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United States Bankruptcy Court

Southern District Of New York

Case No. 12-11076

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In The Matter Of:

ARCAPITA BANK B.S.C. (C), ET AL,

Debtors.

- - - - - X

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

June 24, 2013  
2:08 P.M.

B E F O R E:  
Hon Sean H. Lane  
U.S. Bankruptcy Judge

1       Hearing Re: DOC. #1157 (FINAL) Motion To Approve Debtor In  
2       Possession Financing Debtors Motion For Order Pursuant To 11  
3       U.S.C. §§ 105, 362, 363 (B)(1), 363 (M), 364 (C)(1), 364  
4       (C)(2), 364 (C)(3), 364€ And 552 And Bankruptcy Rules 4001  
5       And 6004 Authorizing The Debtors To Obtain Replacement Post-  
6       Petition Financing To Repay Existing Post Petition Financing

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25       Transcribed By: Lee M. Sapp

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P R O C E E D I N G S

THE CLERK: All right rise.

THE COURT: Good afternoon, please be seated. All right we're here this afternoon, Arcapita Bank et al for the final hearing on the motion to approve debtor in possession financing and related exit financing. Good afternoon.

MR. ROSENTHAL: Good afternoon, Your Honor. Michael Rosenthal with Emad Khalil and Josh Weisser on behalf of the Arcapita debtors.

THE COURT: All right let me get all other appearances while we're at it.

MR. FLECK: Your Honor, good afternoon. Evan Fleck of Milbank Tweed on behalf of the Official Committee of unsecured creditors.

MR. MORRISSEY: Good afternoon, Your Honor. Richard Morrissey for the US Trustee.

MR. SEIDER: Good afternoon, Your Honor. Mitchell Seider of Latham and Watkins for Goldman Sachs International.

MS. WIENER: Good afternoon, Your Honor. I'm Tally Wiener. I'm here for Captain Hani Alsohaibi, Khalid Bashen, Osma Baeshen, Sahar Baeshen and Sumayya Baeshen.

THE COURT: All right. Good afternoon to you all.

MR. ROSENTHAL: Your Honor, before we start on the motion just a brief update. Very brief. We -- we have been

1 working diligently to implement the plan and the plan  
2 transactions. While there can be no assurance when the plan  
3 will go effective I think we're all hoping that it will  
4 occur sometime say the end -- the end of July but we're  
5 working very hard around -- around the world actually.

6 THE COURT: I'm -- I'm sure you are.

7 MR. ROSENTHAL: Your Honor, we're here seeking a  
8 final order authorizing the debtors to obtain post petition  
9 debtor in possession financing. As the court will recall we  
10 were here on June 10th at which time we made a record of the  
11 basic economic terms of the Goldman financing and compared  
12 it with the Fortress financing which has -- which has been  
13 replaced now. Unless Your Honor disagrees I'm inclined not  
14 to repeat the terms of -- of the financing. I would suffice  
15 it to say that the Goldman debtor in possession financing  
16 was the result of a comprehensive and extensive auction  
17 process that the terms of the Goldman financing were  
18 substantially better in economic terms than the Fortress  
19 financing. That it provided the debtor with -- with needed  
20 funding to fulfill its obligations as a Chapter 11 debtor in  
21 emerge from chapter 11. And the debtors and the committee  
22 and everyone who -- who stood before the court with the  
23 exception of -- of the Hani objectors -- objectors supported  
24 the entry of the interim order.

25 In fact, Your Honor, I -- I don't believe that

1 anyone even Hani disputes that the Goldman DIP is not only  
2 economically superior to the Fortress DIP but that it's  
3 absolutely essential to allow the debtors to continue to  
4 operate during their chapter 11 cases and to maximize the  
5 value of their assets for the benefits of all parties and  
6 interest.

7 I want to do a little procedural history and then  
8 we can talk about some of the -- some of the issues. Prior  
9 to the interim hearing on the 10th, the debtors had filed  
10 their initial motion. Subsequent to the initial -- filing  
11 the initial motion they filed a substantially final DIP  
12 agreement on June 6th, which is 18 days before this hearing,  
13 it was only 4 days before the hearing on June 10th.

14 Captain Hani Alsohaibi filed a late filed  
15 procedural objection under rule 4001(c) and then at the  
16 hearing raised a handful of other issues including whether  
17 the DIP agreement is Sharia compliant. At the close of the  
18 hearing Your Honor overruled Captain Hani's objections and  
19 entered an interim order pursuant to sections 363 and 364 of  
20 the bankruptcy code the sections that were the subject of  
21 the motion before the court authorizing the debtors to enter  
22 into a DIP agreement substantially in the form that it had  
23 been filed with the court and to borrow up to a hundred and  
24 seventy five million dollars (\$175m) there under.

25 Hani did not seek a stay of the interim order and

1 three days later on Thursday of that week the debtors closed  
2 the transaction, drew the hundred and seventy five million  
3 dollars (\$175m) and used a hundred and five million dollars  
4 (\$105m) of those proceeds to repay the Fortress facility.

5 That was on the 13th and then the following day we  
6 filed the executed DIP agreement with the court in a redline  
7 that highlighted some primarily technical changes made to  
8 the -- to the previously filed version of the document.  
9 These changes did not materially alter the structure of or  
10 pricing or the security for the DIP transaction.

11 We're now here for the final hearing. And as we  
12 said to the court at the interim hearing we believe the DIP  
13 transaction has been negotiated in good faith and that entry  
14 into this transaction on a final basis is a sound exercise  
15 of the debtors business judgment and essential to allow the  
16 debtors to continue to operate during the chapter 11 cases,  
17 consummate the plan and maximize the value of their assets  
18 for the benefit of all parties and interests.

19 As Your Honor knows there's been one objection  
20 filed by Hani and some joinders. In that objection Hani  
21 simply expands his arguments with respect to the Sharia  
22 compliance of the DIP transaction. And argues that  
23 according to his view of Sharia the DIP transaction is not  
24 Sharia compliant.

25 He doesn't make any effort to base his argument on



1 the bankruptcy code or applicable case law. He doesn't  
2 argue the debtors don't need the money. He doesn't argue  
3 that entering into the DIP transaction is not in the best  
4 interest of the estate or that it's not a proper exercise of  
5 the debtors business judgment.

6 Your Honor, the debtors have put a lot of time and  
7 effort not only with respect to the DIP transaction but  
8 throughout these cases and even before these cases to comply  
9 with the Sharia principles that govern the debtors.

10 And the Sharia principles that govern the debtors  
11 are those that are determined by Arcapita Bank's Sharia  
12 board. We can -- we're going to talk a little bit more  
13 about that in the future.

14 The debtors are not asking the court to determine  
15 and the court does not need to decide whether the DIP  
16 transaction is Sharia compliant. We've only asked the court  
17 to find that the transaction complies with the bankruptcy  
18 code sections that are relevant to a transaction of this  
19 type, sections 363 and 364.

20 The only requirement in the DIP is the condition  
21 precedent -- the only requirement in the DIP related to  
22 Sharia is the condition precedent that the transaction be  
23 pronounced compliant with the principles of Sharia by a  
24 Sharia advisor approved by the debtors. In satisfaction of  
25 this requirement the executive committee of the Sharia board

1 of Arcapita Bank acting through Shea Kazon (Phonetic) and  
2 more recently through Dr. Abdul Satar (Phonetic) two members  
3 of the Sharia Board of Arcapita Bank reviewed the  
4 transaction and issued a fatwa confirming that it is a  
5 Sharia compliant transaction.

6 Now a fatwa, Your Honor, unknown for the most part  
7 in western society but it's -- it's religious decision  
8 issued by an Islamic scholar who's an interpreter in this  
9 case (Unintelligible) an interpreter or expounder of Islamic  
10 law. The lender Goldman Sachs his investment agent accepted  
11 that fatwa in satisfaction of the condition precedent  
12 enclosed the DIP transaction. Therefore, Your Honor, the  
13 debtors have satisfied the only condition with respect to  
14 Sharia compliance.

15 I -- I need to spend a minute talking about the  
16 law that governs these transaction. The DIP transaction  
17 documents are governed by exclusively by English law. They  
18 are not governed by Sharia law; they're governed by English  
19 law.

20 Hani fails to note this point in his -- in his  
21 objection just as he fails to note that even with respect to  
22 Sharia principles clerics and scholars disagree on how  
23 Sharia -- in Sharia's primarily religious principles should  
24 be applied.

25 We spent a lot of time, Your Honor, in our reply

1 talking about a case in the English court of appeals, the  
2 Shamil Bank case. Which addressed the situation that we  
3 think is substantially on all fours with our case. Shamil  
4 like Arcapita was a Hani Bank, it had entered into a loan  
5 agreement governed by U.K. law but there was one distinction  
6 it's loan agreement said that it was not only governed by  
7 the laws of England but it was also subject -- subject to  
8 the principles of the glorious Sharia. Yet even with this  
9 additional language which is not present in Arcapita's loan  
10 documents, the English court of appeals in Shamil made it  
11 clear that enforceability will not depend on Sharia  
12 compliance and approve the enforceability of the loan.

13 In making its decision -- and I want -- and I  
14 think it's important that the record reflect -- I mean this  
15 isn't in our paper but I -- but I want to -- I want to talk  
16 about what the English court concluded. And there was a --  
17 there was a quotation that I think is important which is --  
18 quotation from the English court is, "In the absence of any  
19 agreement on the boundaries of Islamic law or indeed on what  
20 ought to be the precise ingredients of a Murabaha agreement.  
21 It is in practice up to individual banks to determine the  
22 issue.

23 "In the absence of any legal prescription as to  
24 what and what does not constitute Islamic financing or  
25 finance, most Islamic Banks including those in Bahrain seek

1 the advice of Islamic scholars who examine and approve  
2 particular agreements and forms of agreement. The role of  
3 the bank Sharia Committee being to formulate the bank's  
4 interpretation of the Sharia.

5 "The particular form and content of Murabaha  
6 agreements varies. If a bank's religious supervisory board  
7 is satisfied that the bank's activities are in accordance  
8 with Sharia law that concludes the matter. There being no  
9 provision in Bahrain law or Islamic law generally for an  
10 appeal by a customer of the bank against the board's rulings  
11 and certifications."

12 Here we have the same situation. Arcapita has a  
13 Sharia board. The Sharia board reviews transactions that  
14 come before it to determine if they comply with the Sharia  
15 principles that are relevant to Arcapita.

16 Here the Sharia board of Arcapita issued the fatwa  
17 which is the only evidence required under the DIP documents  
18 and the decision by that board is final and unappealable.

19 The articles of the bank at article 43 which deal  
20 with the import -- which deal with the provisions related to  
21 a Sharia board provide that the finding of the Sharia board  
22 is dispositive when determining Sharia compliance.

23 Finally, Your Honor, the debtors have not only  
24 shown that the transaction documents are -- are governed by  
25 English law and are consistent with the Sharia principles of

1 Arcapita Bank as applied by its Sharia board but they also  
2 comply with industry custom in Islamic financing community.  
3 And also with the CBD's own requirements.

4 Let's talk about the first point. The DIP  
5 transaction uses finance documents widely accepted through  
6 the Islamic banking world. The loan market association, the  
7 leading organization that deals with syndicated loan  
8 transaction in Europe, the Middle East and Africa has  
9 established guidelines that are widely followed in  
10 structuring financing transactions in the Islamic World.

11 The form of the DIP documents in connection with  
12 the DIP transaction conform to these guidelines undermining  
13 these forms I would suggest, Your Honor, challenging these  
14 forms in this -- in this court would cause havoc in Islamic  
15 banking.

16 With respect to Hani's argument that the debtors  
17 have not complied with the CVB regulations, I believe we  
18 addressed that in detail in our -- in our response as well.  
19 The CVB itself has made a loan to -- to Arcapita Bank. That  
20 loan and the transaction structure of that loan is  
21 essentially the same structure as the transaction structure  
22 used in these DIP documents.

23 Moreover the CVB has not objected to the DIP  
24 transaction. CVB would be the partying interest with  
25 standing to do so. The C -- the C -- the DIP transaction is

1 structured exactly the same as the Fortress facility.

2 Another transaction to which the CVB did not object.

3 There's a citation, Your Honor, to the Enron case.

4 We -- we spent some time in our pleadings talking about the  
5 Enron case. And I think it's important to note whatever the  
6 Enron case stands for it doesn't stand for anything related  
7 to Sharia as it has nothing to do with Sharia. And it  
8 doesn't mention anything related to DIP or exit financing.

9 The citation cites some allegations of a complaint  
10 that say in certain circumstances in this particular case  
11 what was being discussed was whether for purposes of a  
12 chapter five cause of action under the bankruptcy code,  
13 whether a court might collapse some of the transactions.  
14 Whether that may or may not be the case when court's view  
15 chapter five causes of action has no relevance to how  
16 Islamic scholars to how the members of the Arcapita Bank  
17 Sharia board view these Sharia transactions. We think the  
18 Enron case is simply not appropriate.

19 And finally, Your Honor, I want to spend just a  
20 little time on the reference to the fact that Arcapita --  
21 that AHL should be in the chapter 15 case.

22 The court knows -- the court has been with this  
23 case for 16 months and knows that when this case was filed  
24 it was originally filed as -- it was originally filed and  
25 there was an insularly case filed in the Cayman Islands.

1 While we have on occasion sought and obtained validation  
2 orders from the Cayman Islands this court has jurisdiction  
3 to enter orders with respect to AHL and when we've come to  
4 this court to enter those orders it is this court that has  
5 that jurisdiction.

6 As the court will recall and we cited in our -- in  
7 our -- in our reply the Cayman court's original order  
8 commencing the provisional liquidation expressly provided  
9 that the joint provisional liquidators were only engaged to  
10 oversee and monitor the board. And that the board of  
11 directors of AHHL would continue to be the representatives  
12 of AHHL would continue to represent AHHL as debtor in  
13 possession in these chapter 11 cases and that there would be  
14 no requirement for the joint provisional liquidators to seek  
15 status as a foreign representative under chapter 15.

16 We believe, Your Honor, for all those reasons that  
17 the -- the motion to approve the debtor in possession of  
18 financing on a final basis should be approved. And that the  
19 objection should be overruled.

20 THE COURT: Thank you. All right let me hear from  
21 anyone else who wants to speak on behalf of the requested  
22 relieve and then I'll hear from the objectors.

23 MR. FLECK: Your Honor, once again Evan Fleck on  
24 behalf of the Creditors Committee. I rise briefly in  
25 support of the motion as -- as the committee was also in

1 support of entry of the interim order for all relevant  
2 purposes we -- we -- think this -- this financing is -- is  
3 completely appropriate. I say relevant purposes, Your Honor  
4 because we fully agree with the debtors position that the  
5 arguments raised with respect to whether this financing is  
6 Sharia compliant or not are not before this court. For --  
7 for relevant purposes under the bankruptcy code this is a  
8 fully appropriate financing and the debtor should be  
9 authorized to enter into these transactions. The committee  
10 through its advisors has been thoroughly involved in the  
11 negotiation and documentation of the financing agreements  
12 and the committee members themselves have reviewed the  
13 documentation. I note for Your Honor as we have in the past  
14 two of our committee members are actually institutions that  
15 are intimately familiar with Sharia compliance. One of them  
16 being the Central Bank of Bahrain. The committee has -- has  
17 vetted the transactions in -- in our negotiations and is  
18 fully supportive of -- of the relief that's sought before  
19 the court today.

20 The issues that were raised in respect to Sharia  
21 compliance are quite important to the committee as well for  
22 obvious reasons. But we don't think they interfere at all  
23 with approval. In fact we believe that the debtors and --  
24 and for our part the committee have -- have insured that  
25 this transaction is Sharia compliant but Your Honor as we



1 stated I our joinder should -- should it be determined that  
2 it's not Sharia compliant that will -- that should have no  
3 bearing on this court's approval of the motion. That's not  
4 a requirement for approval as Your Honor knows the financing  
5 transaction before this court. And to the contrary its  
6 actually irrelevant to that approval. For -- for all  
7 relevant purposes under the bankruptcy code this financing  
8 satisfies the test and we -- we join in debtors motion for  
9 approval of the transaction.

10 THE COURT: All right, thank you.

11 MR. FLECK: Thank you.

12 THE COURT: Anyone else wish to be heard before I  
13 hear from the objectors? All right then let me hear from  
14 the objectors.

15 MS. WIENER: Good day, Your Honor.

16 THE COURT: Good day.

17 MS. WIENER: Again I'm Tally Wiener. I am here for  
18 Captain Hani Alsohaibi, Khalid Baeshen, his brother Osama  
19 and his sisters Sahar and Sumayya. And they grew some  
20 question concerning how these people know each other, who  
21 I'm acting for so we can kind of start with that if you  
22 would like to. If Your Honor believes rule 2019 disclosures  
23 are required I'm happy to make those as well.

24 THE COURT: Well -- I'd just prefer to get to the  
25 merits of the objection. Thank you.

1 MS. WIENER: Sure. Well the debtors started with a  
2 recitation of the procedural history and for the -- the  
3 record I would like to give account of presentation on that.  
4 And I'll be brief if I may.

5 THE COURT: Sure.

6 MS. WIENER: Which is we were before the court on  
7 June the 10th at the end of that hearing Your Honor entered  
8 an interim order approving financing. It turns out that the  
9 Cayman courts order was that the -- that court would approve  
10 as of June 6th that court was prepared to approve whatever  
11 financing Your Honor approved on the 11th. Okay.

12 Then the -- so I disagree with the  
13 characterization that the -- our objections were procedural.  
14 They were based on the violation of rule 4001 and therefore  
15 on view a two extension was given in order to give parties  
16 more time to review that credit agreement.

17 Now since then the -- it appears that the debtors  
18 negotiated some more with Goldman Sachs and arrived at a  
19 revised credit agreement. I saw that that -- it looks to me  
20 like that's not on the notice of agenda for today. It  
21 barely caught my eye because it was filed I think as a -- a  
22 statement or something that looked fairly innocuous on the  
23 docket. It was filed the Friday before the Monday objection  
24 deadline and I think it rather speaks for itself if you look  
25 at that redline you can see the changes.

1           So firstly the Cayman court even anticipatorily  
2 has not approved that. And Your Honor is being asked to  
3 approve a different agreement then was approved on June the  
4 10th. The changes seem mostly to be in Goldman Sach's  
5 favor. It looks like they commercially reasonable manner  
6 took advantage of the delay in order to procure more  
7 security and also to position so that if Your Honor doesn't  
8 enter a final order they can default. They can default  
9 Arcapita in be in a better position. As that would be my  
10 characterization of the procedural history.

11           Also I ask for a brief extension because documents  
12 were served Friday after close of business with an objection  
13 deadline of Monday 4:00 p.m. and that was declined. So  
14 whether viewed as substantive or procedural we have again  
15 the issue of an agreement filed pretty late in the game and  
16 as a surprise. And I -- I can leave the procedure to that  
17 (Unintelligible).

18           Debtor's counsel made a presentation that I think  
19 sounds pretty nice as compared to these papers they filed  
20 which are really profoundly disrespectful. I have never  
21 before seen a client where his first name is used as the  
22 defined term to refer to him. At so many instances where  
23 you have a client's name and the word false within ten words  
24 of each other. They threatened me personally with rule 9011  
25 sanctions three times and they make some comments that are

1 pretty snarky and -- and I don't -- I don't appreciate that  
2 but I'm going to try to take the high road here. And I'll  
3 get to the substance. There's a lot to cover and I invite  
4 questions you can stop me anytime.

5 THE COURT: All right, no proceed.

6 MS. WIENER: Okay. We are not asking Your Honor to  
7 provide a ruling on Sharia compliance. We're not asking for  
8 that. We do believe that we've demonstrated that this  
9 transaction is flawed from a Sharia compliance point of  
10 view. You'll note that Goldman Sachs did not file papers.  
11 They are aware that they tried to do a transaction with the  
12 same structure inside of the last couple of years for two  
13 billion dollars (\$2b) and were chased out of the Middle East  
14 on the basis it is not Sharia compliant.

15 THE COURT: Well, Counsel, I want your comments to  
16 relate to things that have been presented to me. I don't  
17 remember seeing any of that in the papers. I certainly  
18 don't have any evidence of that and if I did I'm not quite  
19 sure what I would do with it in any event. So I have an  
20 agreement in front of me that you object to and I want to  
21 hear your objections as to that agreement.

22 MS. WIENER: Okay. I think it might be in my  
23 papers but I'm not sure. So I certainly acquiesce.

24 THE COURT: Well I don't believe I have any  
25 evidence and I think if I'm correct your -- your prior point

1 was complaints about essentially the tone of allegations  
2 made against you and your client. And I -- I scarcely think  
3 that -- that if -- if you're complaining about that that  
4 we're going to have things that are not presented with any  
5 evidence about Goldman Sachs' dealings in the Middle East  
6 unless I have any evidence. So again I'm trying to keep  
7 this to the task at hand which is the present motion and  
8 your objections to it.

9 MS. WIENER: Okay, Your Honor. I'll stay -- I will  
10 stay on track. So while we're talking things that you don't  
11 have evidence of, Your Honor does not have evidence that the  
12 Central Bank of Bahrain favors this transaction. So just to  
13 be clear on that there's the -- some representations that  
14 they don't object.

15 THE COURT: You know if they are a members of  
16 creditors committee?

17 MS. WIENER: They are -- yeah I believe they are  
18 members of the creditors committee. I believe that that  
19 also puts them in a rather awkward position cause they're  
20 both regulators and creditors but I'm -- that's not the  
21 point I'd like to -- to make to you.

22 So you heard a lot about English law controlling  
23 this agreement. Firstly, the -- while parties generally are  
24 free to pick whatever law they would -- they would like  
25 English law is an unusual choice here. It's certainly not

1 something that my client's would have chosen nor would they  
2 have expected that choice. You have Bahrain registered  
3 Arcapita then you have companies under it are Cayman  
4 registered the proceedings are in New York and in Cayman so  
5 an English choice of law -- I'd like to start out by saying  
6 that on its face is just counter intuitive and this is not a  
7 bilateral transaction where the parties can choose what they  
8 want here because the choice is effecting a lot of people  
9 that are not at the table. I am ready to assume for the  
10 sake of discussion only that the English choice is okay.

11 This is a very different case than that U.K. case  
12 that is cited and included in the debtors papers and the  
13 committee's papers. The English case is I think Shamil  
14 Bank, is a contract dispute. A party in that case is being  
15 asked to perform under a contract. That party had  
16 acquiesced to English slash Sharia choice of law. That  
17 party did not perform, reneged and in its defense it said  
18 that Sharia principles make so that the performance is not  
19 due. So at first it's a contracts case. Here Your Honor  
20 has before you the first -- at least as far as the people  
21 report the first Sharia bankruptcy, the first bankruptcy of  
22 a Sharia company in the United States that's qualitatively  
23 different than a contract dispute situation. And it cannot  
24 be -- even assuming that English choice of law is all right  
25 parties cannot contract out of Bahraini law. The Bahraini

1 law here controls Arcapita because that's where it's  
2 registered and that's where it's regulated.

3 The Bahraini law in turn incorporates Sharia  
4 principles. It is not a right to say that there's no  
5 conclusive answers with respect to what is and isn't Sharia  
6 compliant. It is right but there are scholars and clerics  
7 who speak to that. They're basically fiduciaries for hire  
8 just as we have independent directors for hire. And what  
9 your -- the presentation Your Honor is hearing from the  
10 debtors really speaks to their view of the Bahraini  
11 standards. You don't -- Your Honor doesn't have any evidence  
12 really on that -- on that point anyway. And I can tell you  
13 that the Saudi strict standards are more strict. So you  
14 have here Arcapita and its directors allowing its sales  
15 people to cross the causeway that connects Bahrain and Saudi  
16 Arabia and solicit investments from Saudis. And that's how  
17 my clients got in this case at all and now they're being  
18 told that their view of Sharia compliance is not correct and  
19 it's not controlling --

20 THE COURT: I think that I was told the argument to  
21 be that the issue of Sharia compliance is not before me.  
22 Either your view about it and the debtors and the committee  
23 have their view about it but that I am in their view do not  
24 need to resolve that issue in addressing the financing  
25 motion before me.

1 MS. WIENER: Your Honor, in my view -- on my  
2 client's view it would be an abomination for United States  
3 bankruptcy court to approve a financing that imperials their  
4 spiritual wellbeing. That's part of it.

5 THE COURT: Well I think -- I think earlier you  
6 said you didn't think I necessarily had to resolve the  
7 Sharia compliance issue and now I think I understand you to  
8 say that you think that I do because I can't approve it if  
9 it is not compliant with your client's view of Sharia.

10 MS. WIENER: Well, Your Honor, you are resolving  
11 the Sharia issue if you enter this order. There's --  
12 there's no avoiding that. I think it would be more  
13 appropriate to -- to have an independent Sharia board  
14 looking into this than the capture board of Arcapita --

15 THE COURT: And -- and how in your view should I do  
16 that? I should have a court appointed Sharia expert?  
17 What is it that you propose that I do?

18 MS. WIENER: I would propose that working with the  
19 US Trustee's office which I imagine the parties are happy to  
20 do, people are selected that reflect the diversity in this  
21 case not just Bahrainis and not just Saudis but would look  
22 to where Arcapita was doing business. It was doing business  
23 globally and then, Your Honor --

24 THE COURT: Isn't that what a creditors committee  
25 is supposed to do and I have one here today?



1 MS. WIENER: I --

2 THE COURT: I'm not -- I'm not familiar with that  
3 kind of body that you're referring to.

4 MS. WIENER: Your Honor, you do --

5 THE COURT: If you could put an actual term on it  
6 and reference a code provision that would be helpful because  
7 I'm not -- I don't believe that I have free floating  
8 jurisdiction to -- to -- to do things I need a basis in the  
9 bankruptcy codes. So what's your basis in the bankruptcy  
10 code for the appointment of what under -- under what law or  
11 section of the code?

12 MS. WIENER: Your Honor, can -- can certainly lift  
13 a section 105. There are still equity powers that this  
14 court holds.

15 THE COURT: Well as I've said I think in this case  
16 to people who've invoked 105 when I first went on the bench  
17 and I was told by a Judge who said I should always be wary  
18 of people invoking section 105 by itself because a court  
19 does not have free floating equity powers to do things or if  
20 it did the bankruptcy code itself would mean very little.  
21 So that's why I'm asking you for your reference to the  
22 bankruptcy code for such a -- a precision appointment of  
23 somebody so it -- maybe you're not ready to answer that  
24 question, that's fine. I just want to give you an  
25 opportunity to address the question.

1 MS. WIENER: I'm -- I'm -- I'm ready to answer  
2 that. We deliberately did not tee this up as a section 305  
3 abstention request because we think that would put Your  
4 Honor in the awkward position of deciding what is really in  
5 the best interest of the parties when you have economics and  
6 religious interest to -- to weigh here but I could certainly  
7 invoke -- in response to your question what could give the  
8 court authority. There is section 305 under which the court  
9 may suspend proceedings. So we would ask to suspend  
10 entering a final order and then do what's appropriate to  
11 determine what is in the best interest of the parties. So  
12 that would be the source in the -- I've also seen some  
13 rather exotic appointments coming out of the Southern  
14 District once the court -- I think it was in Calpine  
15 appointed its own valuation expert I think to -- Tony  
16 Schnelling because they were competing views of that. So  
17 myself I take a broad view. I appreciate Your Honor's point  
18 about section 105. I would be happy to do some additional  
19 briefing but for now I'm -- I would suggest that section 305  
20 at least empowers you, Your Honor, to do this.

21 Now in terms of the debtors presentation and the  
22 committees wow we really, really need the money to carry us  
23 through to the next stage and Goldman Sachs is the only one  
24 who's really giving -- willing to give us money I don't know  
25 that I disagree with that. The debtors have -- are pre-

1 petition post-petition have run through all money that was  
2 given to them pre-petition their on the verge of default on  
3 a Murabaha which is the story that's told in the first day  
4 papers and then there was a -- a DIP loan that was gotten  
5 and that was on the verge of default. And now they got more  
6 money. The company -- the company is meanwhile are running  
7 at a loss so that they need more money to spend on  
8 professionals. We do understand that --

9 THE COURT: Let me ask you are you making an  
10 argument because I see none in your papers that this money  
11 is not necessary from your point of view?

12 MS. WIENER: Well from our --

13 THE COURT: And if so I -- I need some evidence. I  
14 need somebody to say cause I have declarations that actually  
15 say the opposite, so.

16 MS. WIENER: Well, Your Honor, I don't disagree  
17 that when a company is -- is out of money it needs more --  
18 more money I can't disagree with that.

19 THE COURT: I -- I don't know what that statement  
20 means. Are you making an argument for purposes of the  
21 financing motion that the debtors are incorrect about their  
22 need for capital?

23 MS. WIENER: Yes I -- I suppose so, Your Honor.

24 They --

25 THE COURT: Okay what evidence do you have to

1 present to me today on that issue because I have no such  
2 argument in your papers. I don't believe I had them in your  
3 first objection and I don't believe I saw it in your second  
4 objection.

5 MS. WIENER: Respectfully, Your Honor, this is not  
6 an evidentiary hearing today. They're --

7 THE COURT: But you can't come into court and argue  
8 things that you haven't raised in your papers.

9 MS. WIENER: Well, Your Honor, the debtors have  
10 done just that. They have cited the non opposition of the  
11 Central Bank of Bahrain as if it's some kind of --

12 THE COURT: The Central Bank of Bahrain has been --  
13 all right counsel I'm going to give you a few more minutes  
14 to finish up your -- your comments and then we'll -- I'll --  
15 I'll -- I'll at this point hear whatever else you'd like to  
16 say.

17 MS. WIENER: Okay, Your Honor. Thank you. What my  
18 clients would like to see is what is consistent with their  
19 reasonable commercial expectations in the first place which  
20 is that this company be liquidated. That it get no more  
21 money to spend because it keeps running at a loss that has  
22 nothing to do with any kind of Sharia issue. It's actually  
23 very similar to a German viewpoint. So we would like to see  
24 a liquidation.

25 THE COURT: Well we were here June 10th which was

1 the day before the confirmation hearing you raised your  
2 client's desire that there be a liquidation rather than a  
3 plan of confirmation. Which by the way in this case  
4 actually provides for a manage liquidation. But I digress.  
5 At that time you raised this issue and I said that strikes  
6 me more of a confirmation objection and we have a  
7 confirmation hearing tomorrow. The sun rose the next day  
8 and I did not see you here at the confirmation hearing. I  
9 did not see a confirmation objection from your client.

10 So what is it that you want me to do today in  
11 connection with your argument now about the desire for  
12 liquidation rather than a plan of confirmation when you and  
13 your client were not here for confirmation despite being  
14 here the day before and -- and hearing that from me what do  
15 you want me to do with that argument today?

16 MS. WIENER: Thank you for -- for asking. Our view  
17 of that plan is that it's not enforceable and for a variety  
18 of reasons I was not in court. And what I'm asking --

19 THE COURT: Well I hope it is enforceable because I  
20 signed an order confirming the case.

21 MS. WIENER: Okay, Your Honor, that -- that is what  
22 it is. Recently there was a Supreme Court ruling in Rubin  
23 in the United Kingdom concerning the fact of American  
24 orders. I mean no disrespect it just is what it is whether  
25 that plan is enforceable overseas in Saudi Arabia etcetera.

1 So what I am asking Your Honor to do today is to not enter a  
2 final order approving this financing.

3 THE COURT: All right.

4 MS. WIENER: And to let nature take its course  
5 which might well be a liquidation. Our problem with the  
6 liquidation in the plan is that it is the management that is  
7 overseeing that liquidation and they just keep losing money  
8 if it was straight up the --

9 THE COURT: I -- I am going to cut you off there  
10 because that is a confirmation objection. And that is not  
11 the purpose of today's hearing. So there was a time for  
12 that I did not see you at that time and so I'm not going to  
13 entertain objections to confirmation. So what else would  
14 you like to address in the context of today's motion?

15 MS. WIENER: I would like to answer any questions  
16 Your Honor might have about Shamil Bank because the parties  
17 have relied on it heavily in their papers and I would like  
18 to address any questions.

19 THE COURT: I've read the case so I don't have any  
20 questions for either parties about that case.

21 MS. WIENER: Okay, Your Honor, then I would ask  
22 that you not enter a final order approving a financing today  
23 and I hope nothing further unless the parties keep saying  
24 things in which I would like that ability to respond.

25 THE COURT: All right that's fine.

1 MS. WIENER: Thank you.

2 THE COURT: All right anyone else wish to be heard?  
3 All right. Anything else that needs to be addressed before  
4 I address the motion on the merits? All right what I'd  
5 like to do is take a ten minute break till 3:00 and I will  
6 come out at that time. Thank you.

7 (Whereupon the court recessed)

8 THE COURT: Before the court is debtors motion  
9 seeking authority to enter into a non prime and secured  
10 Murabaha financing transaction with a principle amount of up  
11 to a hundred and seventy five million dollars (\$175m). The  
12 terms of this facility have been discussed at some length in  
13 prior proceedings so I will not repeat them in detail here.  
14 The proposed transaction will enable the debtors to success  
15 or repay existing post petition secure indebtedness and has  
16 been represented to be essential to the plan of the  
17 organization approved in these cases. The court previously  
18 approved the motion on an interim basis only on June 10th  
19 and on that date set a matter -- set the matter for a final  
20 hearing today, June 24th some 14 days later.

21 There some background that is relevant for these  
22 cases for purposes of this motion. On December 18th, 2012  
23 this court entered a final order in which it approved the  
24 debtors entry and performance of certain super priority  
25 debtor in possession master Murabaha agreement. And

1 financing provided there under referred to as the Fortress  
2 facility between AIHL and CFARCLC together with  
3 (Unintelligible) Fortress Credit Corp Fortress.

4 Arcapita was also a pre petition borrower under  
5 two secured Murabaha facilities made available by Standard  
6 Charter Bank a fifty million dollar (\$50m) facility dated  
7 May 30th, 2011 of which approximately forty six point six  
8 million dollars (\$46.6m) was outstanding at the petition  
9 date and it matured on March 28th, 2012 and a fifty million  
10 dollar (\$50m) facility dated December 22nd, 2011 of which  
11 fifty point one million dollars (\$50.1) was outstanding at  
12 the petition date and which matured on March 28th, 2012.

13 The debtors have need for the proceeds of the  
14 existing financings on for today's hearing for a variety of  
15 reasons including to repay the Fortress Facility for general  
16 corporate purposes and for exit financing and that exit  
17 financing is essentially for a plan that is a wind down -- a  
18 manage wind down in a way to maximize the value of debtors  
19 holdings.

20 In connection with the request for financing the  
21 debtors have engaged in an extensive and thorough  
22 solicitation and negotiation process after several rounds of  
23 proposals and negotiations the debtors requested that  
24 Fortress and Goldman put forth their final proposals by  
25 April 24th, 2013 after reviewing both final proposals the



1 debtors concluded that Goldman Sachs April 24th proposal was  
2 the highest and best proposal available. The following day  
3 despite the passage of the April 24th deadline Fortress  
4 submitted a revised proposal to the debtors. Following a  
5 discussion with the committee and the court the court set a  
6 final deadline for bids to be submitted under the court's  
7 supervision at 1:30 p.m. on May 15th, 2013. After review by  
8 the debtors and the committee the debtors announced at that  
9 hearing on May 15th that the final proposal of Goldman Sachs  
10 was the highest and best proposal available.

11 Following that announcement a binding commitment  
12 from Goldman Sachs to provide financing the person to the  
13 committee documents was approved by this court in an order  
14 approving the commitment documents was entered on May 17th,  
15 2013.

16 It has been represented and established that the  
17 debtors have been unable to obtain the same amount of post  
18 petition financing from an alternative provider or providers  
19 on more favorable terms than those set forth in the proposed  
20 transaction here. The alternative proposals that debtors  
21 were received were on worse economic terms.

22 The standard for the requested relief here is  
23 twofold. First a bankruptcy court should grant a debtor  
24 wide deference to act in accordance with its sound business  
25 judgment in obtaining financing see in re Barbara K

1 Enterprises Inc. 2008 Westlaw 2439649 at \*14 bankruptcy  
th

2 Southern District of New York June 16 , 2008.

3 Secondly the bankruptcy code sets for certain  
4 specific provisions that deal with the financing motion  
5 before me. First section 364 (c) of the bankruptcy code  
6 provides among other things that if a debtors unable to  
7 obtain unsecured credit allowable as an administrative  
8 expense under section 503 (b)(1) of the bankruptcy code the  
9 court may authorize the debtor to obtain credit or incurred  
10 debt with priority over any and all administrative expenses  
11 as specified in 503 (b)or 507 (b) of the bankruptcy code  
12 secured by a lien on property of the estate that is not  
13 otherwise subject to lien or secured by junior lien on  
14 property of the estate that is subject to a lien.

15 A debtor seeking to satisfy the requirements of  
16 364 must demonstrate quote by a good faith effort that  
17 credit was not available end quote to the debtor on an  
18 unsecured or administrative basis.

19 Section 364 (e) of the bankruptcy code protects in  
20 good faith lenders right to collect on loans extended to a  
21 debtor and its right in any lien securing those loans even  
22 if the authority of the debtor to obtain such loans or  
23 grants such liens is later reversed or modified on appeal.

th

24 At the interim hearing held at June 10 the  
25 debtors provided evidence of their need for additional

1 financing as well as the immediate and irreparable harm that  
2 would be suffered by the estates if the court did not grant  
3 the relief requested.

4 This is provided in the form of various  
5 declarations attached to the DIP motion. No party including  
6 the objectors argued at that time that the debtors did not  
7 require that DIP transaction or that failure to prove the  
8 requested financing would not cause irreparable or immediate  
9 harm to the debtor's estate.

10 At the interim hearing the court overruled Captain  
11 Hani's objection to the DIP and being granted on interim  
12 basis noting quote, "Captain Hani failed to timely object to  
13 the motion notwithstanding that he previously has filed  
14 pleadings in this case and notwithstanding the debtors  
15 request for replacement financing has been the subject of  
16 numerous prior pleadings and hearings that are reflected on  
17 the docket that's giving more than adequate notice to  
18 Captain Hani." End quote. Interim order at docket 1245.

19 No stay of the interim order was obtained or  
20 sought by a Captain Hani or any other party. On June 17th  
21 Captain Hani filed a second objection to the financing. On  
22 the same date four other individuals also represented by  
23 same counsel filed a joinder to that pleading. See docket  
24 1263.

25 The court shall first address the issue of notice.

1 Which is what got us here in the first place. The objecting  
2 parties have again raised an issue regarding notice knowing  
3 that on June 14th, 2013 Arcapita filed a revised financing  
4 agreement with a redline reflecting what the objection  
5 characterizes as extensive changes. See docket 1259.

6 The objection argues that this constitutes somehow  
7 a violation of the notice rules contained in bankruptcy rule  
8 4001. See second objection paragraph 20. The objector  
9 further argues that if a hearing were to go forward with  
10 respect to this revised financing agreement it would be  
11 contrary to the motion, the interim order approving the  
12 financing and the notice of hearing for final approval of  
13 the financing because they each contemplated that a final  
14 hearing would be on the motion and the relief provided in  
15 the interim order concerning the motion. See second  
16 objection paragraph 21.

17 The argument appears to be that approval of the  
18 revised financing agreement would be something completely  
19 different from the relieve requested in the initial motion  
20 so as to require a complete refinancing -- I'm sorry a  
21 complete refilling and re-noticing of the motion. The court  
22 rejects that position and rejects the objections as to  
23 notice for the following reasons the approval of replacement  
24 DIP financing has been an issue in this case since at least  
25 May 3rd, 2013 when the debtor's filed the motion seeking

1 approval of financing commitment letter to obtain  
2 replacement DIP financing and exit financing as well as to  
3 incur associated fees and expenses. See docket number 1061.  
4 And objection was filed by Fortress Capital and a hearing  
5 was held on May 15th. During this hearing Fortress and  
6 Goldman Sachs International contested which party had made  
7 the highest and best offering to provide the financing. And  
8 they did so in a very public forum.

9 At the end of the hearing the courts determined  
10 that Goldman had made the best offer and an order was  
11 entered on May 17th, 2013 authorizing debtors to enter into  
12 a commitment letter with Goldman to obtain replacement DIP  
13 financing and exit financing. The order attached a copy of  
14 the commitment letter which included among other things a 25  
15 page term sheet detailing the terms of the facility.

16 At no time during these proceedings did Captain  
17 Hani or any other objecting party lodge an opposition or  
18 other objection to approval of the commitment letter and no  
19 objection was filed on the docket.

20 On May 27th, the debtor filed a motion to obtain  
21 replacement post petition financing from Goldman Sachs  
22 International and to repay existing post petition financing.  
23 See docket number 1157. The hearing was scheduled for June  
24 10th, 2013 and the objection deadline was set for June 3rd,  
25 2013. The motion included a six page summary of the

1 material terms of the transaction in addition to including  
2 other details regarding the financing. The debtors included  
3 a copy of the proposed DIP order as well as a copy of the  
4 commitment letter between the debtors and Goldman Sachs and  
5 a 25 page term sheet detailing the terms of the facility.  
6 The motion did not however attach a copy of the proposed  
7 credit agreement. On June 6th, 2013 the debtors filed a  
8 copy of the proposed replacement DIP agreement. See docket  
9 1224.

10 On June 7th, counsel to Captain Hani filed an  
11 objection to the motion to obtain replacement DIP financing.  
12 See docket 1227. The objection was procedural in nature and  
13 was based on the debtors failure to file a copy of the  
14 credit agreement as required by bankruptcy rule 4001 (c).  
15 The hearing held on June 10th the court approved the  
16 replacement DIP financing on an interim basis. During that  
17 hearing counsel to Captain Hani admitted that she had not  
18 been retained until Wednesday June 5 , 2013 subsequent to  
19 the objection deadline. See hearing transcript to page 21,  
20 lines 4 through 5 from June 10th, 2013.

21 At the hearing the court noted that Captain Hani  
22 had been following the case having actively participated  
23 through prior pleadings filed on a pro se basis. See  
24 hearing transcript page 21, lines 10 through 21. Court  
25 found the relief requested had been well noticed. See

1 hearing transcript page 20, line 13 through 23.  
2 Nevertheless given the fair -- to file the credit agreement  
3 until after the objection deadline to the motion the court  
4 set a final hearing for June 24th and set an objection  
5 deadline for June 17th.

6 Those dates were set at the hearing and to the  
7 extent there was an objection to them by Captain Hani's  
8 counsel that objection was waived because I note that  
9 Captain Hani's counsel did not stay around for the  
10 conclusion of the argument on the motion and in fact left  
11 the hearing before it was concluded.

12 On June 10th, 2013 an order was entered approving  
13 the replacement financing on an interim basis. On June  
14 14th, 2013 the debtors filed a copy of the finalized DIP  
15 agreement along with the black line comparison against the  
16 version previously filed. See docket number 1259.

17 Bankruptcy rule 4001(c)(2) states that quote the  
18 court may commence a final hearing on a motion for authority  
19 to obtain credit not earlier than 14 days after service of  
20 the motion. If the motion so requests the court may conduct  
21 a hearing before such 14 day period expires but the court  
22 may authorize the obtaining of credit only to the extent  
23 necessary to void immediate and irreparable harm to the  
24 State pending a final hearing. Close quote.

25 Close to one month has passed since the debtors

1 filed their original motion to obtain replacement financing  
2 on May 27th and over 18 days have passed since the debtors  
3 filed their initial copy of the creditor agreement on June  
4 6th. The changes made in the final version of the DIP  
5 agreement which was filed on June 14th do not impact the  
6 basic structure of the transaction.

7 And the objectors have not identified anything in  
8 the revisions that impacts their arguments including those  
9 regarding Sharia compliance. The court therefore finds the  
10 objecting parties had adequate notice of the structure of  
11 the transaction in which they argue is not Sharia compliant  
12 and therefore I reject any argument as to improper notice.

13 Moving on to the merits of the objection the  
14 primary objection is Captain Hani's argument that to be --  
15 essentially to be approved that a DIP transaction must  
16 comply with the principles of Sharia and does not. In this  
17 objectors appear to challenge the decision of Arcapita's  
18 bank Sharia board that this financing is in fact Sharia  
19 compliance. I'm sorry, in compliance with Sharia.

20 Sharia has been described in the papers by various  
21 parties as essentially evidencing a religious and moral  
22 precepts used by many followers of Islam to guide their  
23 actions and behavior. But it does not purport to be the  
24 applicable law of Bahrain which is a country in which  
25 Arcapita is incorporated. In fact Bahrain is a civil law



1 jurisdiction.

2 The court rejects Captain Hani and the other  
3 objectors argument about Sharia compliance. The objectors  
4 incorrectly assume that in approving this financing this  
5 court must somehow find that the financing issue a  
6 compliant. That is incorrect. There is nothing in the DIP  
7 transaction documents or in the motion that requires any  
8 finding by this court the DIP transaction complies with  
9 Sharia.

10 In fact the agreement itself is governed by  
11 English law which appears to be a matter not in dispute  
12 although it appears to be a source of some unhappiness by  
13 the objectors. Indeed the DIP agreement itself carves out  
14 the issue of Sharia compliance by providing in the DIP  
15 agreement at clause 12.28 quote, "No obligor has relied on  
16 any representation by or any written declaration fatwa  
17 opinion or other documents prepared by, on behalf of or at  
18 the request of the investment agent or any other finance  
19 party as to the Sharia compliance of the transactions  
20 contemplated by this agreement or any other finance  
21 document. And the obligors have independently made their  
22 own assessment as to whether such transactions are compliant  
23 with Sharia and no obligor may claim any dispute on the  
24 grounds of Sharia compliance of the finance documents. A  
25 similar concept is contained in the investment agency

1 agreement in section 17.16 regarding Sharia compliance.

2 The separating of Sharia compliance from the  
3 enforceability of a financing agreement such as this has  
4 been recognized by the English courts. In a case Shamil  
5 Bank that has been cited by both parties, Shamil Bank of  
6 Bahrain E.C. versus Beximco, B E X I M C O, Pharmaceuticals  
7 Limited 2004 1wlr 1784 court of appeals. Murabaha financing  
8 agreements entered into by Bahraini bank had an explicit  
9 provision that said they were quote, "Subject to the  
10 principles of Glory Sharia. This agreement shall be  
11 governed by (Unintelligible) in accordance with the laws of  
12 England." End quote. Shamil Bank at 1787.

13 The English court in that case found that the  
14 financing agreements were controlled exclusively by English  
15 law and therefore Sharia was not relevant or even if they  
16 did not comply with Sharia the financing agreements were  
17 none the less fully enforceable.

18 In its analysis the English courts found the  
19 principles of Sharia were far from settled and were the  
20 subject of considerable disagreement among clerics and  
21 scholars.

22 Just as in Shamil Bank no one in the debtor's  
23 chapter 11 cases is asking this court to make any  
24 pronouncements of Sharia Compliance based on Islamic  
25 religion and orthodoxy and in fact this court is woefully in

1 adequate to such a task.

2           There are other grounds for denying the  
3 objections. Hani never objected to the original Fortress  
4 Facility which is something that the debtors note. And  
5 which was similarly constructed to the present financing  
6 before the court. Indeed the finance structure that Hani  
7 alleges does not comply with Sharia and the regulations of  
8 the central bank of Bahrain appears to be the same structure  
9 by which the CBC itself invested two hundred and fifty  
10 million dollars (\$250m) person to Murabaha facility and  
11 therefore became one of the largest creditors of Arcapita  
12 Bank.

13           The court further notes that the central bank of  
14 Bahrain now which has been discussed a bit here this  
15 afternoon has not objected to the present financing despite  
16 being a member of the creditors committee. Which has been  
17 exceedingly active in a positive way in this case in terms  
18 of reaching a solution of many complicated issues.

19           The court also notes that there appears to be no  
20 dispute that Arcapita Bank did in fact form a Sharia Board  
21 consisting for eminent Sharia scholars as provided by the  
22 Central Bank of Bahrain rules. And that Arcapita's Bank  
23 Sharia Board issued a fatwa proving the DIP transaction as  
24 it had the Fortress Facility and many other transactions.

25           Consistent with the business judgment rule that is

1 used in bankruptcy cases when deciding whether a business  
2 judgment of the debtor should be approved the court finds  
3 that there is a sufficient basis for the debtors to have  
4 entered into and approved the agreements in question and  
5 that there has been an insufficient basis shown to challenge  
6 the actions of the debtors in deciding to seek or approve  
7 the financing in question. Relatedly the court finds that  
8 the objector's reliance on the En Ron case isn't applicable  
9 to the present motion.

10 Putting aside issurary a compliance issue in the  
11 objectors other primary objection is that they object to  
12 this case based on the existence of a provisional  
13 liquidation proceeding in the grand court of the Cayman  
14 Islands. And Captain Hani assumes that the chapter 15  
15 should apply to AIHL's bankruptcy case and that they're --  
16 therefore this case and this motion is flawed.

17 As a threshold matter such an objection is really  
18 not to be -- is to the very existence of these chapter 11  
19 cases rather than to the final approval of the financing  
20 before the court today.

21 In any event the objection on this basis is  
22 overruled. It fundamentally misunderstands the difference  
23 between a case under chapter 15 and a case under chapter 11  
24 of the bankruptcy code. It also appears to assume that  
25 debtors are somehow ineligible to file under chapter 11 of

1 the bankruptcy code and thus are somehow forced to proceed  
2 under chapter 15. Neither of these things are true.

3 As noted one of the very first hearings in this  
4 case on March 21 , 2012 foreign debtors such as the debtors  
5 here are in fact eligible to file under chapter 11. See  
6 transcripts of hearing March 21st, 2012 and pages 24 through  
7 26. See also in re Globo Comunicatos Participicad  
8 (Phonetic) SA 317 bankruptcy reporter 235 Southern District  
9 of New York 2004 in re Nakash, N A K A S H, 190 bankruptcy  
10 reporter 763 bankruptcy Southern District of New York 1996  
11 consistent with those cases and the requirements of section  
12 109 debtors had a bank account in the United States at the  
13 time of the filing of these cases.

14 Moreover they subsequently agreed with the consent  
15 and cooperation of various creditor constituencies to bring  
16 additional incoming funds into that U.S. account from  
17 overseas. Having a valid chapter 11 cases then the debtors  
18 are able to take such steps as are necessary to facilitate  
19 the reorganization of these entities. And one of those  
20 steps that they decide to take is the filing of an insular  
21 proceeding in the Cayman Islands. That which was done after  
22 the filing of these chapter 11 cases. Quote, "With a view to  
23 facilitate the U.S. bankruptcy proceedings." See order of  
24 the Cayman court dated March 19th, 2012 which is attached at  
25 exhibit "G" to debtors reply.

1 By analogy one might say that the Cayman  
2 proceedings are in fact in the nature of a chapter 15  
3 proceeding as it seeks to ensure the Cayman jurisdiction  
4 fully recognizes the transaction and other events occurring  
5 as part of these chapter 11 cases.

6 Moreover the debtors have been careful to keep  
7 this court fully apprised of the proceedings in the Cayman  
8 Island court and in fact requested an order from this court  
9 to make sure that the proceedings work together to achieve  
10 the goals of this reorganization. See docket number 471  
11 which is an order of person to section 363 (b)(1) of the  
12 bankruptcy code authorizing AIHL to enter into cross board  
13 or protocol with the joint provisional liquidators in the  
14 Cayman proceedings.

15 For all these reasons and in conclusion the court  
16 grants the motion and approves the financing on a final  
17 basis and overrules all the objections that have been filed.  
18 And that's my ruling.

19 UNIDENTIFIED SPEAKER: Thank you very much, Your  
20 Honor. Your Honor, I have a -- we have a disk. We have a  
21 disk that we'd like to tender.

22 THE COURT: All right, if you can hand it up that  
23 would be great. Thank you so much. All right have there  
24 been changes to the last version of the order?

25 UNIDENTIFIED SPEAKER: There have not.

1 THE COURT: All right so there's only an original  
2 copy and there's no black line on here? Correct?

3 UNIDENTIFIED SPEAKER: That's correct. We can send  
4 it to Your Honor (Unintelligible).

5 THE COURT: Then what would be a black line against  
6 -- I'm just trying to figure out --

7 UNIDENTIFIED SPEAKER: (Unintelligible).

8 THE COURT: All right that will be helpful if you  
9 have one. Thank you. All right anything else we need to  
10 address here this afternoon?

11 UNIDENTIFIED SPEAKER: No thank you, Your Honor.

12 THE COURT: All right thank you.

13 (Whereupon Proceedings Concluded At 3:25 P.M.)

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C E R T I F I C A T I O N

I, Lee M. Sapp, Certify That The Foregoing Transcript Is A  
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Date: June 26, 2013