bid that we haven't seen. We were hoping that what we might
16 have seen today was more of a live auction as opposed to
17 last and best.

18 THE COURT: Why did you come in thinking that
19 today was going to be a live auction? I'm not sure why that
20 is the expectation, that that would be the -- what you're
21 entitled to do, given the way that this has been -- I mean
22 this is unusual, right, so I'm unsure why you would think
23 that that's how we were going to go one way or the other.

24 MR. FLORES: No, I understand -- let me be clear,
25 Your Honor, that would have been our preference, but you're

1 certainly right.

2 And so we're in a situation where we've been
3 beaten by a bid that we haven't seen, so what do we do now?
4 I mean it's entirely possible --

5 THE COURT: I need an answer, and here's why I
6 need an answer. If you're going to object, then I'm going
7 to spend some time on an evidentiary basis for the debtors
8 exercising business judgment, because I think that would be
9 appropriate to do that.

10 If you're not going to object, then I'm going to
11 spend considerably less time on that issue, but, again, we
12 engaged in a process today notwithstanding the objections
13 that were made by the debtor and the committee, as well as
14 Goldman to the fact that they thought that Goldman had been
15 chosen as the appropriate party for exit financing, and by
16 virtue of the fiduciary out, because that's what these cases
17 are about, we engaged in this process today.

18 This is not a -- this doesn't go on forever, so
19 that's why best and final was done today. It was done in a
20 particular time. It was done with a certainly amount of
21 pomp and circumstance and it is what it is and now we're
22 done.

23 So, if you want to contest it, you contest it and
24 then I'll ask parties to put on whatever record or showing
25 or representations they want to make in support of the

1 debtor's exercising their business judgment.

2 If you don't want to object, that's fine, but it's
3 now.

4 MR. FLORES: And I appreciate that, Your Honor.

5 We would like to see a record and we'll stand by
6 our objection. We appreciate that.

7 THE COURT: All right.

8 And I would like you to articulate your objection
9 so that folks know what they're responding to.

10 MR. FLORES: Thank you, Your Honor.

11 I think the basis at this point is we have no
12 understanding about what makes the Goldman bid supposedly
13 better, and, therefore, why this is a valid exercise of the
14 debtor's business judgment.

15 THE COURT: All right.

16 MR. FLORES: Thank you.

17 THE COURT: Thank you.

18 MR. WILLIAMS: Good afternoon, Your Honor.

19 Matthew Williams of Gibson Dunne & Crutcher for
20 the debtor.

21 I'm not sure if this will (indiscernible - 58:23)
22 concerns or not. Obviously, a lot of the fees under the
23 Goldman proposal, as is common, were filed under seal. So,
24 we can't go in -- when we talk about the different bids, I
25 can't go into those. What I can go into, and maybe this is

1 helpful to Fortress, are some of the changes to the Goldman
2 proposal that have not been filed under seal and hence are
3 public.

4 The first, Your Honor is the profit rate. The
5 profit rate had initially been 9.75 percent under the
6 Goldman proposal. The under the revised Goldman proposal,
7 it is going to be 8.25 percent.

8 Another significant change to the Goldman
9 proposal, which the debtor viewed as significant were the
10 mandatory prepayment fees and how they worked, Your Honor.
11 Under the prior Goldman proposal, year one, there is a 1
12 percent fee on voluntary prepayments only. That stayed the
13 same. For years two and three, there had been a 1 percent
14 fees in year two and a 1 percent in year there for all
15 prepayments. Goldman as agreed that it will have no
16 mandatory prepayment fee for any of the years, and I'm
17 sorry, also in year three, Your Honor, they've agreed to no
18 prepayment fee at all in year three.

19 The rest of the changes to the Goldman proposal,
20 as I stated, Your Honor, earlier, were in essence related to
21 the fees, the administrative fee, those types of fees that
22 were filed with the Court under seal, so I can't go into
23 them on the record. I would note for Your Honor that in
24 connection with this process, we told Fortress this much,
25 that we couldn't give them those fees and Fortress -- but

1 what we did do is we gave them, in essence, our baked-in,
2 all-in calculation of what they needed to beat. So they
3 certainly knew what they needed to beat these fees, right --
4 that we didn't break out each fee, but they can figure out
5 from the IRR that we gave them that this is the number that
6 they had to beat.

7 So I think that they should have, based upon what
8 I told them, what I've said in the record and based upon
9 what you told them during the auction process, all of the
10 information they need to determine whether or not our bid
11 was better or not. I'm not sure if that resolves the
12 Fortress objection.

13 THE COURT: Am I correctly to understand that
14 Fortress submitted its bid under the same terms, that some
15 of the information is confidential and some is public?

16 MR. WILLIAMS: Interestingly no, they did not.

17 Fortress' bid that they filed in their objection
18 that they attached to their objection did not provide that
19 certain things were going to be under seal and certain
20 things didn't. Had they asked you us to do it, Your Honor,
21 I would tell you what's been customary in my experience and
22 I think in the Court's experience is that we certainly would
23 have filed those fee letters under seal, but Fortress didn't
24 ask to do it, and to be frank, they're the ones who filed
25 their letter, we didn't.

1 Now focusing on something that Mr. Rosenthal said
2 earlier, I do think that Fortress did at a lot of value to
3 this process, in essence, it allowed us to continue to drive
4 the Goldman bid down to where we think this is a good deal
5 now. So I think that Fortress has added a lot of value to
6 the process, but I think that they're objection should be
7 overruled based upon the fact that the two debtors -- the
8 two fiduciaries here, both the debtor and the committee,
9 have agreed that this is clearly the best proposal on the
10 table.

11 THE COURT: Okay. Can you just explain for me, as
12 to the two public terms that you just mentioned, that is
13 prepayment and profit, how they compare with Fortress?

14 MR. WILLIAMS: Yes, I can, Your Honor.

15 For Fortress prepayment provisions, they've not
16 changed from what Fortress filed with the Court, I guess, on
17 Monday, Your Honor. In Fortress, year one, there was a 2
18 percent fee for voluntary prepayments only out of financing
19 proceeds and in year two, it was 1 percent with voluntary
20 prepayments with financing proceeds. So Fortress did not --
21 their only prepayment fees were to the extent that we raise
22 alternative financing. They do not have prepayment fees
23 like (indiscernible - 1:02:48).

24 THE COURT: All right. And what about profit, how
25 does the Goldman Sachs and Fortress compare?

1 MR. WILLIAMS: Goldman, under their revised
2 proposal is 8.25 percent -- I'm sorry, is 8.25 percent plus
3 Libor, a Libor floor of 1.5 percent and under the Fortress
4 proposal, we're looking at Libor plus 9.5 percent, although
5 they have a 1 percent Libor flooring.

6 THE COURT: All right. Anything else that you
7 want to put on the record, as to the debtor's exercise of
8 their business judgment in choosing the revised Goldman
9 Sachs proposal?

10 MR. WILLIAMS: No, Your Honor.

11 Other than I think the motion speaks for itself.
12 I don't think anybody could dispute the fact that the
13 debtors need financing. We have a DIP maturity date coming
14 up in June, I think it's June 14th. We have a confirmation
15 date scheduled for, I believe, June 11th, but there is
16 serious concern that we -- that the DIP would (indiscernible
17 - 1:03:47) prior to the actual effective date of the plan.
18 So I think that everybody would concede, and I think that
19 the record speaks for itself, that we actually need an
20 extension of the DIP, that's the first point. The Goldman
21 proposal will allow us to hit that.

22 The second issue is that on the amount of the DIP,
23 the \$150,000,000, the good thing about the Goldman proposal,
24 which we would have had in a revised Fortress proposal as
25 well, is that it gives us an additional \$40,000,000 of

1 liquidity, about, because we had to prepay the DIP on
2 account of certain sales and the like under the previous
3 \$150,000,000 facility. So we're getting that liquidity
4 back.

5 And the third thing, on the exit facility, is the
6 plan, itself, contemplates the exit facility. I believe the
7 disclosure statement contemplates an exit facility of
8 between 215 to \$315,000,000. Depending on whether or not we
9 take SCB out, this proposal under the revised Fortress or
10 the revised Goldman, we're able to hit that bogey. We're
11 able -- we're going to have more than enough to be able to
12 wind down these stakes and get out that confirmation,
13 hopefully, on time.

14 So with that, I think the record is clear -- and
15 one other thing I would say, the process here has worked, as
16 Your Honor noted. It hasn't been necessarily a linear
17 process, but I think that's nor to the benefit of the debtor
18 and the estates and its creditors. I think that just today
19 by reducing the profit, amount of substantial, as well as
20 amount of fees and expenses, I think we can show that this
21 is really the best offer that's out there today.

22 THE COURT: All right. Thank you.

23 MR. WILLIAMS: Thank you, Your Honor.

24 THE COURT: I'm going to ask the committee for
25 their input.

1 MR. DUNNE: Thank you, Your Honor.

2 Dennis Dunne from Milbank Tweed.

3 I'll just echo a couple of the points. I do think
4 that this process, whereby we've arrived today with this
5 proposal for the Court's approval has been open, it's been
6 lengthy. There's been spirited and at times contentious
7 negotiations among the various parties. There have been
8 upwards of \$30,000,000 in net savings to the estate, when
9 you compare the original proposal to where we are now.

10 There has to be finality at some point, Your
11 Honor, and I think the rules set out today on the record by
12 Your Honor were clear that today was one last chance for
13 best and final and, indeed, we have saved incremental
14 millions of dollars for the estate as a result of that.

15 The financial advisor to the creditor's committee
16 believes that the Goldman Sachs proposal provides the
17 cheapest and best terms for the exit facility. I do want to
18 say that Fortress has provided a critical role throughout
19 this. They have acted in good faith and they have created a
20 lot of value for the estate through those efforts.

21 Unfortunately, at the end of the day, there has to be one we
22 select and one we don't select. And the creditor's
23 committee is here submitting that we should approve the
24 Goldman Sachs proposal.

25 THE COURT: All right. Thank you.

1 Let me just clarify for the record, I assume that
2 the debtors are recommending the Goldman Sachs that they're
3 also essentially implicitly telling me that their financial
4 advisor recommends this, that this is the best proposal?

5 MR. ROSENTHAL: That's correct, Your Honor.

6 THE COURT: All right. Does anyone else wish to
7 be heard on the pending motion to approve exit financing
8 here, that being the Goldman Sachs revised terms which were
9 a product of the process conducted here today?

10 MR. FLORES: Your Honor, thank you.

11 Steven Flores, Togut Segal, on behalf of Fortress.
12 I'll be very brief.

13 First, very much appreciate the Court's time today
14 in facilitating the process the way the Court did. Also,
15 appreciate the comment to the debtor's counsel and
16 committee's counsel. I think the one additional data point
17 that we would like to understand is the IRR of the new
18 Goldman proposal. That would help us, I think, understand
19 how these two proposals compare and I believe that would be
20 just a short easy data point.

21 THE COURT: Well, does that resolve your objection
22 or is that information that you would like to know? I think
23 those are two different things.

24 MR. FLORES: Well, I think, Your Honor, that it
25 would fill what we view as a gap in the record and it

1 would --

2 THE COURT: Well, that's all nice, but you either
3 have an objection or you don't. And I would imagine in
4 asking for that information which wasn't provided earlier, I
5 assume for a reason, that you folks may be more amenable to
6 seeing what they can do if it resolves your objection, maybe
7 less amenable to seeing what they can do if it doesn't
8 resolve an objection. So, if it's simply an ask, it's
9 slightly a different circumstance and one that I'm less
10 likely to spend more time on.

11 MR. FLORES: Your Honor, I can't commit to the
12 Court and say --

13 THE COURT: It's an ask, so I'll ask the debtors
14 what their response is to that.

15 MR. ROSENTHAL: Your Honor, I'm not inclined to
16 disclose that information. I will tell you that we and the
17 advisors for the debtors and the advisors for the UCC have
18 clearly done these IR calculations. They are one of the
19 factors. They are very close. They are one of the factors
20 that was taken into consideration, but they're not the only
21 thing.

22 THE COURT: All right. Anything else that anyone
23 wants to add?

24 MR. FLORES: Your Honor, perhaps we could get
25 this -- Steven Flores on behalf of Fortress -- one of the

1 data points that we did learn about today was the --

2 THE COURT: Let me just ask, is this -- because
3 we're not going do this all day, so this is the last ask,
4 hurry.

5 MR. FLORES: I appreciate that, Your Honor. This
6 is it.

7 THE COURT: All right. Do you quickly.

8 MR. FLORES: Is the profit component -- is the way
9 both deals were structured is there a payment and time
10 component versus a cash profit component, if we could get
11 a -- we had like to know what the difference is there.

12 THE COURT: Again, I assume that's an ask. It's a
13 would like to have, but it's not a basis for resolving any
14 objections, so in that -- with that in mind, I will ask the
15 debtors if they have anything that they want to comment on
16 or if they're going to let the record speak for itself?

17 MR. ROSENTHAL: Your Honor, the -- Mr. Williams
18 told you the interest rate component, the profit rate
19 component, Libor, the Goldman proposal was one and a half
20 with a Libor floor of one and a half plus eight and a
21 quarter, so that's 9.75.

22 The profit component in the Fortress proposal did
23 not change it. It was Libor with a floor of one, plus nine
24 and a half, so that's ten and a half; so 9.75 versus 10.5.

25 There are differences in terms of which is cash

1 and which is payment. So, with the reduction in the margin
2 from 9.75 to 8.25, the PIC component, it became all cash.
3 It was a 1.75 percent PIC component to it. It's now -- it's
4 now an all-cash component. But that did go into the
5 calculations and --

6 MR. FLORES: I understand that.

7 THE COURT: All right. So you're one for two.

8 MR. FLORES: Thank you, Your Honor.

9 THE COURT: All right. Anyone else wish to be
10 heard?

11 Goldman wish to be heard?

12 MR. SEIDER: No, Your Honor.

13 THE COURT: All right. Based on the record before
14 me, I'm going to grant the debtor's motion to enter into
15 exit financing under the terms, revised terms provided here
16 today at 1:30 by Goldman Sachs as memorialized in the
17 handwritten note that I have, as well as I'm sure more
18 formally in another document.

19 I think it easily satisfies the business judgment
20 standard and debtors have, after a spirited process that led
21 to probably longer than parties anticipated, but more to the
22 benefit of the estate, that process involved Goldman Sachs
23 and Fortress credit and essentially taking turns edging each
24 other out. It does, however -- well, not typically in terms
25 of what's the best proposal, as I do note, that in terms of

1 the process, Goldman was the winning bidder at the end of
2 the established process with the deadline of April 26th and
3 the proposal that was received by the Court and filed by
4 Fortress was, in fact, after that deadline, which is a point
5 that is noted in the debtor's reply to the Fortress
6 objection.

7 Consistent with their fiduciary out, however the
8 debtors and the committee, nonetheless were interested in
9 hearing additional proposals, obviously there has been quite
10 a bit of work done since the papers were filed leading up to
11 today. In addition, there was another round of bidding done
12 today. At the end of that, both proposals were submitted
13 and satisfied based on the debtor's explanation of why
14 they've chosen the Goldman Sachs proposal that it is in the
15 best interests of the estate. I note that the debtor's
16 judgment has been echoed by the committee and the
17 committee's financial advisor as well. So, for all of those
18 reasons, I will grant the motion.

19 MR. ROSENTHAL: Thank you, Your Honor.

20 What I think we should do at this point is we have
21 an order that doesn't immediate to be changed very much, I
22 don't think, because I think it's just an approval order,
23 but it references the commitment which is now changing a
24 little bit, right?

25 UNIDENTIFIED MALE SPEAKER: Oh, we've got -- yeah,

1 we've got one change.

2 MR. ROSENTHAL: So, I think we had like to bring
3 the documents up to speed with the --

4 THE COURT: That's fine. Just get them to me.
5 I'm at the ABI New York tomorrow. I assume there's some
6 time since it's (indiscernible - 1:14:48) to this, so when
7 do you anticipate being able to get them to me?

8 UNIDENTIFIED MALE SPEAKER: Tonight.

9 THE COURT: Tonight?

10 MR. ROSENTHAL: Tonight, we'll get them to your
11 chambers tonight.

12 THE COURT: And I assume -- what's the timing for
13 that? I go straight from the ABI to a New York City Bar
14 capstone panel meeting.

15 But I can probably -- if it needs to be done
16 tomorrow, I can probably do it in the afternoon.

17 UNIDENTIFIED MALE SPEAKER: We can get it to him
18 tonight or tomorrow morning at the latest.

19 THE COURT: All right. Tonight would be better --

20 MR. ROSENTHAL: We can get it to you tonight.

21 THE COURT: -- if you could get it to me tonight.
22 Anything else that we need to address here today?

23 MR. ROSENTHAL: No, Your Honor.

24 THE COURT: All right. I will just leave with one
25 observation. In the times that I have seen these kinds of

1 auctions spontaneously break out, I will -- they are always
2 painful processes and they do benefit the estate and that's
3 why we do them if there are such things as fiduciary outs,
4 that's the whole point. It seems that all parties here have
5 operated in good faith and about as collegiately as they can
6 under the circumstances. I think it's resulted in an
7 excellent exit financing package for the debtors and so I
8 commend everyone for their efforts and their patience and I
9 appreciate it, since this hearing has lasted a little longer
10 than folks anticipated when it was originally put in the
11 calendar.

12 UNIDENTIFIED MALE SPEAKER: Thank you very much,
13 Your Honor.

14 UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.

15
16 (Whereupon, these proceedings were concluded at 2:57
17 p.m.)

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I N D E X

RULINGS	Page	Line
Hearing re: Doc. #1030 (GIBSON.) Third Application for Interim Professional Compensation/Third Application of Gibson, Dunn & Crutcher LLP	30	8
Hearing re: Doc. #999 (LINKLATERS) Third Application for Interim Professional Compensation/Third Application of Linklaters LLP	32	10
Hearing re: Doc. #1000 (KPMG LLP) Third Application for Interim Professional Compensation/Third Interim Fee Application of KPMG LLP	32	10
Hearing re: Doc. #973 (ERNST & YOUNG) Second Application for Interim Professional Compensation/Second Interim Application of Ernst & Young	35	22

		Page	Line
1	RULINGS		
2	Hearing re: Doc. #980 (GCG) Second	35	22
3	Application for Interim Professional		
4	Compensation/ Second Interim Fee Application		
5	of GCG, Inc.		
6			
7	Hearing re: Doc. #998 (KPMG US) Third	35	22
8	Application for Interim Professional		
9	Compensation/Third Fee Application of		
10	KPMG LLP (US)		
11			
12	RULINGS	Page	Line
13	Hearing re: Doc. #1004 (TROWERS.) Third	35	22
14	Application for Interim Professional		
15	Compensation/Third Application of		
16	Trowers & Hamlins		
17			
18	Hearing re: Doc. #1019 (ALVAREZ & MARSAL)	35	22
19	Third Application for Interim Professional		
20	Compensation/Third Application of		
21	Alvarez & Marsal North America, LLC		
22			
23			
24			
25			

		Page	Line
1	RULINGS		
2	Hearing re: Doc. #1023 (MOURANT.) Third	35	22
3	Application for Interim Professional		
4	Compensation/Third Application of Mourant		
5	Ozannes		
6			
7	Hearing re: Doc. #1025 (ROTHSCHILD INC.)	35	22
8	Third Application for Interim Professional		
9	Compensation/Third Interim Application of		
10	Rothschild Inc. and N M Rothschild & Sons		
11	Limited		
12			
13	Hearing re: Doc. #1005 (KING & SPALDING)	35	22
14	Application for Interim Professional		
15	Compensation/Third Interim Application of		
16	King & Spalding LLP and King & Spalding		
17	International LLP		
18			
19	Hearing re: Doc. #1006 (HASSAN RADHI)	40	3
20	Application for Interim Professional		
21	Compensation/Third Application of Hassan		
22	Radhi & Associates		
23			
24			
25			

		Page	Line
1	RULINGS		
2	Hearing re: Doc. #1012 (WALKERS) Third	40	3
3	Application for Interim Professional		
4	Compensation of Walkers		
5			
6	Hearing re: Doc. #1014 (HOULIHAN.) Third	40	3
7	Application for Interim Professional		
8	Compensation of Houlihan Lokey Capital, Inc.		
9			
10	Hearing re: Doc. #1015 (MILBANK) Third	40	3
11	Application for Interim Professional		
12	Compensation of Milbank, Tweed,		
13	Hadley & McCloy LLP		
14			
15	Hearing re: Doc. #1020 (FTI.) Third	40	3
16	Application for Interim Professional		
17	Compensation of FTI Consulting, Inc.		
18			
19			
20			
21			
22			
23			
24			
25			

		Page	Line
1	RULINGS		
2	Hearing re: Doc. #1061 Motion to	60	17
3	Authorize/Motion for the Entry of an Order		
4	Authorizing the Debtors to (A) Enter into a		
5	Financing Commitment Letter and Related Fee		
6	Letter to Obtain (I) Replacement DIP Financing		
7	and (II) Exit Financing, (B) Incur and Pay		
8	Associated Fees and Expenses, and (C) Provide		
9	related Indemnities		
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C E R T I F I C A T I O N

I, William J. Garling, certify that the foregoing transcript
is a true and accurate record of the proceedings.

William
Garling

Digitally signed by William Garling
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Date: May 17, 2013