

GIBSON, DUNN & CRUTCHER LLP

Michael A. Rosenthal
Craig H. Millet (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

Attorneys for the Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE:	: Chapter 11
	:
ARCAPITA BANK B.S.C.(c), et al.,	: Case No. 12-11076 (SHL)
	:
Debtors.	: Jointly Administered
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**DEBTORS' COUNTER-DESIGNATION OF THE DEPOSITION TRANSCRIPT OF
MATTHEW ELLIOT IN LIEU OF LIVE REDIRECT EXAMINATION IN SUPPORT
OF THE DEBTORS' MOTION CONFIRMING THE DEBTORS'
AUTHORITY TO FUND NON-DEBTOR EUROLOG AFFILIATES**

In connection with the *Debtors' Motion for Order Confirming the Debtors' Authority to Fund Non-Debtor EuroLog Affiliates* (the "**Motion**") [Docket No. 872], Arcapita Bank B.S.C.(c) and its affiliated debtors in possession (the "**Debtors**") set for hearing on July 18, 2013, the Debtors hereby submit the following counter-designations of the deposition transcript of Matthew Elliott of Linklaters LLP (the "**Witness**") as the Debtors' redirect examination of the Witness in response to the designations of the deposition transcript of the Witness submitted by the Committee as its cross-examination of the Witness in lieu of live cross examination.

The Debtors reserve the right to use any deposition excerpts designated by any other party. The Debtors further reserve the right to counter-designate additional ranges in response to any excerpt designated by any other party. The Debtors expressly reserve the right to supplement these counter-designations as necessary and appropriate.¹ The deposition transcript of Matthew Elliott is attached hereto as **Exhibit A**.

Deposition Counter-Designations for Matthew Elliott (Linklaters) – March 17, 2013

Tr.	Excerpt
16:13-17:9	<p>Q. Why hasn't Linklaters sought fees from P3 and Arcapita Limited?</p> <p>MS. DILUIGI: Objection. You can answer.</p> <p>A. Sorry. Why hasn't Linklaters sought fees? Well, we have invoiced P3 and Arcapita Limited, so we have sought fees from --</p> <p>Q. Have you taken any actions to attempt to collect on those invoices?</p> <p>A. I think stepping back, the action we took in the first instance was to secure the court order back in August last year, to insure that there was a basis on which those entities would make payment.</p> <p>Q. Is it your understanding of that court order that P3 and Arcapita Limited were paying those fees, or were those fees to be funded by the debtors?</p> <p>A. I think the language of the order is that the debtors are authorized and directed to make the payments.</p>
96:8-24	<p>Q. So in the EuroLog IPO, the assets of P3 were combined with the assets of Arcapita Limited?</p> <p>A. I'm sorry. Just to be very precise, the construct of the IPO is such that a [n]ew Jersey incorporated vehicle was to be set up into which were going to be transferred the various intermediate holding companies, which ultimately owned the real estate assets, and the – an intermediate holding company of the asset management companies, and it was all going to be tipped into</p>

¹ These counter-designations are in response to designations sent to the Debtors by the Committee prior to the date hereof. Should the designations filed by the Committee differ from the designations that were previously sent to the Debtors, the Debtors expressly reserve their right to supplement these counter-designations accordingly.

	<p>the ListCo, and that holistically would comprise the -- the vehicle that was being floated.</p> <p>Q. Those assets, to your knowledge, still exist; correct?</p> <p>A. Correct.</p>
136:9-12	<p>Q. Yes.</p> <p>A. And bear in mind, these were only estimates. They are my best estimates at the particular time.</p>
146:17-148:14	<p>Q. As a partner now, do you have a general awareness as to the level of discounts that are applied to IPO fees?</p> <p>A. A general awareness, yes.</p> <p>Q. What is your general awareness as to the level of those discounts?</p> <p>A. On a successful or a --</p> <p>Q. Let's start with successful.</p> <p>A. Again, it's very case-specific. I have seen IPOs at a premium to face value, and I have seen those that have marginal discounts to face value on a successful IPO. So it's case-specific.</p> <p>Q. In what circumstances -- by -- what do you mean by "premium"?</p> <p>A. As in an excess over what our notional rates would be.</p> <p>Q. And in what situations would you have a premium on a successful IPO?</p> <p>A. Just the negotiations that had been borne out with the client.</p> <p>Q. How about unsuccessful IPOs?</p> <p>A. Typically there would be a discount applied.</p> <p>Q. Of what general range?</p> <p>A. Again, very fact and case specific, by reference to the nature of the client, and the volume of work, the size of the IPO, and I think you need to be very careful when you are talking about percentages. It's more about aggregate amounts. So, you -- you don't look at it always in percentage. You look at the amount of cash recovery under the matter.</p> <p>Q. In terms of percentages, have you -- are you aware of any IPO that has provided greater than a 30 percent discount?</p> <p>A. I am -- I am -- I am not -- I am not aware of any -- if I take this -- this -- I'm not aware of any transaction, of any IPO, indeed any transaction, where as currently presented, we,</p>

	<p>Linklaters, have agreed a discount in excess of the amounts in which we are talking here, which is, you know, a substantial amount of – a substantial dollar amount. I'm just not aware of us having ever agreed to anything that large.</p>
150:10-20	<p>Q. Are you aware of any instance in which a client has paid the standard billable rates?</p> <p>A. Yes.</p> <p>Q. Have you been involved in any of those situations?</p> <p>A. Yes.</p> <p>Q. In the IPO context?</p> <p>A. In the IPO context? I am not aware – I'm aware of other examples, not the ones that I have been directly engaged with.</p>

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: New York, New York
July 10, 2013

Respectfully submitted,

/s/ Craig H. Millet

Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Jeremy L. Graves (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
Telephone: (212) 351-4000
Facsimile: (212) 351-4035

ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re Chapter 11
ARCAPITA BANK B.S.C.(c), Case No.
et al., 12-11076(SHL)
Debtors. (Jointly Administered)

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DEPOSITION OF MATTHEW ELLIOTT
New York, New York
March 17, 2013

Reported by:
Bonnie Pruszynski, RMR
JOB NO. 59268

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March 17, 2013

1:45 p.m.

Deposition of MATTHEW ELLIOTT, held
at the offices of Milbank, Tweed, Hadley & McCloy,
LLP, One Chase Manhattan Plaza, New York, New
York, before Bonnie Pruszynski, a Registered
Professional Reporter, Registered Merit Reporter,
Certified LiveNote Reporter and Notary Public of
the State of New York.

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

MILBANK TWEED HADLEY & McCLOY

Attorneys for Official Committee of Unsecured
Creditors

One Chase Manhattan Plaza

New York, New York 10005

BY: PATRICK MARECKI, ESQ.

ANDREW LEBLANC, ESQ. (as noted)

CHARLOTTA CHUNG, ESQ.

GIBSON DUNN & CRUTCHER

Attorneys for Debtors

2100 McKinney Avenue

Dallas, Texas 75201

BY: JEREMY GRAVES, ESQ.

CRAIG MILLET, ESQ.

WILLKIE FARR & GALLAGHER

Attorneys for KPMG U.K.

787 Seventh Avenue

New York, New York 10019

BY: JOSEPH BAIIO, ESQ.

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APPEARANCES (Continued):

LINKLATERS

Attorneys for Linklaters and the witness:

1345 Avenue of the Americas

New York, New York 10105

BY: BRENDA DiLUIGI, ESQ.

1 M. Elliott

2 (Witness sworn.)

3 MR. MARECKI: Do we have anyone on
4 the line?

5 MS. DILUIGI: Do you know if we are
6 waiting for anybody?

7 MR. MARECKI: I think Walter and
8 Sarah were going to dial in. But I'm fine
9 to proceed. We can proceed.

10 MATTHEW ELLIOTT,

11 called as a witness, having been first
12 duly sworn, was examined and testified
13 as follows:

14 EXAMINATION

15 BY MR. MARECKI:

16 Q Good morning, Mr. Elliott.

17 My name is Patrick Marecki, and I'm
18 counsel to the Official Committee of Unsecured
19 Creditors.

20 Can you please state your name and
21 current employment.

22 A Matthew Elliott. I'm a partner at
23 Linklaters LLP.

24 Q Are you in the U.K. office?

25 A Yes.

1 M. Elliott

2 Q Have you ever been deposed before?

3 A No.

4 Q Have you ever testified at a hearing
5 before?

6 A No.

7 Q Just a few ground rules for the
8 deposition.

9 We need your answers to be verbal so
10 the court reporter can get them down, which means
11 yes or no, no nods or shakes of the head.

12 If you don't understand a question,
13 please let me know, and I will rephrase to the
14 best of my ability.

15 If you answer a question, I will
16 assume you have understood it. Is that fair?

17 A That's fair.

18 Q If you need a break at any time, just
19 lead me know, and we can take one, but if there is
20 a question pending, we ask that you answer the
21 question before taking the break.

22 A That's fine.

23 Q Can you describe your educational
24 background?

25 A Educated in U.K., at school, Oxford

1 M. Elliott

2 University for three years, two years law school,
3 two years training contract, which is the -- the
4 form of training you undergo in the U.K. at
5 Linklaters, and then I've remained since then at
6 Linklaters for the entirety of my career.

7 Q When did you graduate from Oxford?

8 A In -- it would have been '95, end of
9 '95.

10 Q Where did you go to law school?

11 A Guilford Law School.

12 Q When did you graduate from there?

13 A In -- in the end of, summer of '97,
14 it would have been.

15 Q Did you move straight to Linklaters
16 from there?

17 A Took some time traveling, but I
18 started in Linklaters in January '98.

19 Q When did you become a partner at
20 Linklaters?

21 A May 2010.

22 Q What is your general area of
23 expertise?

24 A Corporate finance lawyer, with a
25 range of expertise from kind of capital markets

1 M. Elliott

2 work through to public and private M&A.

3 Q Has that been your area of expertise
4 throughout your time at Linklaters?

5 A Correct.

6 Q Have you worked on a number of IPOs
7 in addition to the EuroLog IPO?

8 A I have worked in connection with a
9 number, yes.

10 Q Roughly how many?

11 A It's hard to put an exact number on
12 it, but in terms of, if I worked backwards from
13 where I am at today, given the length of time that
14 this IPO has taken, as a partner, this will be the
15 main one. It's 18 months, so, I think -- I think
16 the important thing, really, is that my -- my role
17 on this transaction was one in which I brought to
18 bear the entire range of my skills, from the -- as
19 I say, from the IPO through to the M&A, so...

20 Q This is the only IPO you have worked
21 on as a partner, though; is that right?

22 A That's correct.

23 Q But as an associate, you worked on
24 several others?

25 A Correct.

1 M. Elliott

2 Q And you are not sure roughly how many
3 as an associate?

4 A I mean, that is going back a fair
5 amount of time. I am not sure of the exact
6 number, no.

7 Q How many were successful?

8 MS. DILUIGI: Objection.

9 You can answer.

10 A Again, I'm not sure of the exact
11 numbers, but over -- the majority, I suspect, were
12 successful.

13 Q But you have worked on other IPOs in
14 addition to the EuroLog IPO that were not
15 ultimately successful?

16 A I have worked on other -- yeah, other
17 IPOs that were not ultimately successful.

18 Q Do you have a rough idea as to how
19 many?

20 A Again, hard to, hard to -- a small
21 percentage. Maybe one or two.

22 Q Can you explain your general
23 responsibilities in connection with the EuroLog
24 IPO?

25 A My responsibility was to deliver the

1 M. Elliott

2 transaction in its broadest sense. I was the
3 interface with the client, and my role, as I say,
4 was to, you know, deliver the various constituent
5 parts of the transaction to successful completion.

6 Q Is it fair to characterize you as the
7 lead partner --

8 A Correct.

9 Q -- in charge of the engagement?

10 MR. MARECKI: Marking as Exhibit 1
11 the declaration of Matthew Elliott.

12 (Elliott Exhibit 1 marked for
13 identification as of this date.)

14 A Thank you.

15 Q Mr. Elliott, have seen this document
16 before?

17 A Yes.

18 Q Can you tell me what it is?

19 A It's my declaration.

20 Q If you would flip to the last page,
21 that is your electronic signature?

22 A That's correct.

23 Q This declaration was submitted in
24 support of the debtors' motion for the IPO fees?

25 A Correct.

1 M. Elliott

2 Q Did you draft this declaration
3 yourself?

4 A I did, in conjunction with my
5 colleague, Brenda, here.

6 Q Is there anything in the declaration
7 that you believe to be inaccurate or that you
8 would like to correct?

9 A No.

10 Q You submitted a supplemental
11 declaration as well; is that right?

12 A That is correct.

13 (Elliott Exhibit 2 marked for
14 identification as of this date.)

15 A Thank you.

16 Q Is what's been marked as Exhibit 2
17 the reply declaration you submitted in connection
18 with the fee motion?

19 A That is correct.

20 Q And that's your signature at the end?

21 A Yes.

22 Q Did you draft this declaration
23 yourself?

24 A Again, yes, in conjunction with my
25 colleagues, yes.

1 M. Elliott

2 Q Why did you submit a supplemental
3 declaration?

4 A It was in response to the response
5 that the UCC had placed in connection with the
6 motion that the debtors have put forward.

7 Q Who asked you to submit the
8 declaration?

9 A In -- it was in discussion with my
10 colleagues in New York, in further support of the
11 original motion.

12 Q Is there anything in Exhibit 2 that
13 you believe to be inaccurate or would like to
14 correct?

15 A No.

16 Q If you could turn to Exhibit 1, your
17 initial declaration. Paragraph 11.

18 Does it says that Linklaters was
19 retained by ParkPoint Properties SRO, P3, and
20 Arcapita Limited to provide the services in
21 connection with the EuroLog IPO?

22 MS. DILUIGI: It's PointPark.

23 MR. MARECKI: PointPark. I reverse
24 that every time. That's why I call it P3.

25 MS. DILUIGI: If you would like, we

1 M. Elliott

2 can refer to it as P3 going forward.

3 Q Is that correct, Mr. Elliott?

4 A That's correct.

5 Q If I refer to PointPark Properties
6 SRO as P3 during this deposition, will you
7 understand that I mean PointPark Properties SRO?

8 A I will.

9 Q When was Linklaters engaged by P3 and
10 Arcapita Limited?

11 A Originally in July 2011.

12 Q When was the first engagement letter
13 executed?

14 A The first engagement letter was never
15 technically executed, but we were operating on the
16 basis that it was.

17 Q Was there a draft of the initial
18 engagement prepared?

19 A Yes, there was.

20 Q Why was it never executed?

21 A Unfortunately, the practice in my
22 area is such that the engagement letters are
23 executed at some point during the course of the
24 transaction, but it's not the first thing that
25 people focus on.

1 M. Elliott

2 Q And on what basis were you operating
3 as if it was executed?

4 A Simply --

5 MS. DILUIGI: Objection.

6 You can answer.

7 A Simply on the basis that that was
8 the -- that was the agreed basis. All my
9 discussions and correspondence with the debtors
10 was on that basis.

11 Q With whom did you have correspondence
12 and discussions?

13 A The general counsel, Karim Si-Ahmed,
14 and members of his team.

15 (Elliott Exhibit 3 marked for
16 identification as of this date.)

17 MR. MARECKI: Marked as Exhibit 3 is
18 the engagement letter attached to Mr.
19 Elliott's declaration.

20 Q Do you recognize this document?

21 A I do.

22 Q Is this the engagement letter that
23 Linklaters executed in connection with the EuroLog
24 IPO?

25 A It was the second engagement letter

1 M. Elliott

2 that was executed, yes, on the part of Linklaters,
3 so this is the one that was executed on its face
4 by all the parties.

5 Q You said there were two executed
6 engagement letters?

7 A I'm saying the first engagement
8 letter, which was not executed by the
9 counterparties but was -- would have been executed
10 by Linklaters, that was the one in July 2011.

11 Q But this is the only executed?

12 A Correct.

13 Q And the parties to the engagement
14 letter are P3 and Arcapita Limited?

15 A Correct.

16 Q If you flip to the back, you will see
17 that this was executed by Linklaters, Arcapita
18 Limited and P3; is that correct?

19 A That is correct.

20 Q None of the debtors are parties to
21 this engagement letter; is that right?

22 A That is correct.

23 Q If you turn to Section 2.1, under
24 Section 2.1, is it correct that the IPO fees would
25 have been paid by the ListCo in the event of a

1 M. Elliott

2 successful IPO?

3 A That was the intention, yes.

4 Q And under Section 2.2, who is
5 responsible for the payment of Linklaters' fees in
6 the event of an unsuccessful IPO?

7 A P3 and Arcapita Limited.

8 Q And under the terms of the engagement
9 letter, there is no reference to any of the
10 debtors being responsibility for Linklaters' fees;
11 is that right?

12 A That is right.

13 Q Why hasn't Linklaters sought fees
14 from P3 and Arcapita Limited?

15 MS. DILUIGI: Objection.

16 You can answer.

17 A Sorry. Why hasn't Linklaters sought
18 fees? Well, we have invoiced P3 and Arcapita
19 Limited, so we have sought fees from --

20 Q Have you taken any actions to attempt
21 to collect on those invoices?

22 A I think stepping back, the action we
23 took in the first instance was to secure the court
24 order back in August last year, to insure that
25 there was a basis on which those entities would

1 M. Elliott

2 make payment.

3 Q Is it your understanding of that
4 court order that P3 and Arcapita Limited were
5 paying those fees, or were those fees to be funded
6 by the debtors?

7 A I think the language of the order is
8 that the debtors are authorized and directed to
9 make the payments.

10 Q So no payments were ever directly
11 sought from P3 or Arcapita Limited?

12 MS. DILUIGI: Objection. In what
13 time period?

14 Q In any time period.

15 A Well, no, because the first -- the
16 first invoice that was invoiced in early 2011,
17 which was invoiced to Arcapita and to P3, was
18 addressed to those two entities, P3 and Arcapita
19 Limited. We ended up writing off those fees in
20 the interest of preserving the ongoing
21 relationship under the transaction.

22 Q And so no funds were collected from
23 P3 or Arcapita Limited for those services?

24 A For those -- for those specific
25 services, no, because we wrote those off. We

1 M. Elliott

2 were -- there was a payment made in September 2012
3 off the back of the court order, which -- I don't
4 know what the actual flow of funds were, but the
5 debtors funded it. Whether they funded it through
6 P3 or whether they funded it directly, I'm not
7 sure.

8 Q Has there ever been an effort to
9 obtain payment of fees from P3 and Arcapita
10 Limited without the funding of the debtors?

11 A In the first instance, when we
12 submitted our invoice before the Chapter 11 cases,
13 then clearly we were expecting either the entities
14 themselves to be able to fund those, those
15 amounts, or for them to source funds for them to
16 be able to do so.

17 Q So there was an expectation that P3
18 and Arcapita Limited would pay the fees sought?

19 MS. DILUIGI: Objection to form.

20 You can answer.

21 A There is an expectation that they
22 were able to honor their obligation, whether that
23 be from their own resources or from that from
24 their parent.

25 Q When you say you submitted an

1 M. Elliott

2 invoice, were there ever attempts to collect on
3 that invoice directly from P3 and Arcapita Limited
4 without using the funds of the debtors?

5 MS. DILUIGI: Objection. Asked and
6 answered.

7 You can answer.

8 A I'm not sure what you mean, attempts
9 to collect on.

10 Q I'm asking when that -- you say that
11 there was an invoice submitted to P3 and Arcapita
12 Limited; correct?

13 A Correct.

14 Q Did you ever seek to obtain payment
15 pursuant to that invoice?

16 A Again, so, when you say "seek to," by
17 what? By questioning as to when the funds were
18 going to be received or --

19 Q Yes. Did you just submit an invoice
20 and that was it, or did you take further steps to
21 collect on the amounts requested in the invoice?

22 MS. DILUIGI: Objection to form.

23 You can answer, if you can.

24 A Okay. So the process in and around
25 submitting an invoice was one in which we agree

1 M. Elliott

2 the amount of the invoice with the -- our client,
3 and thereafter submit the invoice. From their
4 having agreed the invoice, you expect it to be
5 paid, because there is no reason for it not to be.

6 Q But the source of funds for that
7 payment could have been from P3 and Arcapita
8 Limited or from funding provided by the debtors?

9 MR. MILLET: Objection. It calls for
10 speculation.

11 Q Was that the expectation?

12 MS. DILUIGI: Same objection.

13 A The expectation was simply that we
14 were going to be paid our fees.

15 Q So the expectation is you would be
16 paid with either funding from the debtors or
17 potentially P3 and Arcapita Limited?

18 A At the time of submitting that
19 invoice, there was no reason to suspect anything
20 else but that the -- our client, P3 and Arcapita,
21 would be able to honor their obligation, whether
22 from their own funds or from elsewhere.

23 Q At the time you submitted the
24 invoice, did you have any knowledge as to the
25 ability of P3 and Arcapita Limited to pay those

1 M. Elliott

2 amounts with their own funds?

3 A I had no reason not to believe that
4 they weren't able to honor their obligation.

5 Q Did you have a reason to believe they
6 were able to honor their obligation without the
7 use of funds from the debtors?

8 A Again, I had no reason to believe
9 that they weren't able -- you know, what their
10 source of funds were, I had no reason to question
11 their ability to fund it, whether -- how they
12 sourced their funds, you know, I was not -- not
13 privy to.

14 Q So you had no reason to believe that
15 they could not pay the invoice, but you did not
16 have particular knowledge as to the source of the
17 funds used to pay the invoice; is that fair?

18 A That is -- that is a fair comment.

19 Q Have you worked on any other IPOs
20 where the engaging party has not paid Linklaters
21 its fees?

22 A No.

23 MS. DILUIGI: Objection. Vague.

24 Q Are you aware of a single example
25 where a non-engaging party pays fees where that

1 M. Elliott

2 arrangement was not reflected in an engagement
3 letter?

4 MS. DILUIGI: Objection.

5 You can answer, if you understand the
6 question.

7 THE WITNESS: Yeah. No, I understand
8 the question.

9 A The -- in engaging with a client,
10 having -- either a new client or an existing
11 client of the firm, there is always an expectation
12 and an understanding that that client is able to
13 honor its obligation. How it sources the funds
14 for that obligation is, if you like, for the
15 client to determine.

16 Q But are you aware of any provision --
17 in terms of the July 2011 engagement letter, that
18 was not executed you said; correct?

19 A That is correct.

20 Q Was the draft engagement letter with
21 the same parties as this ultimate July 19, 2012,
22 engagement letter?

23 A Yes.

24 MS. DILUIGI: If you have the
25 document, are you planning to mark the

1 M. Elliott

2 document?

3 MR. MARECKI: I don't have it.

4 MS. DILUIGI: Okay.

5 A Yes, it was.

6 Q So, the engagement was also with
7 Arcapita Limited and P3?

8 A Yes, it was.

9 Q Was there any provision in the draft
10 engagement letter requiring the debtors to pay the
11 fees of Linklaters?

12 A No.

13 Q Turn to the first page of the
14 engagement letter. In the first sentence of the
15 second paragraph, it says, "As we know, however,
16 the recent developments in relation to Arcapita
17 Bank's and certain subsidiaries thereof bankruptcy
18 filings," and then it goes on, "has prompted us to
19 revisit the terms of our engagement with you, and
20 accordingly, we are writing to record the agreed
21 terms of such an engagement."

22 Do you see that?

23 A I do.

24 Q What recent developments in relation
25 to Arcapita Bank's bankruptcy filings are you

1 M. Elliott

2 referring to here?

3 A Just the nature of the Chapter 11
4 cases.

5 Q The filing of the Chapter 11 cases or
6 anything particular in those Chapter 11 cases?

7 A I mean, just the nature of the
8 Chapter 11 cases as a whole.

9 Q The draft engagement letter was
10 July 2011; is that right?

11 A That's correct.

12 Q And between the draft engagement
13 letter and this engagement letter, Arcapita filed
14 for bankruptcy; correct?

15 A Correct.

16 Q What particular terms of the
17 engagement letter was this amended engagement
18 letter intended to revisit?

19 A The joinder of ListCo as a party to
20 insure that in the event of a successful
21 transaction, that ListCo would assume the
22 obligation to pay.

23 Q Did this letter contemplate
24 revisiting terms regarding the payment of fees in
25 the event of an unsuccessful IPO?

1 M. Elliott

2 A The -- it -- what this did was spell
3 out the change in circumstances in and around the
4 fact that having invoiced for 200,000 pounds in
5 January 2012, we -- we were asked to consider
6 waiving that fee, and so we recorded the fact that
7 we were prepared to work flexibly with the debtor
8 on that point, and so waived the fee.

9 Q Why was Linklaters asked to waive the
10 fee?

11 A I can't comment on why we were asked.
12 We were just asked in the context of the
13 Chapter 11 cases.

14 Q But the fee was not payable by any
15 entity in Chapter 11; is that right?

16 MS. DILUIGI: Objection.

17 Q You can answer.

18 A As I say, there -- the obligation to
19 pay on the part of our clients, P3 and Arcapita,
20 we assumed they were, for want of a better turn of
21 phrase, good for the funds. How they sourced the
22 funds was not -- not what we were particularly
23 concerned with at that particular point in time.

24 Q But you are aware that P3 and
25 Arcapita Limited were not in Chapter 11

1 M. Elliott

2 proceedings?

3 A I am aware, yes.

4 Q So, did that indicate to you that it
5 would be necessary for the payment of the fees for
6 these entities to obtain funding by the debtors?

7 A Not of itself.

8 Q So, if the -- if Linklaters was being
9 asked to waive the fee because of the Chapter 11
10 proceedings, and the entities whom are
11 contractually responsible for the payment of the
12 fees are not in Chapter 11, what was your
13 understanding of that request?

14 A One in which our client holistically
15 was in financial difficulty, so in the interest
16 of -- investing further in our client, we sought
17 to help them out, and so waived the fees.

18 Q Holistically meaning the Arcapita
19 enterprise?

20 A Correct.

21 Q Did it occur to you at this point
22 that in order to be paid, Linklaters would need to
23 receive funds that had been provided by the
24 debtors?

25 A Not specifically. As I say, I was

1 M. Elliott

2 not privy to the -- the specifics of the internal
3 funding mechanics of the group.

4 Q Did you consider adding any of the
5 debtors to the engagement letter at this point?

6 A We considered -- we considered the
7 point, but in light of wanting to focus our
8 attention around securing the successful
9 completion of the monetization event, it was not a
10 point that -- given various discussions that we
11 had understanding were taking place with the UCC,
12 it was not a point that we were -- we thought was
13 in the best interests of everyone's time for us to
14 pursue.

15 Q You say you considered the point.
16 How did the point first become discussed at
17 Linklaters?

18 A Just in the nature of understanding
19 how the Chapter 11 cases were playing out. We --
20 it was an internal point that we just took stock
21 of and concluded that we would, as I say, stick
22 with our existing regime, and, you know, move the
23 transaction forward in the best interest of the
24 estate.

25 Q Did Linklaters first raise the issue

1 M. Elliott
2 of potentially adding the debtors to the
3 engagement letter?

4 A Are you saying did we raise it
5 with -- specifically with the debtors?

6 Q With anyone.

7 A I don't recall whether we raised it
8 outside of Linklaters.

9 Q But it was discussed at some point?

10 A It was discussed.

11 Q And it was rejected because, why?

12 MS. DILUIGI: I was just going to
13 instruct you to let him finish.

14 A As I say, we wanted to focus our
15 energy and efforts in pursuing a transaction,
16 rather than spending time seeking to include the
17 debtor entities onto our engagement letter, and we
18 have always expected that our counterparties to
19 this engagement letter, as they had been in the
20 past, would ultimately, if required, be funded by
21 whatever entities were appropriate within the
22 group.

23 Q And at this point, there was still no
24 expectation that the funds necessarily had to come
25 from the debtors?

1 M. Elliott

2 MS. DILUIGI: Objection to form.

3 (Mr. Leblanc entered the deposition
4 room.)

5 A As I say, we had always consistently
6 been of the view that these particular entities
7 were able to honor their obligations, and the
8 source of their funds was not something that we
9 focused on.

10 Q So, it was your view that they would
11 be able to honor the obligation, either with their
12 own funds or funds of the debtors?

13 A Or indeed funds of another entity
14 within the group, correct.

15 Q But no investigation had been made as
16 to whether Arcapita Limited and P3 themselves had
17 the necessary funds to pay the fees?

18 MS. DILUIGI: Objection.

19 You can answer.

20 A At the time of entering into the
21 engagement letter, and in light of our previous
22 dealings with the client, no particular
23 investigation.

24 Q Who was the one that determined that
25 P3 and Arcapita Limited were the appropriate

1 M. Elliott

2 entities to engage Linklaters?

3 A The debtors.

4 Q At any point did Linklaters suggest
5 different entities should be the engaging parties?

6 A There was no reason for us to, given,
7 as I say, the nature -- the longstanding nature of
8 our relationship.

9 Q Why did the debtors tell you that P3
10 and Arcapita Limited were the appropriate
11 entities?

12 A The basis was -- the P3 entity, in
13 effect, is one of the key operating subsidiaries
14 of the management group, forms an integral part of
15 the IPO, and Arcapita Limited is in effect where
16 the deal team in respect of the IPO sits and is
17 the recipient of fees in respect of services it
18 provides to the wider Arcapita group.

19 Q Did you have an understand as to
20 whether P3 as a key operating subsidiary had
21 sufficient cash to pay Linklaters' fees?

22 MS. DILUIGI: Objection. Asked and
23 answered.

24 You can answer.

25 A As I say, we had no reason not to

1 M. Elliott

2 believe that it was not able to pay our fees in
3 full.

4 Q But that belief was based in part on
5 knowing that the debtors would step in and pay the
6 fees; is that right?

7 A Whether it be the debtors or another
8 entity within the Arcapita group.

9 Q Do you believe that Linklaters won't
10 be paid for services unless the fee motion is
11 granted?

12 A When you say the fee motion --

13 Q The motion currently before the
14 court, where you submitted your declarations.

15 A Well, we already have a court order
16 which reflects the fact that on a prescribed
17 basis, we are due certain fees in respect of the
18 services we have provided to date.

19 Q But you have brought another motion
20 seeking a further order to be paid those fees; is
21 that right?

22 MS. DILUIGI: Objection.

23 Mischaracterizes the motion.

24 You may answer.

25 A The motion that has been brought on

1 M. Elliott

2 this occasion is in respect of the balance of our
3 fees, which in good faith both parties, both UCC
4 and ourselves, were to come to the table to come
5 to a reasonable accommodation with respect to the
6 balance, and that is the purpose of the motion,
7 plus securing payment in respect of the fees for
8 certain other professional advisors that currently
9 remain unpaid.

10 Q Linklaters began work on the EuroLog
11 IPO around July 2011; is that right?

12 A Give or take. Probably slightly
13 before then, but yeah.

14 Q And that was before Arcapita had gone
15 into bankruptcy?

16 A Correct.

17 Q And since that time, Linklaters had
18 executed the July 19th, 2012, engagement letter;
19 right?

20 A Correct.

21 Q Did you expect payment to work the
22 way it always had after the filing of Arcapita's
23 bankruptcy?

24 MS. DILUIGI: Objection to form.

25 You can answer.

1 M. Elliott

2 A No reason not to believe that it
3 wouldn't continue to operate.

4 Q You had no reason to believe that the
5 filing of bankruptcy by Arcapita Bank would impact
6 the ability of Linklaters to get paid under the
7 terms of the engagement letter?

8 MS. DILUIGI: Objection.

9 A Again, we -- we were for a prolonged
10 period of time providing a valuable service to the
11 Arcapita group, the debtor, the estate, and for
12 that, we reasonably expected to be paid for our
13 services.

14 Q But you didn't expect the filing of
15 bankruptcy petitions to impact the ability to get
16 paid or the manner or timing in which payment
17 would be made?

18 MS. DILUIGI: Objection.

19 A So, ability, no. Manner and timing,
20 perhaps.

21 Q What's the basis of your
22 understanding that the filing of the bankruptcy
23 petitions would not affect the ability of
24 Linklaters to get paid?

25 A On the basis that any -- any advisor

1 M. Elliott

2 in respect of the -- the debtor estate, or the
3 committee for that matter, should reasonably
4 expect to be paid for the valuable services that
5 it brings to the table, and we were seeking to
6 deliver a significant monetization event for the
7 better of the estate -- for the benefit of the
8 estate, and so it would be unreasonable to expect
9 that we wouldn't be paid for our services for
10 that.

11 Q Did you have conversations with
12 anyone at the debtors upon the filing of the
13 bankruptcy petitions?

14 A When you say "upon," do you mean
15 immediately upon the filing?

16 Q Around the time.

17 A We had conversations with -- well,
18 the first conversation we had was in respect of
19 the request from the debtor that we write off the
20 200,000 sterling amount that had already been
21 invoiced.

22 Q And that's the amount that we
23 discussed earlier?

24 A Correct.

25 Q Any other discussions?

1 M. Elliott

2 A I don't recall specifics, but clearly
3 there were discussions around what the impact of
4 the Chapter 11 cases was going to have on the --
5 certainly the timing of the IPO and its
6 deliverability.

7 Q Did you have any discussions about
8 the impact of the Chapter 11 cases on the ability
9 of Linklaters to get paid?

10 MS. DILUIGI: At any time?

11 Q At or around the time of the
12 bankruptcy filings.

13 A I don't recall specific conversations
14 on the point. I would never -- I was -- I was
15 never in the position where we at Linklaters
16 thought our services were not of benefit to the
17 estate and therefore merited payment.

18 Q I'm not asking whether or not you
19 thought they were or were not of benefit to the
20 estate. I'm asking whether you had any
21 conversations with anyone at the debtors about
22 payment of those fees around that time.

23 A I don't recall specifics. No, I
24 don't recall specifics. We -- as I said, we had
25 conversation with the debtors around doing all

1 M. Elliott

2 that we could to secure the prompt and proper
3 payment, but nothing specifically about whether or
4 not our fees would or would not be paid.

5 Q Do you recall generally any
6 discussions about the impact of the Chapter 11
7 filings on the ability of Linklaters to get paid?

8 A Around, if you like, the manner and
9 the timing, yes, but not whether or not they would
10 be paid.

11 Q And what conversations did you
12 have -- let's start first with the manner. What
13 conversations did you have about the manner in
14 which Linklaters would get paid?

15 A The manner was in and around where
16 the source of funds would ultimately derive from,
17 and whether, given the length of time over which
18 we were giving advice, whether there was
19 sufficient capital in the hands of P3, for
20 example, to pay the amounts.

21 Q What discussions did you have about
22 the source of funds?

23 A Whether there were entities that were
24 either -- by the debtor entities or within,
25 through which -- through -- that the conduit of

1 M. Elliott

2 funds through debtor entities would have to flow
3 in order to be received into the -- into P3 or
4 Arcapita Limited.

5 Q Were you told that P3 did not have
6 sufficient amounts to pay the funds, to pay the
7 fees?

8 A I was never told expressly that P3 of
9 itself did not have sufficient funds, though there
10 was concern that -- that there was challenges in
11 around that, so in the ordinary course would
12 expect some financial support from other entities
13 within the group.

14 Q Were you told that the debtors would
15 need to provide the source of funds for the
16 payment of Linklaters' fees?

17 A Again, not specifically, but that it
18 would be sourced ultimately from other members of
19 the group.

20 Q Other members of the group being
21 Arcapita Bank and AIHL?

22 A It in theory could have been debtors
23 and other than debtors.

24 Q Was that your understanding of the
25 conversation, that the debtors would ultimately

1 M. Elliott

2 fund the payment of fees?

3 MS. DILUIGI: Objection.

4 A As I say, I don't recall a specific
5 conversation on the point. I recall a number of
6 conversations in and around the point, but that,
7 yes, ultimately that some or all of the funds
8 would be sourced from either debtor entities or
9 other non-debtor entities within the estate.

10 Q Are you aware of any other non-debtor
11 entities within the estate who have the ability to
12 provide funds to pay for Linklaters' fees?

13 A I'm not aware of the balance sheet of
14 other entities within --

15 Q Are you aware of any general or
16 specific conversations about any other non-debtor
17 entity providing funding for the payment of
18 Linklaters' fees?

19 A I don't recall specific
20 conversations.

21 Q You said you also discussed the
22 timing of the payment of Linklaters' fees as a
23 result of the Chapter 11 filings. Can you tell me
24 generally about those discussions?

25 A So in our original engagement and the

1 M. Elliott

2 basis on which we negotiated the fee agreement
3 with the estate or before the -- before Arcapita
4 was in the process, we had agreed a kind of
5 monthly -- a schedule of monthly payments.
6 When -- you know, as part of that process, in
7 going through the Chapter 11 cases, we discussed
8 with the debtor the best, the most efficient way
9 in which we could continue to pursue our fees, and
10 concluded that kind of a monthly basis of
11 invoicing was not the most appropriate, and so we
12 then recognized that we should seek to invoice at,
13 you know, various appropriate milestones.

14 Q So, pre-petition, Linklaters invoiced
15 on a month-to-month basis, and post petition, it
16 was a more periodic basis?

17 A No. Well, pre-petition we -- the
18 agreement was that we would invoice on a
19 month-to-month basis. Given the stop-start nature
20 of the transaction, actually we waited until there
21 had been a buildup of WIP.

22 Our original fee deal, we agreed that
23 we would write off the first 150,000 sterling
24 worth of our time, so we did a lot of structuring
25 up front for free.

1 M. Elliott

2 We then ran through the summer, and
3 we were doing some more work, and concluded that
4 we would bill at the end of the year, in respect
5 of the time up to that year, so that was the 200K.
6 Then, having submitted that invoice early
7 January 2012, the process thereafter, the -- we
8 were into the Chapter 11 cases, and so our ability
9 at that point to invoice on a monthly basis was,
10 if you like, prohibited.

11 Q Okay. And why was that prohibited?

12 A We simply, in conclusion -- in
13 discussions with the debtor, recognized the
14 efforts that everyone was having to go through in
15 addressing the Chapter 11 cases and, at the same
16 time, the IPO, and so we were seeking to be
17 flexible, and we agreed that we would drop that
18 requirement in lieu of securing some other kind of
19 payment plan.

20 Q The ultimate agreement being more
21 periodic payment as opposed to -- more periodic
22 invoices as opposed to monthly invoices?

23 A Correct.

24 Q How many invoices did Linklaters end
25 up issuing post petition?

1 M. Elliott

2 A Post petition? We have two.

3 Q And on what dates were those invoices
4 issued?

5 A The first one would have been post
6 agreement of the -- of the Linklaters order, if I
7 can call it that, the one that we agreed in August
8 of last -- of last year. So it would have been
9 late August, which was for the U.S. dollar
10 1.5 million that had been agreed with the court
11 would be paid in the first instance.

12 And the second invoice was earlier
13 this year, when -- following the, if we can call
14 it the termination of the IPO process. Again, in
15 conjunction with the -- the order, we spoke to the
16 debtor to understand what the most efficient
17 means -- what the most efficient means was of
18 invoicing the estate, and concluded that we would
19 submit an invoice, which we did, for the balance
20 of all of our outstanding time.

21 Q Were both of those invoices directed
22 to P3 and Arcapita Limited?

23 A They were.

24 Q Were either of those invoices
25 directed to any of the debtors?

1 M. Elliott

2 A No.

3 Q Linklaters, does Linklaters perform
4 any other services for the debtors or Arcapita
5 affiliates?

6 A I believe we have a or had a small
7 role, though I'm not privy to the nature of that
8 role, nor have I ever been involved myself.

9 Q Your only involvement has been in
10 connection with the EuroLog IPO engagement?

11 A Correct.

12 Q But you believe there is another
13 engagement by Linklaters to provide some form of
14 services?

15 A Correct.

16 Q Do you have a general idea as to what
17 services those are?

18 A I'm sorry, it was a very discrete
19 role, and I understood that was to be at the start
20 of the Chapter 11 cases, so...

21 Q Do you know if those services were
22 performed on behalf of the debtors?

23 A Sorry, I don't know on whose behalf
24 they have been performed.

25 Q So, the -- let's turn to the

1 M. Elliott

2 Linklaters motion that was filed on August 8th,
3 2012.

4 A So, are we now -- yeah, we are now
5 talking about just the Linklaters motion?

6 Q Yes.

7 A Yes.

8 Q Why did Linklaters choose to file
9 this motion?

10 MS. DILUIGI: Objection.

11 MR. MILLET: Objection. Assumes
12 facts not in evidence. Linklaters didn't
13 file the motion.

14 Q You can answer.

15 A We didn't file the motion.

16 Q Did Linklaters approve of the filing
17 of this motion? Did Linklaters request this
18 motion?

19 MS. DILUIGI: Objection.

20 Q You can answer.

21 A We clearly were in support of the
22 motion.

23 Q Did Linklaters request that motion be
24 filed?

25 A I actually think the debtors were --

1 M. Elliott

2 requested that the motion be filed.

3 Q Why did the debtors request that the
4 motion be filed?

5 MS. DILUIGI: Objection. Calls for
6 speculation.

7 Q You can answer.

8 A The debtors saw the value in our
9 services, and were keen for us to secure interim
10 payment in respect of our fees, which by that
11 stage had been outstanding for over a 12-month
12 period, and in the interest, I believe, of
13 transparency, vis-a-vis the committee, the motion
14 was put forward in order to secure payment.

15 Q The debtors were the driving force
16 behind the filing of this motion, not Linklaters?

17 A Correct. The debtors have
18 consistently been very supportive of the services
19 that we have provided, and in -- in the regular
20 dialogue that we would have in and around our
21 role, this was a point that they were keen to
22 pursue, and clearly we were also.

23 Q Do you know why the debtors were so
24 eager to pursue the payment of Linklaters' fees?

25 MS. DILUIGI: Objection.

1 M. Elliott

2 MR. MILLET: Objection.

3 A I can't comment on the whys or
4 wherefores of what the -- the debtor view. For my
5 part, as I say, having had an original expectation
6 of monthly payment, and having ceded that, I think
7 you made the point earlier that we were looking
8 for interim payment along during the course and
9 the life of the transaction.

10 Q Did you have any discussions with any
11 of the debtors prior to the filing of the motion?

12 A Yes.

13 Q What did they concern?

14 A Simply around the fact that the
15 amount outstanding of our -- of our outstanding
16 WIP, and what would be an appropriate amount to
17 seek to invoice at that time.

18 Q The Linklaters motion was filed less
19 than a month after Linklaters executed the
20 July 19th, 2012, engagement letter; is that right?

21 A I believe that's right.

22 Q When was the first discussion you can
23 recall about filing the Linklaters motion?

24 A I don't recall a specific discussion.
25 As I say, there was an ongoing dialogue around the

1 M. Elliott

2 amount and the nature of the buildup of our WIP,
3 and the willingness on both sides to ensure that
4 part of that was satisfied at the earliest
5 opportunity.

6 Q Was there any particular event
7 between the filing -- the execution of the
8 engagement letter on July 19th and the filing of
9 the Linklaters motions a few weeks later?

10 A Not that I recall.

11 Q Had you had any discussions about the
12 Linklaters motion prior to executing the July 19th
13 engagement letter?

14 A Not that I recall.

15 Q Was there any plan to file the
16 Linklaters motion at the time the engagement
17 letter was signed?

18 A No, not that I recall.

19 Q Why weren't the debtors just added as
20 a party to the engagement letter instead of filing
21 the Linklaters motion?

22 A You will have to excuse my knowledge
23 of the bankruptcy court process, but my
24 understanding was that that would require, in the
25 interest of transparency at least, going off to

1 M. Elliott

2 court in the manner that we did in and around the
3 underwriting agreements and the IPO, to ensure
4 that the debtor entities had authority to enter
5 into that engagement.

6 Q So was it your understanding that the
7 debtors could not be parties to the engagement
8 letter?

9 A It was not that they could not. It
10 was the process around which that we would have to
11 go through in order to -- to get them to be
12 parties, and as I said earlier, we wanted to focus
13 our energies on securing a successful outcome
14 rather than appearing in court.

15 Q And that process involves getting an
16 order to determine that the debtors had the
17 authority to fund; correct?

18 A The order was the -- the authority
19 and directing, so, both the authority and the
20 obligation.

21 Q That's what was sought in the
22 Linklaters motion; is that right?

23 A That's correct.

24 Q Did you have any discussions with
25 anyone from KPMG or Freshfields around the time of

1 M. Elliott

2 the filing of the Linklaters motion?

3 A No.

4 Q This was not raised at all with any
5 of the other IPO professionals?

6 A No.

7 Q Do you know why KPMG and Freshfields
8 did not file similar motions?

9 MR. BAIIO: Objection.

10 A I can't comment on their --

11 Q But you have had no discussions with
12 any of those, any individuals from either of those
13 entities?

14 MR. BAIIO: Objection. Asked and
15 answered.

16 A In connection with the --

17 Q On or before the filing of the
18 Linklaters motion, did you have any discussions?

19 A No.

20 Q How about --

21 MS. DILUIGI: About anything -- I
22 think that's what he was asking you. About
23 anything or about that issue?

24 MR. MARECKI: I was trying to finish,
25 but yes.

1 M. Elliott

2 A Sorry, let you finish. Go on, repeat
3 your question.

4 Q On or before the filing of the
5 Linklaters fee motion, did you have any
6 discussions with anyone from KPMG about the
7 Linklaters fee motion?

8 A And to be clear, we are talking about
9 the motion in August of last year, so --

10 Q Yes.

11 A The answer is no, I did not.

12 Q And afterwards, after the motion had
13 been filed, did you have any discussions with
14 anyone from KPMG or Freshfields about the
15 Linklaters fee motion?

16 MS. DILUIGI: Objection. At any time
17 after?

18 MR. MARECKI: Yes.

19 A And your question is, did I have any
20 discussion about the Linklaters fee motion?

21 Q Yes.

22 A No.

23 Q To this day, you still have not had
24 any discussions with anyone from KPMG or
25 Freshfields about the Linklaters motion filed on

1 M. Elliott

2 August 8th?

3 A Not specifically about the Linklaters
4 fee motion.

5 Q Do you think that the filing of the
6 August 8th Linklaters motion had any impact on the
7 IPO process?

8 MS. DILUIGI: Objection.

9 A I don't believe it had any impact.
10 We simply were running hard at trying to, as I
11 say, pursue a successful outcome.

12 Q At the time, what was the stage of
13 the EuroLog IPO on or around August 8th, 2012?

14 A It was at an intense stage of
15 building the case in order to go to market.

16 Q What activities did that involve?

17 A There are a number of, if you like,
18 limbs to the process. There is the drafting of
19 all the prospectus, which -- and everything that
20 goes along with that, which is a substantial work
21 stream.

22 At the time there was, as you will no
23 doubt be aware, a complex reorganization process
24 that had to be, if you like, fleshed out and
25 considered.

1 M. Elliott

2 So both of those work streams were
3 running pretty hard at that point in time.

4 Q You don't feel that filing a public
5 disclosure of a Linklaters dispute in connection
6 with its engagement in the EuroLog IPO in any way
7 damaged the IPO process?

8 MS. DILUIGI: Objection.

9 A I don't believe so, no.

10 Q You don't feel it was damaging at all
11 to the IPO valuation?

12 MS. DILUIGI: Objection. Asked and
13 answered.

14 A I don't believe so, no.

15 Q In your mind, is there any way in
16 which the filing of the Linklaters motion
17 contributed to the failure of the IPO?

18 MS. DILUIGI: Objection.

19 A No.

20 (Elliott Exhibit 4 marked for
21 identification as of this date.)

22 Q Do you recognize this document,
23 Mr. Elliott?

24 A I do.

25 Q What is it?

1 M. Elliott

2 A It's my declaration.

3 Q This was your declaration in
4 connection with the August 8th Linklaters motion;
5 correct?

6 A Correct.

7 Q The Linklaters motion sought the
8 authority of the debtors to fund certain expenses;
9 is that correct?

10 A The authority and direction.

11 Q If you look at the first paragraph,
12 the very bottom of the first page, the declaration
13 states that it's seeking "an order confirming the
14 debtors' authority to pay certain transaction
15 expenses incurred in connection with the EuroLog
16 IPO." Is that right?

17 A Yep.

18 Q What did you understand that to mean?

19 A As I said before, insuring that our
20 expectation around the payment of our fees from P3
21 and Arcapita Limited was capable of being
22 satisfied in whole. Our understanding was that
23 the -- some or all of the debtor entities would
24 need to assist in that funding obligation, and so
25 that was the purpose of this declaration in

1 M. Elliott

2 support of the motion.

3 Q And it's seeking authority to pay;
4 right? Is there any mention in the declaration
5 about directing the debtors to make specific
6 payments?

7 A The authority and the direction. The
8 natural consequence of the authority is to have
9 the -- the obligation, the direction to pay, and
10 that was what was recorded in the order, which was
11 the whole purpose of putting the motion together
12 in the first place.

13 So I think it's right to look at the
14 motion as opposed to specifics around the
15 declaration.

16 Q So, it was a natural consequence, but
17 the -- but what was being sought was the authority
18 of the debtors to pay?

19 MS. DILUIGI: Objection.

20 A The authority -- the authority is the
21 authority to pay, but clearly, one needs the
22 requirement to pay in addition, which was what was
23 secured under the court order.

24 Q So this sought to resolve the
25 authority of the debtors to pay current and future

1 M. Elliott

2 fees.

3 MS. DILUIGI: Objection.

4 Q Is that right?

5 A This was a specific request in
6 respect of -- when we submitted this motion, it
7 was a specific request in respect of a certain
8 amount of fees that had been incurred to date.
9 The subsequent discussions with the committee led
10 to an accommodation on both sides whereby there
11 was an understanding of what we would be paid
12 currently, and what we would be paid going
13 forward.

14 (Elliott Exhibit 5 marked for
15 identification as of this date.)

16 Q Marked as Exhibit Number 5 is the
17 proposed order submitted in connection with the
18 August 8th Linklaters motion.

19 Do you see that this is an order for
20 confirming the debtors' authority to fund
21 non-debtor EuroLog affiliates? Do you see that?

22 A Sorry, you are looking at paragraph
23 two?

24 Q So just the title of the order.

25 A Yes.

1 M. Elliott

2 Q Do you recognize this as the proposed
3 order that was sought in connection with the
4 filing of the Linklaters motion?

5 A This was the proposed order but not
6 the ultimate order.

7 Q Not the ultimate order, yes.

8 A Yes.

9 MS. DILUIGI: He's just asking if you
10 recognize it.

11 A Yes, I recognize -- I don't recognize
12 every detail, but I recognize this, yes.

13 Q If you flip to the second page,
14 paragraph two. Do you see that in connection with
15 the Linklaters motion, the debtors sought "the
16 court hereby confirms that the debtors are
17 authorized to advance sufficient funds to the
18 EuroLog affiliates to enable them to pay the IPO
19 fees"?

20 A I see that, yes.

21 Q Do you see anywhere in this proposed
22 order where it directs the debtors to pay current
23 and future fees in connection with the IPO?

24 MS. DILUIGI: Objection. The
25 document speaks for itself.

1 M. Elliott

2 A The document does speak for itself,
3 but this is relevant to a motion in respect of
4 which we were seeking a certain payment. That
5 payment was never ultimately sanctioned, and what
6 was sanctioned, which is reflected in the actual
7 order, was a defined schedule of payments which
8 were both authorized and directed to be paid.

9 Q I'm talking about the proposed order.
10 Under the proposed order sought by the debtors, it
11 seeks authorization of the debtors to advance
12 fees; is that right?

13 A That is correct.

14 Q Does it demand that the debtors fund
15 current and future fees?

16 MS. DILUIGI: Objection. The
17 document speaks for itself. Calls for a
18 legal conclusion.

19 Q You can answer.

20 A Does it say that -- the document
21 reads as it reads.

22 Q Do you see any part, any statement in
23 this order where the directors -- where the
24 debtors are directed to fund the IPO fees?

25 MS. DILUIGI: Same objections.

1 M. Elliott

2 A I -- I see no statement, but this
3 was -- this order was never granted. As I say,
4 the subsequent order, which was granted, had both
5 direction and authority.

6 Q This is the order that was proposed
7 by the debtors in connection with the motion;
8 correct?

9 A Correct.

10 Q If you can turn to your current
11 declaration marked as Exhibit 1. Just put that
12 out alongside with your declaration from
13 August 8th.

14 In the August 8th declaration, the
15 statement --

16 MS. DILUIGI: Let me just get them.
17 Exhibit 4 and Exhibit 1.

18 THE WITNESS: Yes.

19 A Yes.

20 Q In connection with the Linklaters
21 motion on August 8th, again, under paragraph one,
22 you sought "an order confirming the debtors'
23 authority to pay certain transaction expenses
24 incurred in connection with the EuroLog IPO."

25 Correct?

1 M. Elliott

2 A Correct.

3 Q If you look at the declaration you
4 submitted in the current fee motion, in paragraph
5 one, the last sentence there, of your declaration,
6 you seek "an order confirming the debtors'
7 authority to fund certain non-debtor affiliates
8 with funds of the non-debtor EuroLog affiliates to
9 pay certain professional fees incurred in
10 connection with the EuroLog IPO."

11 Do you see that?

12 A I do.

13 Q Do you see any difference at all
14 between the requests in the two motions?

15 MS. DILUIGI: Objection. The two
16 documents speak for themselves.

17 A And one predates the actual order
18 that we received and the other postdates. I'm
19 reflecting the position that was agreed upon with
20 the court.

21 Q Aside from the dates, is there
22 anything different in the relief that is requested
23 in your declarations?

24 MS. DILUIGI: Objection. The
25 documents speak for themselves.

1 M. Elliott

2 Q You can answer.

3 A As I say, the -- the words -- the
4 words are different, and that is a function of the
5 fact that we had an order from the court speaking
6 as to the direction and authority, and so, this
7 declaration was -- was subsequent to that court
8 order and therefore consistent with it.

9 Q The words are different. The first
10 declaration requests the debtors' authority to pay
11 certain transaction expenses; correct?

12 A Correct.

13 MR. MILLET: Objection. Misstates
14 the document.

15 Q And the second seeks the debtors'
16 authority to fund with their funds certain
17 professional fees; is that correct?

18 MR. MILLET: The declarations don't
19 seek relief. They are just evidence. The
20 motion seeks relief.

21 Q You can answer.

22 A Yeah, I mean, it's -- it is -- it is
23 just simply reflecting the fact that post the
24 order that we received from the court, the
25 authority and direction was what was required in

1 M. Elliott

2 respect of my subsequent declaration.

3 Q But this subsequent declaration is
4 the first instance in which the debtors' use of
5 the debtors' funds to -- sorry.

6 The second declaration is the first
7 instance in which it is sought that the debtors
8 use their fees to fund the IPO expenses; is that
9 right?

10 MS. DILUIGI: Objection.

11 MR. MILLET: Objection. You first.

12 MS. DILUIGI: Sorry.

13 Mischaracterizes the document.

14 Q You can answer.

15 MR. MILLET: Vague, ambiguous, plus I
16 will join in the objection of counsel.

17 A So, this subsequent declaration on my
18 part is -- was borne out of and in light of the
19 order that we secured from the court.

20 Q I understand what it's borne out of.
21 I'm asking whether this is the first declaration
22 where you specifically sought the authority for
23 the debtors to fund certain non-debtor affiliates
24 with their funds.

25 MS. DILUIGI: Objection.

1 M. Elliott

2 MR. MILLET: Are you talking about in
3 the whole case by anybody or by Linklaters?
4 I don't understand.

5 MR. MARECKI: I'm talking about the
6 statements in his declarations.

7 A But in the prior declaration, there
8 was no -- it goes to the point we talked about
9 earlier, which is, having an understanding on what
10 basis the P3 and Arcapita Limited were able to
11 secure payment. Post securing the court order, it
12 was clear that the obligation, as required --
13 would require, if you like, efforts on the part of
14 the debtor to pay. Hence, the request for
15 slightly amended language, which is authority and
16 direction on the part of the debtors.

17 Q So, it required a further authority
18 and direction upon the debtors in order for
19 Linklaters' fees to get paid?

20 MS. DILUIGI: Objection. Vague and
21 ambiguous.

22 You can answer the question if you
23 understand it. It sounded like a partial
24 question to me.

25 A I think -- I think I have been clear,

1 M. Elliott

2 this -- my first declaration predates the court
3 order. My second declaration postdates it with
4 the benefit of what we secured in respect of that
5 court order, and so the language is simply
6 reflective of that.

7 Q Can you look at paragraph seven of
8 your August 8th declaration. In connection with
9 the original -- or rather in connection with the
10 August Linklaters motion, you stated that "unless
11 the fee issue were resolved, Linklaters will, as a
12 matter of firm policy, be unable to continue
13 working on the EuroLog IPO."

14 Do you see that?

15 A Yep.

16 Q Can you explain the firm policy for
17 me?

18 MS. DILUIGI: Objection.

19 A The point at that time was that we
20 saw, as a firm, no credible alternative but to
21 understand how our fees were going to be paid,
22 because at that time, we had worked on the
23 ultimate assumption that our clients were able to
24 source the funding in order to pay our fees.

25 Q Does this refer to a written policy?

1 M. Elliott

2 A I'm not sure. It's written -- it was
3 a consensus built within senior members of the
4 firm.

5 Q Is it an official policy or is this
6 meant more as an internal decision to cease work
7 if the fee issue was not resolved?

8 MS. DILUIGI: Objection.

9 A I'm not sure if there is a difference
10 between what -- we are a partnership and we agree
11 among partners, the basis on which we are prepared
12 to transact for our clients.

13 Q Is the policy discretionary, or did
14 the firm policy require mandatory termination of
15 Linklaters' services?

16 MS. DILUIGI: Objection. Vague.

17 A As I say, the discussions with the
18 members of the firm revolve around the fact that
19 in the absence of an understanding around how fees
20 are going to be paid in the ordinary course, the
21 firm has to consider its position as a business.

22 Q In the absence of that, in the
23 absence of a -- in the absence of a satisfactory
24 understanding, Linklaters was in fact going to
25 cease work on the EuroLog IPO; is that right?

1 M. Elliott

2 MS. DILUIGI: Objection.

3 Speculation.

4 Q Well, the declaration says
5 "Linklaters will be unable to continue work."

6 A At the point of the declaration, we
7 saw no credible alternative. Fortunately for all
8 concerned, we were able to come to a sensible
9 accommodation, so it never came to that.

10 Q There was no credible alternative
11 other than obtaining the debtors' authority to
12 fund the fees; is that right?

13 A No credible alternative but to insure
14 that we had an understanding of how those fees
15 were going to be paid, whether they be debtors or
16 other non-debtors within the group.

17 Q But again, you are not aware of any
18 other non-debtors who had the ability to fund the
19 fee; is that right?

20 A I'm not aware whether they are or
21 not.

22 Q You don't have any specific knowledge
23 of that?

24 A No.

25 Q Is it general practice for Linklaters

1 M. Elliott

2 to cease work on an IPO if fees have not been paid
3 prior to the launch of an IPO?

4 MS. DILUIGI: Objection.

5 A This is -- this is not a general --
6 this is a very specific fact pattern, which
7 promulgated the discussion among the partner group
8 at the firm in respect of this specific case.

9 Q The discussion being that if
10 Linklaters could not get comfort that their fees
11 would be paid from someone, they would cease work
12 on the IPO?

13 MS. DILUIGI: Objection.

14 Q Is that a fair --

15 A I think it's fair to say at that
16 point in time, we saw no other credible
17 alternative.

18 MR. MARECKI: We been going about an
19 hour-and-a-half. Do you want a break?

20 (Recess taken.)

21 (Mr. Leblanc no longer present.)

22 (Elliott Exhibit 6 marked for
23 identification as of this date.)

24 BY MR. MARECKI:

25 Q Mr. Elliott, do you recognize

1 M. Elliott

2 Exhibit 6 in front of you?

3 A I do.

4 Q Can you tell me what this is?

5 A It's the order confirming the
6 debtors' authority to pay certain transaction
7 expenses in connection with the EuroLog IPO.

8 Q And this is the order that -- this is
9 the ultimate order resulting from the Linklaters
10 motion filed in August; is that right?

11 A That's correct.

12 Q Can you tell me how you rely on this
13 order --

14 MS. DILUIGI: Objection. I'm sorry.

15 Q -- in your --

16 MS. DILUIGI: I thought that was the
17 end.

18 Q Can you tell me how you rely on this
19 order in connection with the fee motion to support
20 the argument that the debtors are obligated to
21 fund fees to pay Linklaters' legal expenses?

22 MS. DILUIGI: Objection.

23 MR. MILLET: Vague and ambiguous.

24 A It -- my -- my read and my
25 understanding of all the discussions in and around

1 M. Elliott
2 the settling of this order was that the debtors
3 were authorized and directed to make a series of
4 payments, preagreed payments over time, and that
5 was the commercial agreement that we came to with
6 the committee.

7 Q Pursuant to what paragraphs of this
8 order?

9 MS. DILUIGI: Objection. Calls for
10 legal conclusions.

11 Q Well, let me direct you to paragraph
12 five. Am I correct, Mr. Elliott -- well, let's
13 first turn to paragraph two.

14 Am I correct that the interim payment
15 in paragraph two is not at issue on the current
16 motion?

17 A That's correct. That has been paid.

18 Q Can you turn to paragraph three.

19 Am I correct that the IPO termination
20 payment is not at issue on the current motion?

21 A Insofar -- well, insofar as it's
22 going to dispute the fact that it's due and
23 payable as from the 12th of November, and so we
24 are not seeking on the current motion to discuss
25 anything in respect to those amounts.

1 M. Elliott

2 Q Yes, that's what I mean.

3 A That's correct, yeah.

4 Q Am I right that similarly, in
5 paragraph four, the second interim payment is not
6 part of the relief that is currently sought in the
7 fee motion?

8 MS. DILUIGI: Objection.

9 A That's correct.

10 Q So is it paragraph five of this order
11 that forms the basis of your belief that the
12 debtors are authorized and directed to pay the
13 fees of Linklaters?

14 MR. MILLET: Objection. Misstates
15 his testimony.

16 MS. DILUIGI: Same objection.

17 A It's not the fees. It's just a
18 specific portion of the fees. The remainder of
19 the fees already have been the subject of a prior
20 requirement to pay.

21 Q And we are talking about the final
22 payment discussed in paragraph five of the
23 Linklaters order; is that right?

24 A Correct.

25 Q Is it your understanding that this

1 M. Elliott

2 final payment referenced in paragraph five of the
3 order preapproves payment of Linklaters' fees
4 without the consent of the committee or further
5 order of the court?

6 MR. MILLET: Objection. Calls for a
7 legal conclusion.

8 MS. DILUIGI: Calls for a legal
9 conclusion.

10 A That is my understanding, yes.

11 Q What is the basis of that
12 understanding?

13 A This is a document -- I'm not a
14 bankruptcy lawyer, but this is an order of the
15 court which states on its face that certain
16 amounts are due and payable, the first amount in
17 which there was a payment made, which supports the
18 fact that the payment under paragraph two was
19 made.

20 The payment under paragraph three was
21 due and payable on November the 12th. It has not
22 been paid.

23 The amount under paragraph four was
24 also due on or around November the 12th. That
25 hasn't been paid.

1 M. Elliott

2 And so the only point of conjecture
3 is the obligation on the part of all parties, in
4 my view, to negotiate in good faith as to the
5 balance of our fees.

6 Q The basis is your reading of the
7 document and not conversations with any of the
8 debtors?

9 MS. DILUIGI: Objection.

10 A My reading of the document and that
11 the -- the debtors 100 percent support the
12 nature -- the fact of and the payment schedule as
13 set out in this order.

14 Q To your knowledge, is the language in
15 paragraph five of the order the same language that
16 was -- strike that.

17 So, we earlier looked at the proposed
18 order in connection with the Linklaters motion; is
19 that right?

20 A You are referring to the order that
21 was appended to the original -- the original
22 motion?

23 Q Yes.

24 A Yes.

25 Q And that order, that proposed order

1 M. Elliott
2 is different from this -- that proposed order is
3 different from this final order that was entered;
4 correct?

5 A That is correct.

6 Q Were you part of any discussions
7 concerning the changes made from the proposed
8 order to the order that was ultimately entered?

9 A No, I was not.

10 Q To your knowledge -- but you do
11 recognize that this paragraph five contained in
12 the entered order is different than material
13 contained in the proposed order; correct?

14 MS. DILUIGI: Objection. The
15 documents speak for themselves.

16 A And I mean --

17 Q Does paragraph five of the entered
18 order appear in the proposed order?

19 A No, it does not, but neither does
20 paragraph two or three or four, for that matter.

21 Q Do you have any understanding as to
22 whether the language in paragraph five of this
23 entered order was negotiated between any of the
24 parties to the dispute?

25 A Not specifically, no.

1 M. Elliott

2 (Elliott Exhibit 7 marked for
3 identification as of this date.)

4 Q Mr. Elliott, I have handed you an
5 e-mail from Evan Fleck to Craig Millet dated
6 August 16, 2012. As you see under that first
7 e-mail, it says, "Committee comments are attached
8 in track changes format."

9 Do you see that?

10 A I see that, yep.

11 Q Do you see that the subject is "Order
12 proposed re Linklaters EuroLog"?

13 Have you seen this e-mail or the
14 attachment before?

15 A No.

16 Q Can you flip to paragraph five of the
17 attached redline.

18 Do you understand that this is a
19 redline of the proposed order -- rather, do you
20 understand this is track changes from an order
21 proposed by the debtors containing the Creditor
22 Committee's comments?

23 MS. DILUIGI: Objection. The witness
24 just testified that he's not familiar with
25 the document.

1 M. Elliott

2 Q Can you flip back to the cover
3 e-mail. If you look down at the first e-mail in
4 the chain, there is an e-mail from Craig Millet
5 dated August 16th.

6 A Yes.

7 Q From Gibson Dunn. Do you understand
8 that Gibson Dunn represents the debtors?

9 A I do.

10 Q And do you see that it's sent to Evan
11 Fleck at Milbank Tweed, and do you understand that
12 Milbank represents the Creditors Committee here?

13 A I do.

14 Q Do you see that the debtors' counsel
15 is writing to Milbank saying, "Attached is a
16 proposed order resolving the Linklaters EuroLog
17 IPO issues"?

18 Do you see that?

19 A Yes.

20 Q And you will see that Milbank counsel
21 for the Creditors Committee responds, "Committee
22 comments are attached in track changes format."

23 A Yes.

24 Q Do you understand this to be the
25 committee track changes to the proposed order that

1 M. Elliott

2 the debtors sent to the committee?

3 MS. DILUIGI: Objection. The
4 document speaks for itself. The witness has
5 already testified that he's not familiar
6 with the document.

7 MR. MILLET: Further objection, lacks
8 foundation, assume facts not in evidence.

9 Q You can answer the question.

10 MR. MILLET: If you can.

11 A I don't know whether this is the
12 document attached to this e-mail. I don't know
13 whether this document itself is, but for the track
14 changes, the replica of the court order as filed.

15 Q I will represent that it is, for
16 purposes of this deposition, but can you turn to
17 paragraph five.

18 You will see that in the middle of
19 the paragraph five, the words "reasonably" and
20 "the debtors to fund an amount to be applied
21 against the remaining IPO legal fees" have been
22 struck out from the text of the proposed order.

23 A I see the strike through, yes.

24 Q So is it your understanding that the
25 original proposed order, at least according to

1 M. Elliott

2 this document, was that paragraph five should read
3 that "with the intent that Linklaters may
4 reasonably expect the debtors to fund an amount to
5 be applied against the remaining IPO legal fees"?

6 MS. DILUIGI: Objection. Calls for
7 speculation. The document speaks for
8 itself.

9 Q Do you understand that that language
10 was originally in the proposed order by the
11 debtors, based on this document?

12 MS. DILUIGI: Objection. Calls for
13 speculation.

14 Q You can answer.

15 A If you -- I can only assume so, if
16 that's what you are representing as being the --
17 you know, the version, the prior version that came
18 from -- from Gibson Dunn.

19 Q Does the language that is struck out
20 in paragraph five of the proposed order appear in
21 the final order that was entered?

22 MR. MILLET: Objection. The
23 documents speak for themselves.

24 A And, no, I mean, it does not.

25 Q In your mind, would the meaning of

1 M. Elliott

2 the order that was ultimately entered be any
3 different if the struck-out language in paragraph
4 five had been included?

5 MS. DILUIGI: Objection. Calls for
6 speculation. Calls for a legal conclusion.

7 A I -- I can't conclude on that, absent
8 a read through of the entire document to
9 understand the basis, and I think what is -- if
10 you would like, the more important point is in
11 around the fact that paragraphs four, three, and
12 two talk about fees which shall be paid as opposed
13 to what this is concerned with, which is the
14 balancing amount and the obligation to discuss in
15 good faith as to the basis on which amounts would
16 be paid with respect to the balancing amount.

17 Q Well, you see that according to this
18 redline, the language "the debtors to fund an
19 amount to be applied" has been removed; correct?

20 A On the version I am looking at,
21 correct, that has been removed.

22 Q And the language "the debtors to fund
23 an amount to be applied" is not contained in the
24 final Linklaters order; is that correct?

25 MS. DILUIGI: Objection. The

1 M. Elliott

2 documents speak for themselves.

3 A Yeah, as I say, the documents say
4 what the documents say.

5 Q Do you think the removal of language
6 to say "the debtors to fund an amount to be
7 applied" has any impact on whether the order was
8 intended for the debtors to fund the IPO legal
9 fees of Linklaters?

10 MS. DILUIGI: Objection. Calls for a
11 legal conclusion, and also asked and
12 answered.

13 A Yeah, I have no further comment on
14 that point.

15 Q So you don't view that the
16 elimination of this language has any bearing on
17 the intent of the order that was ultimately
18 entered?

19 MS. DILUIGI: Objection. Asked and
20 answered. Calls for a legal conclusion.

21 MR. MILLET: And argumentative.

22 MS. DILUIGI: The witness has
23 testified already to that point.

24 A Yeah, our intent was clear.

25 Q If the court denies the motion

1 M. Elliott

2 currently before it, is Linklaters going to write
3 off its fees incurred to date?

4 MS. DILUIGI: Objection. Calls for
5 speculation.

6 A I can't -- I can't comment on what
7 Linklaters might or might not do until we are
8 presented with the facts as they appear to be.

9 Q Has Linklaters considered the
10 possibility of the court denying the ability of
11 the debtors to fund the payment of Linklaters'
12 fees?

13 MS. DILUIGI: Objection to form.

14 A If we are talking about -- I mean, to
15 be clear, we have, with the debtors' authority and
16 an order of the court, a prescribed basis on which
17 we should have been paid a certain portion of our
18 fees to date.

19 So if you are asking whether -- as we
20 got to the balance, what would Linklaters do if
21 the court ultimately opines because we cannot come
22 to a sensible accommodation between ourselves and
23 the committee, then I can only say that I would
24 have to discuss that with the relevant partners at
25 Linklaters at that point in time to determine on

1 M. Elliott

2 what basis, you know, we would be prepared to work
3 going forward.

4 Q Are there any parties, other than the
5 debtors, that Linklaters can conceivably seek
6 payment of its fees from?

7 A I just --I don't have the knowledge
8 to understand who else within the organization can
9 pay.

10 Q Would Linklaters consider pursuing
11 fees from the parties that engaged it, Arcapita
12 Limited and P3?

13 MS. DILUIGI: Objection.
14 Speculation.

15 A Define "pursuing."

16 Q Pursuing as in collecting payment
17 from them with -- from their own funds.

18 A To the extent that the entities are
19 within -- have the funds available to them from
20 whatever source, then obviously that would be
21 where we would be collecting our fees from.

22 Q Well, if the fee motion is denied and
23 the court rejects the debtors as a funding source
24 for P3 and Arcapita Limited, would it be possible
25 for Linklaters to receive payment from P3 and

1 M. Elliott

2 Arcapita Limited?

3 A I would have to look at the state of
4 their balance sheet at that particular point in
5 time.

6 Q If there were sufficient cash on the
7 balance sheet to satisfy the payment of
8 Linklaters' fees, would Linklaters pursue payment
9 from those parties?

10 MS. DILUIGI: Objection,
11 hypothetical.

12 A You are asking about a scenario which
13 we are not currently in, and I can only comment
14 once I understand the nature of that scenario, and
15 we are not there today.

16 (Elliott Exhibit 8 marked for
17 identification as of this date.)

18 Q Mr. Elliott, do you recognize this
19 document?

20 A Yes, I do.

21 Q Can you tell me what it is?

22 A It is the order of the court
23 authorizing debtors to launch the EuroLog IPO.

24 Q And you are aware that this order was
25 entered pursuant to a motion that had earlier been

1 M. Elliott

2 filed; correct?

3 A I'm aware.

4 Q Did you have any involvement in -- if
5 I refer to that as the IPO motion, will you
6 understand what I mean?

7 A I will.

8 Q And if I refer to this as the IPO
9 order, will you understand that I mean this order?

10 A Yes.

11 Q Did you have any involvement in
12 drafting the IPO motion?

13 MR. MILLET: Objection. Vague and
14 ambiguous.

15 A Not the specific drafting of the
16 motion.

17 Q Did you have conversations with
18 anyone about the filing of the IPO motion?

19 A Yes. Generically, yes.

20 Q And generically, what did these
21 conversations involve?

22 A Giving context and status of the --
23 you know, of the transaction itself, and where we
24 were in the process.

25 Q Were you supportive of filing the IPO

1 M. Elliott

2 motion?

3 A I think all parties were supportive
4 of filing the IPO motion.

5 Q All parties being which parties?

6 A All stakeholders in -- in -- all
7 stakeholders in the transaction, which would
8 include the committee.

9 Q And this motion was filed several
10 weeks before the Linklaters motion; is that right?

11 A This was -- and when you are talking
12 about the Linklaters motion, you mean the most
13 recent motion in respect of --

14 Q I mean the motion resulting in the
15 August -- the August 8th order.

16 A No. This was after that.

17 MS. DILUIGI: Do you have the motion
18 just so he can -- if you want to make a
19 point about the dates.

20 MR. MARECKI: Yeah, I do.

21 MS. DILUIGI: It's confusing, because
22 he can see the filing date for the -- for
23 the order being entered.

24 MR. MARECKI: One second.

25 Q Can I represent to you that the

1 M. Elliott

2 Linklaters motion was filed on August 8th, and the
3 IPO motion was filed on July 26th?

4 A Okay.

5 Q Does that comport with your
6 understanding of the general timeline?

7 A That -- yes, generally, without
8 specifics.

9 Q So you are generally aware that the
10 IPO motion was filed about a week or two before
11 the Linklaters motion was filed; is that right?

12 A That sounds about right.

13 Q Is it your understanding that the IPO
14 order in any way authorizes the debtors to pay
15 Linklaters' fees?

16 MS. DILUIGI: Objection.

17 MR. BAIO: Objection.

18 MS. DILUIGI: You can answer.

19 MR. MILLET: Join.

20 MS. DILUIGI: That specifically calls
21 for a legal conclusion.

22 A It's consistent with the Linklaters
23 order, but under section two of the IPO order, the
24 debtor is -- the debtors were authorized and
25 empowered to take steps to pay any required fees

1 M. Elliott

2 or expenses in connection with the IPO.

3 Q Was it your understanding that those
4 fees and expenses would include the fees and
5 expenses of Linklaters?

6 A We had a specific court order that
7 addressed the point vis-a-vis the Linklaters fees.

8 Q But the court order was entered, and
9 you are referring to the court order in the
10 Linklaters motion?

11 A Um-hum.

12 Q But what I am asking is, the IPO
13 motion was filed before the Linklaters motion;
14 correct?

15 A The motion was filed.

16 Q The motion was filed.

17 And the motion sought the relief
18 outlined in the order ultimately entered in the
19 IPO motion?

20 A Correct.

21 Q And I'm asking, why was there a need
22 to file the Linklaters motion if similar leave was
23 being sought in the IPO motion?

24 MS. DILUIGI: Objection.

25 MR. MILLET: Objection. Lack of

1 M. Elliott

2 foundation.

3 MR. BAIIO: Objection.

4 A You will forgive me for not
5 remembering the exact dates. We had already, I
6 think, begun that process irrespective of what --
7 this -- this, if you like, IPO motion was -- had a
8 number of facets to it, of which part of which was
9 ensuring payment of fees for the wider advisory
10 group.

11 However, very specifically, we,
12 Linklaters, in conjunction with the debtor were
13 seeking a payment plan in respect to our
14 outstanding fees. This is not inconsistent with
15 it, but it's not to the exclusion of the order
16 that we specifically sought for our fees.

17 Q Okay. So, notwithstanding the relief
18 that was being sought in the IPO motion,
19 Linklaters also sought approval of a specific
20 payment plan related to its specific fees?

21 MS. DILUIGI: Objection.

22 MR. MILLET: Objection. Misstates
23 his testimony.

24 MR. MARECKI: He can answer.

25 MR. MILLET: If he can. You are

1 M. Elliott

2 misstating his testimony, so I don't see how
3 he can answer.

4 Q Do you understand the question?

5 A No, so --

6 MS. DILUIGI: Do you want to --

7 Q Notwithstanding the relief that had
8 been sought in the IPO motion, Linklaters
9 nonetheless decided to file the Linklaters motion;
10 is that right?

11 MS. DILUIGI: Objection.

12 Mischaracterizes testimony.

13 MR. MILLET: Join.

14 A The chain of -- the chain of events
15 at this point -- I mean, I'm clarifying this
16 because this was a quite intense period of, if you
17 like, work in and around the IPO, and there was a
18 motion put together which was intended to, if you
19 like, endorse the furtherance of the IPO as a
20 whole, of which part of which was a reference to
21 the expenses of the advisory body in relation to
22 that -- in relation to the IPO.

23 But independently of that, we,
24 Linklaters, were seeking a specific order in
25 respect of the payment of our fees because that is

1 M. Elliott

2 what we had agreed with the debtors as being the
3 basis on which we should be continuing to work for
4 and on behalf of the estate.

5 Q Why did Linklaters seek the specific
6 order with respect to the payment of its fees?

7 MR. MILLET: Objection. Misstates
8 the testimony and the facts that have
9 already been established in this deposition.

10 Q You can answer.

11 A Because going back from a long --
12 from a -- from early in the year, when we were
13 looking to understand the basis on which we were
14 going to recover, we were -- had an ongoing
15 dialogue with the debtors and concluded that we
16 should, you know, submit a motion in respect of an
17 interim payment of our fees, so, it was just, you
18 know, absolutely with the support of the debtors
19 that that is what we should do.

20 (Elliott Exhibit 9 marked for
21 identification as of this date.)

22 Q Mr. Elliott, do you recognize this
23 document?

24 A In general terms, yes.

25 Q Can you tell me what it is?

1 M. Elliott

2 A It's the debtors' reply to the
3 objection of the committee to the motion
4 confirming the debtors' authority to fund.

5 Q Did you see a draft of this motion
6 before it was filed?

7 A I saw a draft.

8 Q You saw a draft?

9 A Actually, did I see a draft of this
10 one? Actually, I -- I never -- I never saw a --
11 this was only drafted quite recently, and I have
12 been traveling a great deal.

13 So I have not seen -- I may have been
14 sent a draft. I'm not sure I had the opportunity
15 to review a draft.

16 Q Did you review the final version of
17 this brief?

18 A No.

19 Q No.

20 Can you turn to page 14? Hang on one
21 second, this isn't my highlighted version, so --

22 MR. MARECKI: Off the record for a
23 minute.

24 (Recess taken.)

25 BY MR. MARECKI:

1 M. Elliott

2 Q All right. Page 14 of the reply
3 brief.

4 A Okay.

5 Q Do you see the last sentence in the
6 second paragraph states, "The IP" -- I believe
7 that is the IPO approval order -- "was negotiated
8 with the committee with the input from the service
9 providers the EuroLog affiliates would require,
10 and KPMG, Freshfields, and the other advisors
11 relied upon paragraph two of the IPO approval
12 order authorizing the debtors to fund the
13 necessary portfolio company fees and expenses to
14 launch the EuroLog IPO."

15 Do you see that?

16 A I see that paragraph, yes.

17 Q Did Linklaters also rely on paragraph
18 two of the IPO approval order authorizing the
19 debtors to fund the necessary portfolio company
20 fees and expenses?

21 MS. DILUIGI: Objection. Calls for a
22 legal conclusion.

23 A Our focus was on the order that we,
24 you know, specifically agreed with the court for
25 Linklaters. That's not to the exclusion of this,

1 M. Elliott

2 but our focus was on that, because it was a very
3 specific payment profile that we negotiated with
4 the committee.

5 Q When you say your focus, do you mean
6 your focus was on obtaining that order?

7 A Our focus was on obtaining that
8 order; correct.

9 Q And once that order was obtained,
10 does that mean that you primarily relied on the
11 Linklaters order for funding of the Linklaters
12 fees?

13 MS. DILUIGI: Objection.

14 A Primarily, yes, because it gave a
15 specific negotiated timetable against which our
16 fees were to be paid.

17 Q Is there any -- you say "primarily."
18 Is there any way in which Linklaters did rely on
19 the IPO order for payment of Linklaters' fees?

20 MS. DILUIGI: Objection. I believe
21 the question as put to him used the word
22 "primarily."

23 Q Can you answer the question?

24 A The Linklaters order, as I say, was
25 our primary focus, not to the exclusion of the

1 M. Elliott

2 paragraph you are referring to, but it certainly
3 was our primary focus, because it's what we
4 specifically negotiated with the committee.

5 Q That order was approved before the
6 IPO order; correct?

7 A I think -- wasn't it all approved at
8 the same time or the same hearing?

9 MS. DILUIGI: Are you asking when it
10 was entered or when it was --

11 MR. MARECKI: Entered, sorry.

12 Q The Linklaters order was entered
13 before the IPO order was entered; is that right?

14 A That's right. And you are going to
15 have to excuse me. This is my misunderstanding.
16 When you say -- when you say "entered," you mean
17 the point at which the order was actually granted
18 by the court?

19 Q Yes.

20 A So that was granted by the court on
21 late August.

22 Q Yes, August 28th.

23 A Okay. And you're contrasting that
24 with the order for the IPO, which was in -- you
25 are talking October -- which is October?

1 M. Elliott

2 MS. DILUIGI: I think we can
3 stipulate to the dates that the orders were
4 entered, but if you have a specific question
5 for him about the orders.

6 MR. MARECKI: I do.

7 MR. MILLET: Excuse me. Exhibits 6
8 and 8 say at the top the date that the
9 orders were entered, so I mean you could
10 just go by what your own exhibits say, and
11 they show that they were entered on
12 different dates.

13 Entry and granting of the order are
14 two different things, so that also misstates
15 facts.

16 If we are just trying to establish
17 what dates the orders were entered, let's
18 just look at the top of the exhibits.

19 BY MR. MARECKI:

20 Q At the time the Linklaters order was
21 entered, did you feel as if the questions
22 surrounding the payment of Linklaters' fees had
23 been resolved?

24 MS. DILUIGI: Objection. Vague.

25 A I -- at the point at which the

1 M. Elliott

2 Linklaters order was entered, I felt that we had
3 an agreement with the committee as regards -- and
4 obviously with the support of the debtors -- with
5 regard to the basis on which we were going to be
6 paid on an ongoing basis.

7 Q Based on your understanding of that
8 agreement, did you feel as if any further orders
9 of the court would be necessary in order to
10 provide for the payment of Linklaters' fees?

11 MS. DILUIGI: Objection. Calls for a
12 legal conclusion.

13 A I did not feel that anything further
14 was required. We had been to the court. The
15 court had opined. We were done.

16 Q You do feel, however, that there is
17 additional support for the payment of Linklaters'
18 fees in the IPO order; is that a fair
19 characterization of what you said earlier?

20 MR. MILLET: Objection. Vague and
21 ambiguous. Misstates his testimony.

22 Q Do you feel as if the IPO order
23 provides an independent basis for the payment of
24 Linklaters' fees?

25 MS. DILUIGI: Objection. Calls for a

1 M. Elliott

2 legal conclusion.

3 MR. MILLET: Objection.

4 A I don't think it's at odds with
5 anything that we had already secured with the
6 court.

7 Q Linklaters was engaged in connection
8 with the EuroLog IPO; correct?

9 A Correct.

10 Q Did that IPO ever launch?

11 A Yes, it did.

12 Q And was that IPO ever successfully
13 completed?

14 A It -- it was not.

15 Q Did Linklaters' services in
16 connection with that IPO result in any cash being
17 distributed into the debtors' estates?

18 A No, it did not.

19 Q Do you view that there is any -- you
20 are aware that the -- can you describe generally
21 the assets that were involved in the EuroLog IPO?

22 A If you are looking at pure assets,
23 they were a series of real estate assets held
24 across seven or eight European jurisdictions, of
25 which a number were income producing and a smaller

1 M. Elliott

2 percentage were development, and they are the hard
3 assets, if you would like.

4 But as an adjunct to that, there is
5 the management team that is responsible for
6 managing the assets and securing the value of
7 those assets, and so holistically, they comprise
8 the -- the assets of the IPO.

9 Q Okay. Which assets did P3 hold?

10 A P3 held the management companies,
11 which were the individual management -- the
12 employers of and managers to the underlying, you
13 know, fixed real estate assets.

14 Q And Arcapita Limited?

15 A I would need to familiarize myself
16 with the legal structure, but the structure itself
17 was pretty complex. What you had was three
18 independently -- or three funds which were each
19 held to varying degrees by independent third
20 parties, and by certain Arcapita -- and Arcapita
21 Bank-affiliated entities.

22 I would need to refresh my memory by
23 reference to the structure chart as to whether
24 Arcapita Limited had any direct interests. I
25 can't recall.

1 M. Elliott

2 Q Is it your general understanding that
3 the assets of P3 and Arcapita Limited were
4 combined with the underlying hard assets that you
5 described that form the EuroLog IPO?

6 A Sorry, I don't understand the
7 question.

8 Q So in the EuroLog IPO, the assets of
9 P3 were combined with the assets of Arcapita
10 Limited?

11 A I'm sorry. Just to be very precise,
12 the construct of the IPO is such that a New Jersey
13 incorporated vehicle was to be set up into which
14 were going to be transferred the various
15 intermediate holding companies, which ultimately
16 owned the real estate assets, and the -- an
17 intermediate holding company of the asset
18 management companies, and it was all going to be
19 tipped into the ListCo, and that holistically
20 would comprise the -- the vehicle that was being
21 floated.

22 Q Those assets, to your knowledge,
23 still exist; correct?

24 A Correct.

25 Q Have you been involved in -- since

1 M. Elliott

2 the failure of the EuroLog IPO, has Linklaters
3 been involved in any additional efforts to
4 monetize those assets?

5 A No, nothing specifically to monetize
6 those assets since the IPO. The only work we have
7 done since is in respect of securing part of the
8 re- -- well, part of the rollover of some of the
9 asset-level debt.

10 Q If those assets are monetized in the
11 future, do you believe that Linklaters will be
12 able to obtain payment from the proceeds of any
13 monetization?

14 MR. MILLET: Objection.

15 MS. DILUIGI: Objection. Calls for
16 speculation.

17 A It would very much depend on the
18 structure and the nature of whatever was -- of any
19 deal that was secured going forward.

20 Q So the structure of a future
21 monetization event would impact the ability of an
22 entity such as Linklaters to receive payment?

23 MS. DILUIGI: Objection.

24 Mischaracterizes testimony.

25 A Potentially.

1 M. Elliott

2 Q So, are you saying you could
3 structure an event to distribute the proceeds of a
4 monetization event in a way that Linklaters would
5 not get paid for its fees?

6 MS. DILUIGI: Objection.

7 A Well, just to be clear, we -- we
8 are -- Linklaters can't structure anything in
9 order to insure that we secure payment, but to
10 give you an example, if the IPO were to -- were to
11 occur, then under the terms of our engagement
12 letter, we would have the ability to join ListCo
13 and secure payment out of the proceeds of the IPO
14 per our engagement letter. That would be one
15 example.

16 Q And that was the way, that example in
17 the EuroLog IPO documentation, that's how that was
18 structured; am I right?

19 MR. MILLET: Objection.

20 MS. DILUIGI: Objection. Vague and
21 ambiguous.

22 Q Is that a hypothetical? You're
23 giving me what was in the documentation, is my
24 understanding.

25 MR. MILLET: Objection.

1 M. Elliott

2 A That is in the Linklaters engagement
3 letter of 19 July, 2012.

4 Q Would it have been possible to
5 structure the transaction in a way that Linklaters
6 would have -- let me strike that.

7 You say that Linklaters is not
8 currently performing any services in connection
9 with the monetization of the EuroLog assets?

10 A That's correct.

11 Q Are you aware of any efforts that are
12 currently being undertaken to monetize the EuroLog
13 assets?

14 A I'm aware that, you know, the various
15 stakeholders are seeking -- looking at,
16 considering a number of options in order to
17 potentially monetize the assets, but nothing more
18 than that.

19 Q Can you describe generally any of the
20 options that you are aware of?

21 A I'm not aware of any specific
22 options. The options that have always been tabled
23 are the ones that have been tabled and the
24 committee is familiar with since day one.

25 Q Can you turn to your declaration?

1 M. Elliott

2 MS. DILUIGI: Which one?

3 MR. BAIO: Which declaration?

4 MR. MARECKI: The original one in
5 this, the February 27, 2013, Exhibit 1.

6 A Yep.

7 Q It may also be helpful -- what I am
8 trying to do is walk through the payments and --
9 that were made on the fees. It may also be
10 helpful to have the reply brief open, which is
11 starting at --

12 MS. DILUIGI: Exhibit 9.

13 Q Starting at page two.

14 Under the Linklaters fee order that
15 was entered, how many payments were required to be
16 made to Linklaters?

17 MS. DILUIGI: Objection. The order
18 speaks for itself.

19 A Yeah, I mean, it's clear on the face,
20 face of the order.

21 Q And how many is that?

22 MS. DILUIGI: Same objection.

23 A You can read it like I can, but for
24 the benefit -- for your benefit, there was a
25 1.5 million dollars, was the first payment.

1 M. Elliott

2 Q Is that referred to as the interim
3 payment?

4 A Correct.

5 Q And was there a second payment
6 contemplated by the order?

7 A There was, on the earlier of a number
8 of scenarios occurring, but the one that is
9 relevant here is the date November the 12th.

10 Q If I refer to that as the IPO
11 termination payment --

12 A Correct.

13 Q -- do you understand that?

14 A third payment?

15 MS. DILUIGI: Can I just have a
16 standing objection to your asking him what's
17 required under the order?

18 MR. MARECKI: Yes.

19 MS. DILUIGI: Thank you.

20 A So, there is the 1.5, which is the
21 IPO, and then there was a third payment which was
22 due on or around that same date.

23 Q If I refer to that as the second
24 interim payment, do you understand what I mean?

25 A I do.

1 M. Elliott

2 Q And as for a fourth payment?

3 A A fourth payment was with respect to
4 the balance, there was an obligation to negotiate
5 in good faith.

6 Q And if I refer to that as the final
7 payment, you will understand me; correct?

8 A Correct.

9 Q All right. If we can just walk
10 through these one by one.

11 Step one, the interim payment.

12 A Yep.

13 Q The payment amount there was
14 1.5 million dollars; is that right?

15 A That's correct.

16 Q That has been paid?

17 A Correct.

18 Q And that payment is not at issue in
19 the fee motion; is that right?

20 A That's correct.

21 Q The second payment, the IPO
22 termination payment, that amount is also
23 1.5 million dollars?

24 A Correct.

25 Q When is that payment due? When was

1 M. Elliott

2 that due, rather?

3 A The 12th of November, 2012.

4 MS. DILUIGI: Objection. The fee
5 order speak for itself, as does the motion.

6 Q Why was that payment due on the 12th
7 of November?

8 MS. DILUIGI: Objection. Calls for a
9 legal conclusion.

10 A Because that's what it says on the
11 face of the order, and that was always the basis
12 on which we had been agreed with the committee
13 that it would be paid.

14 Q That's not what it says on the face
15 of the order. The face of the order gives three
16 conditions.

17 I'm asking why you are picking out
18 November 12th as the payment date.

19 MS. DILUIGI: Objection.
20 Argumentative.

21 A So, let's read the face of the order.
22 The face of the order says --

23 Q We are talking about paragraph five;
24 correct?

25 A Yes.

1 M. Elliott

2 Q Okay.

3 A Earliest of termination of the
4 EuroLog IPO.

5 Q When was the EuroLog IPO terminated?

6 A When was it terminated? In effect,
7 when we were down towards when -- when we didn't
8 achieve pricing, which was probably around the
9 12th of November.

10 Q And on the 12th of November, was any
11 action taken to -- was any action taken by
12 Linklaters to obtain this payment?

13 A The action that was taken was to
14 discuss with the debtors shortly after the 12th,
15 to understand and discuss with them the most
16 appropriate fashion for us to invoice our fees.

17 Q This payment has still not been made;
18 is that right?

19 A That's correct.

20 Q What did you discuss with the debtors
21 as to the most appropriate fashion to invoice your
22 fees?

23 A We -- we discussed whether it was
24 appropriate to work through the detail of the
25 order, or whether in the interest of coming to a

1 M. Elliott

2 swift conclusion and for the benefit of all
3 concerned, whether we should put forward a
4 proposal that reflected broadly these terms and
5 that would have been, you know, acceptable to the
6 debtors, which is what we did.

7 Q Do you recall who you had those
8 conversations with?

9 A Yes. It was Karim Si-Ahmed.

10 Q Why aren't these fees included in the
11 fee motion currently pending?

12 MS. DILUIGI: Objection. Vague.

13 A What fees?

14 Q If this \$1.5 million termination
15 payment has not been paid, why is Linklaters not
16 seeking payment of that in addition --

17 MS. DILUIGI: Objection.

18 Mischaracterizes -- finish your question.

19 Q In addition to the amounts that are
20 being sought in the fee motion?

21 MS. DILUIGI: Wait. Objection.

22 Mischaracterizes the motion.

23 A Because the motion, the current
24 motion is not designed to capture something that
25 we have already secured authority and direction to

1 M. Elliott

2 have paid.

3 Q Do you have an understanding as to
4 when that amount will be paid?

5 A Which amount?

6 Q The 1.5 million dollar IPO
7 termination payment.

8 A It should have been paid already, and
9 as soon as -- the reason that we discussed with
10 the debtors coming to a sensible conclusion in
11 order to address all our fees was the basis on
12 which we did not at that point in time invoice
13 specifically for that particular fee, and instead
14 looked at our position in totality, and invoiced
15 an aggregate sum.

16 Q When was that invoice issued?

17 A I don't recall the exact date, I'm
18 afraid.

19 Q Was it on or around November 12th, or
20 was it at some point -- at some later date?

21 A It was at some later date.

22 Q Was it within this calendar year?

23 MS. DILUIGI: Which calendar year?

24 The current calendar year?

25 MR. MARECKI: 2013.

1 M. Elliott

2 A I believe the invoice was actually
3 issued in this calendar year, 2013, and so not
4 2012.

5 Q So it was invoiced at least several
6 months, at least two months after the payment was
7 initially due?

8 A Not two months, because the payment
9 was the 12th of November, so, I -- I would need to
10 check the exact.

11 Q Are you aware of any objection by the
12 committee to payment of the 1.5 million IPO
13 termination payment?

14 A I'm aware of the fact, the very fact
15 that I am sitting here today, that the committee
16 has issues with paying the advisory fees.

17 Q The 1.5 million dollar IPO
18 termination payment is not part of the fee motion,
19 is it?

20 A No, because -- like I believe that it
21 needs to have any sanction of the court to have it
22 paid. What we were seeking to do was rather than
23 have an adversarial discussion around it, we were
24 seeking to address the entirety of our fees in a
25 sensible fashion, and so we were hoping that it

1 M. Elliott

2 didn't come to the point where we needed to come
3 take it before the committee and the court.

4 Q All I am asking is, to date, are you
5 aware of any objection by the committee to the
6 payment of the IPO termination payment?

7 A As I say, I'm aware that the
8 committee has objected generally to the payment of
9 some fees in respect of the IPO. I don't know
10 what in particular it has or has not objected to.

11 Q It has objected generally, but has it
12 objected specifically to this payment?

13 MS. DILUIGI: Objection. Asked and
14 answered.

15 Q To your knowledge.

16 A No, not so far as I am aware
17 specifically.

18 Q Okay. The third payment, which is
19 referred to as the second interim payment --

20 A Yes.

21 Q -- the payment of this payment is a
22 little under \$1.8 million; is that right?

23 MS. DILUIGI: Just caution the -- the
24 witness has testified that he has not seen
25 this document before, so -- and it seems

1 M. Elliott

2 that you are reading from the reply brief.

3 Q Have you calculated the amount of the
4 second interim payment?

5 A I have -- I have not.

6 Q Could you turn to your declaration,
7 the one that is marked as Exhibit 1. Paragraph
8 six.

9 A Yeah.

10 Q You describe the general methodology
11 of computing that payment; is that right?

12 A Correct.

13 Q But you yourself have not made those
14 calculations?

15 A Correct.

16 Q Are you generally aware as to the
17 amount of the second interim payment?

18 A I am generally aware, yes.

19 Q How are you generally aware?

20 A In discussions with my colleagues,
21 but not specifically.

22 Q What is your general awareness as to
23 the amount of that payment?

24 A My assumption is that based on the
25 formula as described in section six of my

1 M. Elliott

2 declaration, that the dollar amount is circa
3 1.7 million.

4 Q Do you have an understanding as to
5 when that payment is due?

6 A It was due simultaneously with the
7 termination payment or as soon as practical
8 thereafter, so my expectation was very much that
9 it would have been on or around that time.

10 Q That time being on or around
11 November 12, 2012?

12 A Correct.

13 Q This payment has also not been paid?

14 A Correct.

15 Q Why hasn't it been paid?

16 MS. DILUIGI: Objection. Calls for
17 speculation.

18 If you know.

19 A I -- I don't know why the amounts
20 have not been paid.

21 Q Did you ever discuss with anyone why
22 this approximately 1.7 million payment has not
23 been made?

24 A The discussions I had with the
25 debtors was around what was the most efficient way

1 M. Elliott

2 to insure payment, and that was invoicing for, if
3 you like, the entire amount on a -- a basis that
4 reflects the fact that the IPO had not at that
5 point in time been successful.

6 Q Is this second interim payment part
7 of the same discussions you held surrounding the
8 IPO termination payment?

9 A Yes.

10 Q Is the IPO termination payment and
11 second interim payment, were they invoiced at the
12 same time?

13 A No, they were not invoiced. They
14 were -- rather than break it down into individual
15 invoices, we put in one invoice for the entirety
16 of our fees with an appropriate discount, which we
17 did in the early stages of 2013.

18 Q But the entirety of the IPO
19 termination payment and second interim payment,
20 the entirety of those amounts were included in the
21 same invoice; is that right?

22 A Correct.

23 Q Is the -- are the funds that are part
24 of the second interim payment at issue on this
25 current fee motion?

1 M. Elliott

2 A I don't believe they are.

3 Q And are you aware of any committee
4 objection to payment of the funds associated with
5 the second interim payment?

6 A Not specifically.

7 Q Combining the first and second --
8 rather, sorry, combining the IPO termination
9 payment and the second interim payment, those
10 together total approximately \$3.2 million, to the
11 best of your knowledge; is that correct?

12 A That is, just on simple math,
13 correct.

14 MS. DILUIGI: But just for the
15 record, Linklaters invoices in pounds, and
16 so whatever the currency conversion rate.

17 MR. MARECKI: I'm basing it off the
18 currency conversion rate in the motion,
19 but -- the reply brief.

20 MS. DILUIGI: Just a clarification.

21 MR. MARECKI: Noted. Yes.

22 Q So this is -- so you said roughly
23 3.2 --

24 A Yes.

25 Q -- million dollars?

1 M. Elliott

2 A Um-hum.

3 Q That became due on or around
4 November 12th of 2012?

5 A Correct.

6 Q That was not invoiced for the first
7 time until some point in January 2013?

8 A Correct. I need to check the date,
9 but I mean, that sounds --

10 Q Do you recall who the invoices were
11 sent to?

12 A From recollection, it would have been
13 to P3 and Arcapita Limited, which was the same
14 basis that we had previously invoiced the first
15 interim payment of 1.5 million dollars, which --
16 sorry, the interim payment of 1.5 million dollars,
17 which had been paid in September 2012.

18 Q When was the first time that you
19 raised with the debtors collection of this
20 \$3.2 million?

21 A It would have been not long -- kind
22 of mid to late November. So, not long after the
23 IPO -- IPO pricing meeting fell over.

24 Q Is it your position that the
25 Linklaters order approves the payment of this

1 M. Elliott

2 approximately \$3.2 million?

3 A Yes, it is.

4 Q Are you aware of any party disputing
5 Linklaters' ability to collect on that
6 \$3.2 million?

7 A Not specifically.

8 Q Is the only reason Linklaters has not
9 collected on that \$3.2 million because of the
10 discussions that you held with the debtors?

11 MS. DILUIGI: Objection. Vague and
12 calls for speculation.

13 A Yes. We -- we -- we have throughout
14 this process sought to be -- sought to be
15 flexible, and we have a very strong and good
16 relationship with the debtors, and so we discuss
17 openly with them the most appropriate means of us
18 invoicing our outstanding fees, and that was the
19 conclusion we came to.

20 Q But the payment was due and
21 collectible as of November 12, 2012?

22 A That is my understanding.

23 Q Why did the debtors request to defer
24 payment of that obligation?

25 MS. DILUIGI: Objection.

1 M. Elliott

2 Speculation.

3 MR. MILLET: Objection. Go ahead
4 with the objection, then I will make mine.

5 MS. DILUIGI: You can go ahead.

6 MR. MILLET: Assumes facts not in
7 evidence, and misstates his testimony.

8 Q You can answer.

9 A I don't think I have got anything --
10 nothing further to say, really.

11 Q Why did the debtors not want to pay
12 on November 12th?

13 MS. DILUIGI: Objection.
14 Mischaracterizes testimony.

15 MR. MILLET: Assumes facts not in
16 evidence, that the debtors didn't want to
17 pay.

18 A It's not that the debtors did not
19 want to pay. The debtors and I sat down and
20 discussed the most efficient and kind of pragmatic
21 way to secure payment, rather than going through
22 a -- necessarily a prescribed process, and so we
23 were -- that is the basis on which we ultimately
24 deferred some payment.

25 Q Why did you determine that it was the

1 M. Elliott

2 most efficient pragmatic way to secure payment by
3 delaying the invoice until January 2013?

4 MS. DILUIGI: Objection.

5 Mischaracterizes testimony.

6 A The debtors ultimately are the
7 vehicle through which we're going to secure
8 payment, and so, as I said, from the start, we
9 have consistently tried to be accommodating to
10 their requests. They invariably have the dialogue
11 with the committee. And so we were -- we listened
12 to what they had to say and were accommodating of
13 it.

14 Q Were the debtors the ones that
15 requested the deferment of the \$3.2 million
16 payment that became due in November 2012?

17 A I mean, it's wrong to characterize it
18 as a request for deferment. It's better to
19 characterize it as in order to secure payment of
20 an appropriate -- secure payment of the
21 outstanding amounts, which includes the 3.2, the
22 better approach was to put in an invoice for the
23 entire amount with the appropriate --

24 Q Why was that the best approach?

25 A That was the advice of the debtor,

1 M. Elliott

2 knowing that -- knowing the relationship that the
3 debtor has with the committee, but I don't know
4 why that was the advice or that was the request
5 that they made.

6 Q Was it because -- was there -- to
7 your knowledge, you said there was no outstanding
8 committee objection to payment of this
9 \$3.2 million; correct?

10 A Correct, specifically.

11 Q Did the debtors tell you that the
12 committee would object if Linklaters sought
13 payment?

14 A Not specifically, no.

15 Q So what if the -- knowing the
16 relationship the debtor has with the committee,
17 how does that affect the timing of the
18 \$3.2 million payment that was due in November?

19 MS. DILUIGI: Objection. Assumes
20 facts.

21 A I cannot speculate as to the nature
22 of the committee's relationship or the debtors'
23 relationship with the committee. I can only say
24 that we have a strong and supportive relationship
25 with the debtor, and we listen to their, you know,

1 M. Elliott

2 reasonable requests, or any advice they may give
3 in that context.

4 Q So, this request was made to not make
5 payment immediately upon the -- immediately upon
6 it becoming effective as of November 2012?

7 A Correct.

8 Q Do you know the total amount of fees
9 Linklaters has incurred in connection with the
10 EuroLog IPO?

11 A If you mean by that all amounts,
12 including those amounts that we have written off?

13 Q Yes. Let's start with that number.

14 A So, the headline -- I'm going to talk
15 sterling, and I am going to talk generically. So
16 approximately 5.7 million sterling as an
17 outstanding amount, and to which you would need to
18 add in the 200K that we wrote off and another 150K
19 that we wrote off at the beginning of the matter,
20 and then you would have to add in the 1.5 million
21 dollars that we were paid in September.

22 So -- so roughly --

23 MS. DILUIGI: It's not a math test,
24 so if you can't do the math, I think --

25 Q In general is fine, but I will note

1 M. Elliott

2 that you used two different currencies there, so I
3 don't know if we are --

4 A Well, yeah. Well --

5 Q Do you know it roughly in dollars?
6 Maybe we could stick to that, if you do.

7 A It's easier for me in sterling. I
8 think the total amount is roughly 7 million
9 sterling, in terms of the total amount of fees,
10 which were then -- which we have written off, as I
11 say, nearly 500 sterling in terms of our initial
12 150 and then the subsequent 200.

13 Q So, 7 million sterling is roughly the
14 amount before any discounts are taken into effect?

15 A Correct.

16 Q And the amount, total amount after
17 discount is roughly what?

18 A If you go back to what we have put in
19 our -- it's just over four million.

20 Q Just over what?

21 A Four.

22 Q You are seeking less than that,
23 considerably less than that in connection with
24 this fee motion; is that right?

25 A Well --

1 M. Elliott

2 MS. DILUIGI: Objection.

3 Mischaracterizes the motion.

4 A So, the fee motion is with respect to
5 the balance of the amount that we have not secured
6 a court order on, so we have the secured court
7 order, and so the fee motion is around the balance
8 amount.

9 Q Switching back to dollars, and we can
10 switch back if it's a little confusing, but the
11 motion speaks in terms of roughly 2.7 million as
12 the final payment that is being sought by
13 Linklaters?

14 A Yes, roughly.

15 Q Is that roughly consistent with your
16 understanding?

17 A Yes.

18 Q So for that portion, I'm going to
19 refer to that as \$2.7 million.

20 If the court grants the motion and
21 approves the debtors' funding of Linklaters' fees
22 of this \$2.7 million, is Linklaters going to
23 consider that payment full satisfaction for all of
24 Linklaters' fees in connection with the EuroLog
25 IPO?

1 M. Elliott

2 MS. DILUIGI: Objection.

3 Hypothetical.

4 A I mean it is hyp- -- that is
5 hypothetical, but are you assuming in that fact
6 pattern that those amounts under the original --
7 the Linklaters court order have also been paid?

8 Q Yes. Let's say the interim payment,
9 the IPO termination payment, the second interim
10 payment and the final payment in the amount of
11 \$2.7 million, which is the amount requested in the
12 motion, if all of that is paid, is Linklaters
13 going to consider that payment full satisfaction
14 of the fees incurred in connection with the IPO?

15 MS. DILUIGI: Same objection.

16 A We would have to look at that,
17 because what that reflects is a substantial
18 discount to face value on the basis of the IPO not
19 having completed. So, on that fact pattern, the
20 answer is yes.

21 In the case where there is a
22 subsequent potential monetization event, we would
23 have to discuss at that point in time the basis on
24 which we would secure payment.

25 Q Meaning if there is a subsequent

1 M. Elliott

2 monetization of the assets, Linklaters may seek to
3 claw back a portion of the discount that is
4 currently being provided to the --

5 A That's not what I --

6 MS. DILUIGI: Objection.

7 Speculation.

8 A Yeah. And that's not what I said.

9 Q Explain it. I'm not trying to
10 mischaracterize. I'm trying to understand.

11 A So, as we sit here today, with no --
12 with no IPO, the deal that we negotiated in and
13 around a failed IPO is the deal that we
14 negotiated, and we will stand by that.

15 If we get to a place where there is a
16 new deal, be that an IPO, be that some other
17 monetization event, then we will have a discussion
18 at that point in time what the basis, any basis of
19 our fee arrangement would be.

20 Q Are you saying a basis for a fee
21 arrangement of Linklaters' work on a future
22 monetization event?

23 A Correct.

24 Q I'm talking about seeking additional
25 payments based -- put everything else aside. I'm

1 M. Elliott

2 just talking about the EuroLog IPO work at this
3 point.

4 If all of the payments sought, all
5 the payments that are contemplated in the
6 Linklaters order and the payments sought, the
7 2.7 million payments sought in connection with the
8 current fee motion, if those are paid, will
9 Linklaters consider that full satisfaction for all
10 the work performed in the past in connection with
11 the EuroLog IPO?

12 MS. DILUIGI: Objection.

13 Speculation.

14 A Again, if the status quo remains as
15 it is, so no IPO, yes, that is the deal that's
16 been struck.

17 If -- in respect of any future
18 monetization event, well, then we would need to
19 discuss the basis on which any payment would be
20 made going forward.

21 Q Future monetization event, are you
22 saying a future monetization event will affect
23 whether or not Linklaters seeks additional fees in
24 connection with the original EuroLog IPO work?

25 MS. DILUIGI: Objection.

1 M. Elliott

2 Mischaracterizes testimony.

3 A I don't think we can have that
4 conversation until we know what the monetization
5 event -- I can only speak on what the facts are
6 today. The facts are today there is no IPO. We
7 have come to an accommodation, we believe, in
8 terms of what is the appropriate fee arrangement,
9 and we will stand by that by reference to those
10 facts.

11 Q That is the appropriate fee
12 arrangement for today under these circumstances?

13 A Correct.

14 Q And if the circumstances change, then
15 that fee arrangement may no longer be appropriate?

16 MS. DILUIGI: Objection.
17 Speculation.

18 A At that point in time, we would have
19 to discuss a -- you know, a fee -- an appropriate
20 fee arrangement at that time. I can't speculate
21 on that today.

22 Q So regardless of what the court does
23 with respect to granting or denying the current
24 fee motion, that may or may not be a permanent
25 solution as to the amount of fees that Linklaters

1 M. Elliott

2 is seeking to collect for the past work for the
3 EuroLog IPO?

4 MS. DILUIGI: Objection. Vague and
5 ambiguous. Calls for speculation.

6 A Yeah, I can't speculate on that until
7 I know what -- you know, I can only talk about the
8 here and now.

9 Q Is it possible that Linklaters will
10 pursue payment of additional amounts based on work
11 performed in connection with the EuroLog IPO?

12 MS. DILUIGI: Same objection. Calls
13 for speculation.

14 A I can't comment on that until I know.

15 Q You can't comment whether it's
16 possible?

17 A Yes. As I say, I need to -- I can
18 only go and address that point by reference to,
19 you know, a specific set of facts at a particular
20 point in time, so I don't know whether it's
21 possible or not possible.

22 But in any event, we would be -- you
23 can bet your bottom dollar that we will be talking
24 to you good fellows.

25 Q Were estimates of Linklaters' fees

1 M. Elliott

2 prepared during the course of the work on the
3 EuroLog IPO?

4 A We prepared estimates at the start of
5 the transaction, and at various -- one or two
6 specific instances going forward, but the very
7 nature of the transaction, the length of time, the
8 complexity, the unforeseen circumstances around
9 the Chapter 11, meant that they were revisited.

10 Q When was the first estimate prepared?

11 A When we opened the matter.

12 Q Was that in July 2011, roughly?

13 A Yes, roughly.

14 Q Do you recall what the initial
15 estimated fee amount was?

16 A Very roughly, two-and-a-half to
17 three-and-a-half million sterling, on some very
18 fixed assumptions around timing.

19 Q Do you know, sitting here, roughly
20 what that translates to in dollars, in the current
21 exchange rate? I know we are not being precise.

22 MS. DILUIGI: Can I give him a
23 calculator?

24 MR. MARECKI: Yes, if you would like.

25 A 1.6 --

1 M. Elliott

2 MS. DILUIGI: It is what it is.

3 MR. MARECKI: It is. I was looking
4 for a benchmark. I mean, we can sit here
5 all night, and I can pull out a calculator.

6 A So 1.6 times. So three-and-a-half to
7 five, three-and-a-half to \$5 million; is that
8 right?

9 Q Okay. All right.

10 MS. DILUIGI: Again, it is what it
11 is.

12 A But to be clear, they were -- they
13 were, you know, our best placed estimates at a
14 time on a certain set of facts with very clear
15 boundaries around when we expected the deal to
16 close, all of which were ultimately proved to be
17 ill-founded.

18 Q Did you have involvement in the
19 preparation of that initial estimate?

20 A Yes, I did.

21 Q Did you have ultimate approval over
22 that estimate?

23 A Yes.

24 Q Did you agree with that estimate at
25 the time?

1 M. Elliott

2 A Yes.

3 Q You say that was based on the initial
4 launch date. Was the initial launch date roughly
5 in September 2011?

6 A Yes.

7 Q Was the estimate revised after -- was
8 that launch date ever pushed back to a further
9 date?

10 A It was.

11 Q When was the launch date delayed? At
12 what point was it determined that the launch date
13 needed to be delayed?

14 A Midway through the summer of 2011.

15 Q Why was it determined that the launch
16 needed to be delayed?

17 A It wasn't thought that the market
18 opportunity was sufficiently strong.

19 Q At that point, when was the expected
20 launch date pushed to?

21 A There were a number of iterations,
22 but initially Q1 2012.

23 Q And then?

24 A And then Q3 and Q4, 2012.

25 Q When the expected launch date was

1 M. Elliott

2 pushed to Q1 2012, did Linklaters prepare a
3 revised estimate of the expected fees?

4 A Not at that point in time, no.

5 Q When the launch date was pushed to Q2
6 2012, did Linklaters prepare a revised estimate of
7 its expected fees?

8 A It wasn't Q2, it was Q3.

9 MR. MILLET: Objection.

10 A Q3 and Q4. To be clear, we, on a
11 reasonably regular basis, updated the debtors as
12 to the actual amount of our fees.

13 The point at which we sent them a
14 revised estimate was when we supplied the revised
15 engagement letter, when we sought to socialize
16 where we thought the fees might end up in light of
17 the circumstances as they presented themselves at
18 that point in time.

19 Q This is in the July 2012 engagement
20 letter?

21 A Correct.

22 Q Is that amount reflected anywhere in
23 the engagement letter?

24 A It is.

25 Q And what is that amount?

1 M. Elliott

2 A This is sterling.

3 MS. DILUIGI: I think you have -- I
4 think you have the document as an exhibit.

5 Q I believe it's Exhibit 3.

6 A Yes. So it's in the range of 3.5 to
7 \$4.25 million, excluding the 150 writeoff.

8 Q When was the final launch of the
9 EuroLog IPO?

10 A It technically launched in October,
11 which is when -- you know, we published the
12 intention to float announcement in October of
13 2012.

14 Q Were there considerable services
15 performed by Linklaters after the launch of the
16 IPO?

17 A Yeah, absolutely. I mean, because
18 from launch, you are in full execution to drive
19 the process from there to pricing, so, launch is
20 when you announce it to the market, and you are in
21 full marketing mode, and you are going out on the
22 road with the management team to market the -- the
23 IPO, and it's a very intense period of work right
24 up to the point at which you have your pricing
25 meeting on the night before admission.

1 M. Elliott

2 Q Do you know generally how much in
3 fees Linklaters incurred after the launch of the
4 IPO?

5 A I couldn't actually give you a
6 sensible estimate of that.

7 Q Do you have an understanding, as to
8 the amount in total fees that Linklaters had
9 incurred in connection with the IPO, how much of
10 those fees had been paid at the time of the
11 launch?

12 A At time of the launch, in dollars,
13 the 1.5 million.

14 Q And was that the 1.5 million that is
15 referenced in the Linklaters order?

16 A Correct, the interim -- the interim
17 payment.

18 Q Under the terms of the -- under the
19 terms of the EuroLog documentation, in the event
20 of a successful IPO, Linklaters' fees were going
21 to be paid out of the proceeds of that IPO; is
22 that right?

23 A Correct.

24 Q What was your understanding as to the
25 source of the payment of Linklaters' fees in the

1 M. Elliott

2 event of a terminated IPO?

3 A In the event of a terminated IPO?

4 Q Yes.

5 A Our engagement was with P3 and
6 Arcapita Limited, and we had no reason to believe
7 that they weren't able to source funds either from
8 the debtors or indeed from other entities in order
9 to make those payments.

10 Q Do you recall what the -- when the
11 final estimate Linklaters provided -- do you
12 recall the date of the final estimate Linklaters
13 provided of the total fees that were expected to
14 be incurred in connection with the IPO?

15 MS. DILUIGI: Are you specifically
16 referring to a written estimate?

17 MR. MARECKI: A written estimate,
18 sure.

19 A So, so is the question when we
20 provided the estimate in our engagement letter
21 of --

22 Q 3.5.

23 A Yeah. The July 2012, did I
24 anticipate what I thought the ultimate fees --

25 Q No. Was that fee amount -- let's

1 M. Elliott

2 start with this amount.

3 So as of July 2012 -- and referring
4 to Section 3.2 of the engagement letter; correct?

5 A Yes.

6 Q And that estimates a range of
7 3.5 million to 4.25 million pounds?

8 A Yes.

9 Q Was this estimate of the total
10 expenses ever revised at a future date?

11 A Not -- no, it was not revised at a
12 future date. There was ongoing sharing of
13 information about what the actual numbers were,
14 but there was no official revision of an estimate.

15 Q So there was sharing of actual
16 numbers as in, you mean actual fees incurred?

17 A Correct.

18 Q And those were shared with whom?

19 A They were shared with the deal team
20 at Arcapita, so Karim Si-Ahmed and Cherine
21 Aboulzelof. And also with the P3 team, so the
22 general counsel, Jonathan Farrell, the finance
23 director, George Aase. A-A-S-E.

24 Q At the time the engagement letter was
25 signed, do you have an understanding as to the

1 M. Elliott

2 actual amount of fees that had been incurred by
3 Linklaters?

4 A At the time this engagement was
5 signed?

6 Q Yes. Exhibit 3, July 19, 2012.

7 A I don't recall today what they were,
8 but at the time I would have done, and that would
9 have helped inform the basis on which I would have
10 pulled together the -- the estimated range.

11 Q You were responsible for putting
12 together this 3.5 to 4.25 million-pound estimated
13 range?

14 A I was.

15 Q Did you view that as accurate at the
16 time?

17 A I did.

18 Q Did there become a point where you
19 realized that that estimate was not accurate?

20 A Yes, there was.

21 Q At what point was that?

22 A I don't remember specifically, but it
23 was highlighted as -- when -- in the discussions
24 that I had with the individuals that I mentioned.

25 Q It was highlighted in discussions

1 M. Elliott

2 with the debtors?

3 A With the debtors, yes.

4 Q Was that ever highlighted in
5 discussions -- do you know if that information was
6 shared with the committee or its advisors?

7 A I don't. I don't know.

8 Q What was the -- makes it a little
9 difficult, comparing back from pounds to dollars.

10 How much overbudget, over this
11 July 2012 budget, estimated budget, were the final
12 fees and expenses of Linklaters?

13 MS. DILUIGI: If you know.

14 A If you just take the numbers,
15 roughly, at the top, 5.7 -- well, 5.7 million
16 against 4.25. So, 1.4, 1.5 over budget.

17 Q 1.5 --

18 A Million pounds.

19 Q -- million pounds?

20 A Yeah.

21 Q And again, the budget that is
22 reflected here was never updated; correct?

23 MS. DILUIGI: Objection. Asked and
24 answered, and mischaracterizes his
25 testimony.

1 M. Elliott

2 A There was never another written --
3 there was, as I say, sharing of information about
4 what the actual numbers were on an ongoing basis,
5 both written and oral.

6 Q Those are written and oral
7 communications with the individuals --

8 A That I mentioned.

9 Q Yes.

10 A And bear in mind, these were only
11 estimates. They are my best estimate at the
12 particular time.

13 Q Do -- these estimates included in the
14 fee letter, what discounts do they reflect?

15 A They reflected a 15 percent discount.

16 Q And they also reflect a certain
17 writeoff of invoices; is that right?

18 A That's correct.

19 Q So even reflecting these discounts,
20 reflecting some of these discounts, Linklaters was
21 overbudget by, you estimate, 1.5 million pounds?

22 A Well, if you -- no, because that
23 1.5 million is without any discounts. You need to
24 take 15 percent, so, 5.7 million is the -- the
25 amount, the aggregate amount without the benefit

1 M. Elliott

2 of any discount. Okay.

3 If you took 15 percent of that 5.7,
4 it would come down to a lower number. You would
5 have to compare the 4.25 to that lower number to
6 give you the delta on a discounted basis.

7 And I'm sorry, I don't have a
8 calculator with me.

9 MS. DILUIGI: That's okay. It's not
10 a math test.

11 Q What portion of the total discount do
12 you attribute to a concession due to the failed
13 IPO?

14 A Okay. So, the concession that we put
15 forward as being an agreed basis upon the basis of
16 a failed IPO was an additional 15 percent
17 discount, so in total, a 30 percent discount to
18 our face value.

19 Q The initial 15 percent discount is
20 the discount reflected in Section 3.2 of the
21 engagement letter?

22 A Correct.

23 Q And that engagement letter was
24 entered into prior to the termination of the IPO?

25 A Correct.

1 M. Elliott

2 Q And the additional 15 percent
3 discount you are referencing, when was that
4 discount agreed to?

5 A When we first entered into the
6 matter, back in July 2011, we had negotiations
7 around the basis on which we were prepared to take
8 on the mandate, and part of the package of that
9 proposal was that on an aborted basis, we would
10 discount by 30 percent.

11 Q Did those negotiations result in any
12 written provision being included in the engagement
13 letter?

14 A Yes.

15 Q In what section of the engagement
16 letter?

17 A In 3.4.3.

18 Q And this is the 15 percent that is
19 ultimately reflected in the Linklaters order?

20 A The additional 15 percent, yes.

21 Q So the 15 percent discount from this
22 provision of the engagement letter is the
23 15 percent that is reflected -- the additional
24 15 percent that is reflected in the Linklaters
25 order?

1 M. Elliott

2 A If you are talking about paragraph
3 five of the --

4 Q Yes.

5 A Yes. So to be clear, the standing --
6 as a standing rate, we applied a 15 percent
7 discount to our standing rates in order to -- on
8 an ongoing basis. So on a successful IPO, we
9 would have had a 15 percent discount.

10 Q Is this just with respect to the
11 EuroLog IPO, or is this with respect to other
12 clients?

13 A This is with respect to the EuroLog
14 IPO.

15 Q Okay.

16 A Just to finish the point, in the case
17 of an unsuccessful IPO, we would discount by an
18 additional 15 percent, so, in aggregate a
19 30 percent discount to our face value.

20 Q That 30 percent is also the
21 30 percent that is reflected in paragraph five of
22 the Linklaters fee order?

23 A Correct.

24 Q Were there any --

25 MS. DILUIGI: Just objection.

1 M. Elliott

2 Mischaracterizes the fee order.

3 Q Are there any additional discounts
4 that were taken aside from the 30 percent that is
5 reflected in the Linklaters order?

6 A Well, we wrote off 150,000 sterling,
7 so call that -- you know, the dollar equivalent of
8 150,000 sterling.

9 Q What services was that writeoff for?

10 A It was for structuring, early-stage
11 structuring of the transaction.

12 It was for choice of the IPO -- the
13 nature and the choice of the IPO listing vehicle,
14 and whether we would be listed as a fund or a
15 property company.

16 It was in respect of some preliminary
17 due diligence.

18 So it was really getting the IPO --
19 some of the key decisions around ensuring that the
20 IPO could be -- be progressed.

21 Q Is that a different writeoff than is
22 referenced in Section 3.2 of the engagement
23 letter?

24 A No, it's the same writeoff.

25 Q Okay. So, there -- that is not a new

1 M. Elliott

2 concession that has been made after entry of the
3 Links order; correct?

4 A No -- that is correct.

5 Q And that concession is reflected in
6 the initial engagement letter executed in
7 July 2012?

8 A Correct.

9 Q So taking that into account, there
10 has been no further concession aside from the
11 amounts reflected in paragraph five of the Links
12 order; is that right?

13 MS. DILUIGI: Objection.

14 A And the 200K writeoff, which we have
15 an invoice we did write off.

16 Q Isn't the 200K invoice also
17 referenced in Section 3.2 of the engagement
18 letter?

19 A It is.

20 Q So all of these writeoffs and
21 discounts are taken into account in their entirety
22 in paragraph five of the Links order; is that
23 right?

24 MS. DILUIGI: Objection.

25 Mischaracterizes the order.

1 M. Elliott

2 A Yes, that is correct.

3 Q There have been no further discounts
4 or writeoffs since then; is that right?

5 MS. DILUIGI: Since when?

6 A Since when?

7 Q There have been no further discounts
8 or writeoffs aside from those reflected in the
9 order?

10 A Aside from those reflected in the
11 order, no, that is correct.

12 Q I think if you can pull out the
13 order -- I will tell you the exhibit number as
14 soon as I find it.

15 A Is that the one?

16 Q Exhibit 6; correct?

17 A Yes.

18 Q And paragraph five.

19 Can you tell me your general
20 understanding of how payment should be calculated
21 under paragraph five?

22 A My general understanding is that,
23 assuming payment had been made of the IPO
24 termination payment, and the second interim
25 payment, that in the event that the IPO had

1 M. Elliott

2 terminated, there was to be a reduction of an
3 additional 15 percent to insure that, if you like,
4 aggregate recovery under the matter was reflective
5 of a 30 percent discount.

6 Q Is that -- is that also -- is it a
7 purely -- in your understanding, a purely
8 mechanical transaction, whereas there is an
9 additional 15 percent discount taken off the
10 amount, and that is the amount that Linklaters is
11 entitled to under this provision?

12 MS. DILUIGI: Objection. Vague.

13 A The -- there was an element, which
14 is, if you like, the piece outside -- the balance
15 outside those payments that were required to be
16 made.

17 Q Are you referring to the first three
18 payments, the --

19 A Correct.

20 Q -- interim payment, IPO termination
21 payment, and second interim payment?

22 A Yes. So the balancing amount, which
23 is the -- I think we referred to it in dollars as
24 the 2.7 million.

25 Q We have been switching around a lot.

1 M. Elliott

2 A Yeah.

3 Q Putting aside those first three
4 payments for now.

5 A Okay.

6 Q Just with respect to this final
7 payment calculation.

8 A So, just -- my understanding is,
9 there is an obligation on the part of the
10 committee and ourselves to discuss in good faith
11 the basis on which we would recover those amounts.

12 Q So there is a 15 percent discount
13 taken from the initial amount; correct?

14 A There is a 15 percent -- my
15 understanding is that we would negotiate in good
16 faith to insure that holistically there would be a
17 15 plus 15 percent discount to our aggregate fees.

18 MS. DILUIGI: Which just for the
19 record is not the same as 30 percent.

20 A It actually -- it leads to -- it
21 actually leads to a better result for you on that
22 calculation, as opposed to what we have done,
23 which is take 30 percent off the top and come up
24 with a number.

25 But the obligation on both parties

1 M. Elliott

2 was to discuss that in good faith and come up with
3 a number around that dispute, if you like, around
4 that balancing amount. That is how I read section
5 five.

6 Q So there is essentially the 15, the
7 15, and then a discussion?

8 A I -- I see it as a -- a 15, and then
9 a -- the discussion is around, if you like, the --
10 yes, the balancing amount. So 15 and then 15, but
11 the balancing amount would be a good-faith
12 negotiation around the fact that there had been,
13 if you like, a 30 percent discount across our
14 fees. That's how I read this.

15 Q Does Linklaters typically give
16 discounts on failed IPOs?

17 A Linklaters -- I don't think you
18 can -- there is not one size fits all. Linklaters
19 does and would give a discount on -- discounts on
20 failed transactions, very much on a case-by-case
21 basis.

22 Q Have you ever been involved as a
23 partner -- did you mention there was one
24 transaction or one other IPO transaction you have
25 been involved on?

1 M. Elliott

2 A I mean, this is --

3 Q Or did I get that wrong?

4 A As a partner, this is the only IPO
5 transaction that I have been involved with.

6 Q As an associate, how many
7 transactions did you say you were involved on,
8 again, IPO transactions?

9 A I don't have the precise number.

10 Q Do you have a general awareness as to
11 the discounts on those IPO -- discounts in fees on
12 those IPO transactions?

13 MS. DILUIGI: Objection. Assumes
14 facts.

15 A Over those times and that point, no,
16 I'm afraid I don't.

17 Q As a partner now, do you have a
18 general awareness as to the level of discounts
19 that are applied to IPO fees?

20 A A general awareness, yes.

21 Q What is your general awareness as to
22 the level of those discounts?

23 A On a successful or a --

24 Q Let's start with successful.

25 A Again, it's very case-specific. I

1 M. Elliott

2 have seen IPOs at a premium to face value, and I
3 have seen those that have marginal discounts to
4 face value on a successful IPO. So it's
5 case-specific.

6 Q In what circumstances -- by -- what
7 do you mean by "premium"?

8 A As in an excess over what our
9 notional rates would be.

10 Q And in what situations would you have
11 a premium on a successful IPO?

12 A Just the negotiations that had been
13 borne out with the client.

14 Q How about unsuccessful IPOs?

15 A Typically there would be a discount
16 applied.

17 Q Of what general range?

18 A Again, very fact and case specific,
19 by reference to the nature of the client, and the
20 volume of work, the size of the IPO, and I think
21 you need to be very careful when you are talking
22 about percentages. It's more about aggregate
23 amounts.

24 So, you -- you don't look at it
25 always in percentage. You look at the amount of

1 M. Elliott

2 cash recovery under the matter.

3 Q In terms of percentages, have you --
4 are you aware of any IPO that has provided greater
5 than a 30 percent discount?

6 A I am -- I am -- I am not -- I am not
7 aware of any -- if I take this -- this -- I'm not
8 aware of any transaction, of any IPO, indeed any
9 transaction, where as currently presented, we,
10 Linklaters, have agreed a discount in excess of
11 the amounts in which we are talking here, which
12 is, you know, a substantial amount of -- a
13 substantial dollar amount. I'm just not aware of
14 us having ever agreed to anything that large.

15 Q But that is also relative to the
16 amount of work and fees incurred in connection
17 with the IPO; right?

18 A Correct.

19 Q Who makes a determination as to
20 whether to discount the billable rate? Is it the
21 lead partner in charge or someone else?

22 A The lead partner has, if you like,
23 the ultimate responsibility, but it's very much a
24 consensus-led business.

25 Q In the case of the EuroLog IPO, was

1 M. Elliott

2 it your responsibility to make the initial
3 determination as to any discount in Linklaters'
4 fees?

5 A Yes.

6 Q Was it your determination to do the
7 initial 15 percent reduction reflected in this
8 paragraph 3.2 of the engagement letter?

9 A Yes.

10 Q And it was your determination to
11 write off the various amounts reflected in
12 paragraph 3.2 of the engagement letter.

13 A Yes.

14 Q And why did you make those
15 determinations?

16 A In the -- you have to look at each of
17 them on the facts at the particular time. The
18 initial 15 percent was when we pitched for the
19 work, given the nature of our relationship with
20 Arcapita, and, you know, appetite to continue to
21 invest in that relationship, and to -- to secure
22 the mandate.

23 Q So the 15 percent was -- that was
24 part of the engagement letter --

25 A Yeah.

1 M. Elliott

2 Q -- was part of the pitch?

3 A Yeah.

4 Q Is that unusual?

5 A No. You -- you would expect to pitch
6 for work, and if you are ultimately concluded to
7 be one or a number of potential successors, you
8 would typically be asked to put forward a fee
9 proposal, which I did.

10 Q Are you aware of any instances in
11 which a client has paid the standard billable
12 rates?

13 A Yes.

14 Q Have you been involved in any of
15 those situations?

16 A Yes.

17 Q In the IPO context?

18 A In the IPO context? I am not
19 aware -- I'm aware of other examples, not the ones
20 that I have been directly engaged with.

21 Q But you haven't been involved
22 in such?

23 A Me, personally.

24 Q Has Linklaters ever put a client into
25 insolvency proceedings?

1 M. Elliott

2 MS. DILUIGI: Objection. Vague.

3 We have a restructuring department.

4 A I can say I have never.

5 Q You have never?

6 A No.

7 Q Are you aware of anyone else ever?

8 A I'm not aware of specifics.

9 Q Have you or anyone else at
10 Freshfields notified P3 or Arcapita Limited that
11 it may initiate insolvency proceedings against
12 them if Linklaters' fees are not paid?

13 MS. DILUIGI: Did you mean to say
14 anybody else at Linklaters?

15 MR. MARECKI: What did I say? Yes.
16 I guess they are not on the phone.

17 A So, the question was --

18 Q Let me rephrase that.

19 Have you or anyone else at Linklaters
20 notified P3 or Arcapita Limited that Linklaters
21 may initiate insolvency proceedings against them
22 if the Linklaters fees are not paid?

23 A Not that I am aware.

24 Q Are you aware of any plans for
25 Linklaters to do that in the event that the IPO

1 M. Elliott

2 fees sought in connection with the current motion
3 are not funded by the debtors?

4 A I'm not currently aware, but I can't
5 comment on that in -- you know, in abstract.

6 Q But you are not aware of any
7 discussions to that effect?

8 A No.

9 Q Why does Linklaters need to get paid
10 now rather than upon a monetization event?

11 MS. DILUIGI: Objection.

12 A We have a court order that stipulated
13 that we should have been paid in November. With
14 the support of the debtors, we are just seeking to
15 have that court order honored.

16 Q Well, we discussed earlier that
17 \$3.2 million of that is not a dispute in this
18 motion, which has not been paid to Linklaters
19 because the debtors have requested that you not
20 request the funding at this point. Is that right?

21 A No. What the debtors requested was
22 that we submit an invoice with the entirety of our
23 amount, with a commensurate discount, which we
24 have done.

25 Q Which was submitted in January of

1 M. Elliott

2 this year; right?

3 A But it has not been paid.

4 Q And it's several months later and it
5 still has not been paid.

6 A Correct.

7 Q Do you have any basis to believe that
8 P3 or Arcapita would be -- Arcapita Limited
9 rather, would be forced into insolvency
10 proceedings if Linklaters' fees aren't paid now?

11 A I don't know the strength of their
12 balance sheets, so I can't comment on that.

13 Q Are you aware of any contemplated
14 reimbursement agreements between any entities?
15 For example, a reimbursement agreement between P3
16 and Arcapita Limited and entities that are -- and
17 other entities that hold substantial assets?

18 A I'm aware of generic discussions, but
19 not the detail.

20 Q What is your understanding of the
21 generic discussions?

22 A Simply that there were discussions
23 around what arrangements were to be put in place
24 around reimbursement, but nothing more.

25 Q Has Linklaters had any involvement in

1 M. Elliott

2 drafting those reimbursement agreements?

3 A No.

4 Q Are you aware of such reimbursement
5 agreements being used in other situations?

6 A No.

7 MS. DILUIGI: Objection. Vague.

8 Q To your knowledge, is this a unique
9 arrangement?

10 A Is what a unique arrangement?

11 Q Have you dealt with -- have you dealt
12 with reimbursement agreements of this nature
13 before?

14 MS. DILUIGI: Objection. Vague and
15 ambiguous.

16 A No, but I can say there is a lot
17 about this transaction that is unique.

18 Q Do you have any understanding as to
19 how the contemplated reimbursement agreements
20 would work?

21 A No.

22 Q Do you know if any reimbursement
23 agreements have been executed at this date?

24 A I don't know.

25 Q Do you know why any reimbursement

1 M. Elliott

2 agreements may or may not have been executed?

3 A No.

4 Q Do you have any understanding as to
5 what parties would enter into them?

6 A No.

7 Q Is it fair to say you know very
8 little about reimbursement agreements?

9 A I know very little about them.

10 MR. MARECKI: Can I have five? I
11 think there is one more thing I want to go
12 over.

13 (Recess taken.)

14 (Continued on next page with witness
15 jurat.)

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M. Elliott

MR. MARECKI: So we are done.

MS. DILUIGI: I have no questions.

oOo

I, MATTHEW ELLIOTT, the witness herein,
do hereby certify that the foregoing testimony of
the pages of this deposition to be a true and
correct transcript, subject to the corrections, if
any, shown on the attached page.

Subscribed and sworn to before me this
_____day of _____, _____.

NOTARY PUBLIC

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C E R T I F I C A T E

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

I, BONNIE PRUSZYNSKI, a Notary
Public with and for the State of New York,
do hereby certify:

That MATTHEW ELLIOTT, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such deposition
is a true record of the testimony given by
the witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 17th of March, 2013.

Bonnie Pruszyński

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I N D E X

WITNESS	PAGE
MATTHEW ELLIOTT	
BY MR. MARECKI	5

E X H I B I T S

Elliott Exhibit 1 Declaration of Matthew Elliott	10
Elliott Exhibit 2 Supplemental Declaration of Matthew Elliott	11
Elliott Exhibit 3 Engagement letter	14
Elliott Exhibit 4 Declaration of Matthew Elliott re August 8th Linklaters motion	51
Elliott Exhibit 5 Proposed order re August 8th Linklaters motion	54
Elliott Exhibit 6 Order confirming debtors' authority to pay certain transaction expenses incurred in connection with the EuroLog initial public offering	65

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Elliott Exhibit 7 August 16, 2012 72

e-mail chain with
attachment, redline copy of
Order

Elliott Exhibit 8 Order pursuant to 80

Section 105(a) and 363(b) of
the bankruptcy code and Rule
6004(h) of the bankruptcy
rules, authorizing debtors
to launch the EuroLog IPO

Elliott Exhibit 9 Debtors' reply to 87

objection of the Official
Committee