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

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In re:) Chapter 11
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ARCAPITA BANK B.S.C.(C), <u>et al.</u> ,) Case No. 12-11076 (SHL)
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Debtors.) (Jointly Administered)
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**DEPOSITION DESIGNATION LIST OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS IN CONNECTION WITH THE HEARING
REGARDING THE DEBTORS' MOTION FOR ORDER 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], the Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession in the above-captioned chapter 11 cases files this deposition designation list in connection with the July 18, 2013 hearing on the Motion, and respectfully designates the following deposition testimony of Andy Pyle of KPMG LLP (UK) for use at the hearing.

The Committee reserves the right to use any deposition excerpts designated by any other party and to utilize additional excerpts for cross-examination or impeachment. The Committee further reserves the right to counter-designate additional ranges in response to any excerpt designated by any other party. The Committee expressly reserves the right to supplement these designations as necessary and appropriate. The deposition transcripts of Andy Pyle is attached hereto as Exhibit A.

Deposition Designations for Andy Pyle (KPMG) – March 13, 2013

Tr.	Excerpt
33:24-34:9	<p>Q. And so we'll go through the engagement letters in a little bit, but none of the entities that retained KPMG are debtors in any of the cases in the U.S.; is that right?</p> <p>A. That's correct.</p> <p>Q. And none of them are debtors in cases in other jurisdictions like the Cayman Islands; is that right?</p> <p>A. That's my understanding, yeah.</p>
38:4-40:22	<p>Q. Right. And the engagement letters -- and we can look at them -- but they indicate that you're invoicing PointPark Properties, correct?</p> <p>A. That's my recollection. I can go back and refer to them if it will be helpful to confirm.</p> <p>Q. We'll go through them in a little bit, but is there any document that you're aware of that says that you're looking to Arcapita Bank for payment of fees in connection with the EuroLog IPO?</p> <p>A. Yes. So prior to -- at the very early stages of them initiating the IPO, we were engaged to do some preliminary tax structuring work and also what we refer to as an IPO readiness review. The engagement letters for -- the two engagements letters for those two pieces of work -- and they were, again, Arcapita Limited and PointPark Properties SRO to start with. But the IPO readiness engagement letter was subsequently varied to bring in Arcapita Bank Bahrain, one of the debtors as</p>

	<p>a party to that engagement letter, but this is all prepetition, and Arcapita Bahrain paid the fees for the -- for the IPO readiness review, for the phase -- for the tax structuring first phases and also paid some of the audit fees that were undertaken as part of the IPO engagement letter, but, again, prepetition. And they paid those fees directly. And it was always understood by -- by KPMG and the other advisors through discussions with Arcapita representatives and PointPark Properties, that Arcapita Bank Bahrain was the source of all of the money that would be used to pay KPMG's fees.</p> <p>Q. Okay. We're going to break that down some. The fees that you're seeking to be paid today, the ones that are unpaid --</p> <p>A. Yes.</p> <p>Q. -- are any of those associated with the prepetition work that you just referred to?</p> <p>A. No.</p> <p>Q. And so you've been paid for the engagement letter that had the variance that included Arcapita Bank; is that right?</p> <p>A. Yes, that's right.</p> <p>Q. So the fees that you're now seeking compensation for are fees that were incurred pursuant to a subsequent engagement; is that fair?</p> <p>A. In respect of the IPO reporting accountant, yes. I would want to just go and double check on tax structuring as to whether the -- the post-petition work was done through a variation to the original engagement letter or whether it was done through a separate engagement letter, but I'm happy to come back to that later, if that's what you'd like to do.</p>
42:13-19	<p>Q. And so for the engagements that you're now seeking compensation for, leaving aside the IPO readiness, none of those have any written reference to Arcapita Bank making the payments that you're seeking; is that correct?</p> <p>A. I think that is right, yes.</p>
43:12-17	<p>Q. And -- but the services for which you're now seeking compensation, those are not services for which KPMG has ever</p>

	<p>been retained in the bankruptcy case; is that correct?</p> <p>A. That is correct.</p>
45:2-46:15	<p>Q. When did you do the work that you're now seeking to be compensated for?</p> <p>MR. O'CONNOR: You want the time period?</p> <p>MR. LEBLANC: The time period generally.</p> <p>A. Sure, so the majority of the work -- it was undertaken in phases, but the majority of the work was undertaken from the period April 2012 through until October 2012. We did not do -- we did not really do any more work after October 2012. There were a couple of periods within that -- that time frame where we were not actively working across all work streams, but as you'll see from the schedule that you have in front of you, regarding sort of fees, some of the work -- not all of the work streams were basically going on all the way through that period because there were a couple of sort of natural gaps that were there.</p> <p>Q. Am I right that in terms of the work with respect to the IPO, something like 70 percent of it was done prior to July of 2012 and then 30 percent was done afterwards; does that sound right to you?</p> <p>A. I mean, yeah, without checking the numbers, that doesn't sound unreasonable as the splits, but we had done the majority of the reporting accountant work. We had done quite a lot of tax work, and we then had to go through a process of updating some of that work and doing some more audit work. So I'm sure the maths could be checked, but --</p> <p>Q. But that sounds generally --</p> <p>A. Sounds ballpark.</p>
52:7-14	<p>Q. Have you had any client in your five years pay your standard rates?</p> <p>A. Yes.</p> <p>Q. And was that in connection with an IPO that closed?</p> <p>A. No, it was not. It was in connection with other transactions</p>

	<p>that have closed.</p>
52:15-20	<p>Q. Do you regularly discount your standard rate?</p> <p>MR. O'CONNOR: Objection to form. You can answer.</p> <p>A. It is -- it is more the normal that some sort of discount would be given.</p>
56:5-9	<p>Q. Did your expectation that Arcapita Bank would pay for the fees incurred change as a result of Arcapita Bank's filing for bankruptcy?</p> <p>A. No, it did not.</p>
56:10-57:10	<p>Q. Other than your counsel, did you have discussions with anybody about whether or not it was reasonable to expect to be paid by Arcapita Bank after they had gone into bankruptcy?</p> <p>A. We had conversations with Arcapita Bank employees, the names of the people that I mentioned before, about what would happen with regard to payment post petition, and they told me that things would continue to operate as they had done before and that Arcapita Bank would -- would fund either Arcapita Limited or PointPark in order for them to be able to pay for the services if Arcapita Bahrain didn't pay them directly.</p> <p>Q. So you had the discussions that you just described with representatives of Arcapita Bank after they filed for bankruptcy?</p> <p>A. Yes.</p> <p>Q. And they're the people that you identified, Mr. Ahmed, Ms. Aboulzelof and Mr. Dutheil?</p> <p>A. Yes.</p>
61:16-63:4	<p>Q. Yeah, I want to focus just on the amount that was paid to KPMG, the \$500,000. Your -- what's your best recollection of the date or the time in which that was paid? You can give me a month.</p> <p>A. I would -- I think either towards the end of May or at some point in June.</p>

	<p>Q. And is it your understanding that the \$500,000 was funded by Arcapita Bank to P3?</p> <p>A. That was what CFO of P3 told me.</p> <p>Q. And was it funded for the -- to the best of your knowledge, what did he tell you, everything that he told you about that?</p> <p>A. He told me that -- that they were going to make us a part payment of \$500,000 -- this is Euros not dollars, to be clear, \$500,000 Euros. And that is what Arcapita Bank were funding them as part of P3's normal monthly funding.</p> <p>Q. Normal monthly funding from Arcapita?</p> <p>A. My understanding from discussions with the P3 CFO is because P3's revenues from these asset and real estate management contracts do not cover its overheads. P3 was funded by Arcapita Bank on a monthly basis to enable it to pay the costs that were due, and as part of that normal monthly funding process, that's -- that's where sort of the \$500,000 was dealt with.</p> <p>Q. And that's George --</p> <p>A. George Aase.</p>
67:22-69:17	<p>Q. Now, were you -- did you see the Linklaters' fee order at or around the time it was entered?</p> <p>A. I can recall looking at the information that was on the docket either around or just after the hearing.</p> <p>Q. Okay. And with the focus on paragraph 5 and, again, you can read as much as this as you'd like to, paragraph 5 speaks to payments that would be made to Linklaters, correct?</p> <p>MR. O'CONNOR: Objection to form. The document speaks for itself. You can answer.</p> <p>A. Sorry. I think Linklaters is the only party referred to in paragraph 5 and 6.</p> <p>Q. Did it concern you that you didn't have an order like this with respect to payments to KPMG?</p> <p>A. Yeah, I -- well, I mean, the -- the order -- Linklaters had a much more significant backlog of unpaid fees than KPMG had</p>

	<p>at that point. Because KPMG had been paid some money post petition but also had been paid money prepetition for the work that was done prepetition as well. So I can't really speak about Linklaters' concerns, but -- but they had a much larger amount of money outstanding at the time. We had a -- a smaller sort of sum of money. We were certainly very -- very sort of interested and looking carefully at what was happening and were having conversations with Arcapita and Linklaters, you know, and PointPark SRO when all of this was sort of -- was going -- was going on. Bear in mind that in early August the -- I don't think the IPO process was -- was that -- in early August, anyway, was just about to sort bounce, sort of kick back off again, so we were -- we were interested in it. That would be fair to say.</p>
71:4-73:2	<p>Q. Do you recall any representatives of the debtors having a discussion with you about payment of your fees after the entry of the Linklaters' fee order?</p> <p>A. Yeah, we did have a conversation with -- at that time would have most likely have been with Karim Si-Ahmed.</p> <p>Q. And do you recall what Mr. Ahmed said?</p> <p>A. My recollection is that -- that it would be difficult without going back -- sorry. In order for us to get paid anything else ahead of the IPO completing, that they would most likely have to go back through a court process, and that there would not be very much time available to do that. And so effectively, the discussions were, basically we will do that -- if the IPO does not succeed, then we will go back through the process of -- of -- of seeking approval. If the IPO does proceed, then, you know, we would have been paid out of IPO proceeds, but in the situation where the IPO does not complete, then obviously it would be the responsibility of -- of PointPark and Arcapita Limited effectively as funded by Arcapita Bahrain to pay -- to pay the fees because our fees are not and cannot be under UK Audit Independence Rules, cannot be contingent upon the outcome of an IPO.</p> <p>Q. Okay. So at the time that you had the discussion that you just referred to, which was in the period after August with Mr. Ahmed, did you understand that, to have further payments from Arcapita Bank made on your fees, there would have to be an order of the court?</p> <p>A. I don't think it was -- my recollection is that that's not quite what was said. I think what was said was that, there would have</p>

	<p>to be agreement reached with the creditors committee, and if that was not forthcoming, that they -- it would need an order of the court to be able to pay the fees.</p>
83:12-86:10	<p>Q. Do you believe that there's risk that KPMG would not get paid upon a monetization events? I'm trying to understand, is it just about timing or is it ultimately about not getting paid?</p> <p>MS. DILUIGI: Objection.</p> <p>A. I think the subject to -- the question is around -- why I'm maybe struggling to answer is, there's going to be a whole suite of different legal agreements that I have no awareness of that would need to be executed and additionally whatever is sort of -- is finally decided by the court, that would</p> <p>remove the risk. So, you know, it -- I guess the answer to the question is that if all of the steps that were necessary to remove the risk were taken, then there would be no risk.</p> <p>Q. No risk on KPMG, correct?</p> <p>A. Well, no risk on anybody. If the requisite steps are taken, there's no risk.</p> <p>Q. Well, okay. If the steps that are requested in the motion, namely the payment of fees -- funding of money to pay fees today were taken, then KPMG would no longer be at risk?</p> <p>A. Well, that's right because once we've been paid, we've been paid.</p> <p>Q. But Arcapita Bank would be at risk, correct?</p> <p>A. Arcapita Bank would effectively have taken the risk from KPMG, yes.</p> <p>Q. And if Arcapita Bank funds money to pay KPMG today, KPMG would get paid as soon as that funding is made, so the timing element, Arcapita Bank would take that off of KPMG's hands as well, right?</p> <p>A. Yes.</p> <p>Q. And that's what's requested in the motion, to shift the risk, both the timing and of repayment from KPMG keto Arcapita Bank, correct?</p>

	<p>MS. LIU: Objection to form.</p> <p>MS. DILUIGI: Objection to form.</p> <p>MR. O'CONNOR: The motion speaks for itself.</p> <p>Q. You can answer.</p> <p>MR. O'CONNOR: You can answer.</p> <p>A. I think that is effectively the point of -- that's what the motion is trying to do. As you say, the motion speaks for itself.</p> <p>Q. Okay. Has KPMG sought compensation from P3 and Arcapita Limited?</p> <p>A. Not to date.</p> <p>Q. Why not?</p> <p>A. Because Arcapita Limited and P3, our understanding is this, while they have significant revenue streams and assets, they are funded on a monthly basis by Arcapita Bahrain and so, therefore, what we have done in terms of trying to seek recovery of the fees is that we have -- we have been pursuing the route that we're doing now, and we have not gone down the route of -- of pursuing these -- the organizations that have the liability for -- for the money pending resolution of this process.</p>
87:25-88:5	<p>Q. You were aware of what limited revenue streams that Arcapita and P3 had at the time you signed the engagement letter, right?</p> <p>A. That is correct.</p>
95: 4-98:11	<p>Q. So let's look at the next document in your exhibit. And this is now the exhibit I've handed out, what's been marked as Exhibit 5 for this deposition.</p> <p>A. Yeah.</p> <p>Q. And from your declaration it has -- at the top, it's page 17 of 75?</p> <p>A. Yes.</p> <p>Q. Okay. What is this document?</p>

A. Okay. So this document was effectively varying the Pyle Exhibit 4, 11 of August engagement letter to bring in Arcapita Bank BSC, which is Arcapita Bahrain into the previous engagement letter.

Q. When you say to bring in Arcapita Bank BSC, what do you mean by bringing in?

A. Well, if you look at the documents, then it says - effectively it sets out the terms under which Arcapita Bahrain will accept the terms of the engagement letter as if it had actually signed a copy of it itself, and that in return for that, we will basically assume responsibility to them for the work that was done. So this letter is -- is designed to have the legal effect of making Arcapita Bahrain an addressee of Pyle Exhibit 4 engagement letter as though it had been an addressee right from the outset.

Q. And is it your belief that as a result of that, Arcapita Bank is obligated to make, for the invoices in connection with the prior engagement letter?

MR. O'CONNOR: Objection. It calls for a legal conclusion, but he did ask for your understanding, so you can answer.

THE WITNESS: Okay.

A. Well, under our sort of standard terms and conditions, all of the addresses of our engagement letters have joined in several liability under UK law for our fees. So by signing this, Arcapita Bahrain would effectively assume joint and several liabilities to pay the fees that are attached under this -- that would be billable under this engagement letter.

Q. Did Arcapita ever sign what is marked as Exhibit 5?

A. My recollection is that they did not and that this letter was -- post-petition was rescinded because I think, again, my recollection is that we were told that that would perhaps require, you know, some approvals in order to do that.

Q. Okay. But this letter, Exhibit 5 was dated January 17, 2012, right?

A. Yeah. I think there was an equivalent letter for the IPO readiness review, which did get paid prepetition in full and that letter was signed. That's my understanding and recollection.

Q. When you say an equivalent letter, was it a letter as to which

	<p>Arcapita Bank was a party?</p> <p>A. We had exactly the same kind of original letter with Arcapita Limited and PointPark Properties SRO for the IPO readiness review. And we then had a subsequent letter that -- like this that then brought Arcapita Bahrain in, but they paid those fees full.</p> <p>Q. Okay. But Exhibit 5, you don't believe was ever signed by Arcapita --</p> <p>A. I don't think it was, no.</p>
105:15-106:6	<p>Q. And at this point, again, you had performed all of the work and you didn't have a signed engagement letter?</p> <p>A. That's correct. That's fairly normal.</p> <p>Q. And it's normal in your experience that you don't have a signed engagement letter until the end of the process?</p> <p>A. Regrettably, yes.</p> <p>Q. Now, in any of the iterations, to the best of your recollection, any iterations, prior versions of Exhibit 8, was there any mention of Arcapita Bank making payment of charges incurred?</p> <p>A. No.</p>
108:7-15	<p>Q. And that is to make clear that it's not being issued -- invoices are not being issued to Deutsche Bank or Credit Suisse?</p> <p>A. Yeah, that's right.</p> <p>Q. But there's no reference to invoices being issued to anybody other than P3 PLC, correct?</p> <p>A. That's correct.</p>
113:22-115:3	<p>Q. Have you had situations, other than the EuroLog IPO, where you were looking for payment of your fees from someone other than the party that engaged you?</p> <p>A. No.</p> <p>Q. So this is the first instance that you can recall where you had</p>

	<p>an expectation that someone other than, for example, in this case, P3 PLC would be making payment to you?</p> <p>A. That's right, yeah.</p> <p>Q. So then you wouldn't have experience as to how you would reflect that in the engagement letter?</p> <p>A. You typically -- I mean, I've had situations outside of IPOs where we've done that. And so you wouldn't necessarily reflect it in the engagement letter. You might have a side letter. You might not. It would depend upon the nature of the relationship and the specific circumstances of the transaction.</p> <p>Q. Have you had occasion previously to work on an IPO of a portfolio company of an entity that's in bankruptcy?</p> <p>A. No. To my knowledge, this was the first London IPO of an entity where there was a lead in a U.S. bankruptcy anyway.</p>
116:3-117:10	<p>Q. Can you recall any example of an investment manager paying the fees for an IPO of one of its portfolio companies?</p> <p>A. Not in my experience, but it's not -- it has -- you do often find that the -- that an entity other than the company that is subject to the transaction will pay the fees.</p> <p>Q. When you say you do often find that, can you give me an example of that?</p> <p>A. You may have -- you may be working for a business that's about to be sold and you're doing -- so I have an example at the moment where we're working for a business that's going to be sold but not through an IPO and the parent company is going to pay the fees, but in that case, the engagement letters were the parent company.</p> <p>Q. Can you think of a single example of a party, other than the party on the engagement letter, paying the fees where that was not reflected in the engagement letter?</p> <p>A. I can't think of a specific example, but I'm sure that -- I need to give that a bit more thought. I'm sure there has been. I don't think this is the first time where this has been the case, but a specific example doesn't come to mind immediately. I haven't given it any thought before this hearing.</p>

135:7-25	<p>Q. Okay, but just so I'm very clear about this, the amount that you're asking to have Arcapita Bank fund to pay KPMG is exactly the amount that KPMG would have been paid if the IPO had completed?</p> <p>A. Yes, because we do not have -- we did not have a fee structure and we're not permitted to have a fee structure that varies with the outcome of the IPO.</p> <p>Q. Right. And KPMG is not proposing any discount off of what its fees would be if the IPO were completed to have Arcapita Bank make the payment necessary to fund those fees?</p> <p>A. No, we are not. Partly because there are other costs that we, you know, we talked about the other costs that we may seek to recover in the event that we are not successful through this route.</p>
142:5-143:18	<p>A. Okay. With regard to KPMG UK, we have done -- we have served proceedings on clients with respect to recovery of fees. It does not happen very often, but it is something that we -- we do when we feel as though it is in our best commercial interest to do so.</p> <p>Q. How many instances do you know of where KPMG has served proceedings on its clients?</p> <p>A. Well, I have no knowledge as to the number of times that KPMG, as a whole, recognizing that there are 550 partners in the UK and sort of about 12,000 people. I have not personally been in the situation in my career where I have had to sue a client for fees. And I would like to finish my career without having to sue a client for payment of our fees, but I have no problem with doing that if I judge it to be in KPMG's best commercial interests.</p> <p>Q. To the best of your knowledge, has anyone in transition services sued a client to recover fees?</p> <p>A. I don't have any knowledge to be able to comment on that.</p> <p>Q. And can you give me any example of which you are aware in which KPMG has served proceedings against a client?</p> <p>A. Not without breaching client confidentiality undertakings, which I would not do.</p>

	<p>Q. Even where the proceedings have been commenced?</p> <p>A. I don't have a specific name in my head, but even if I did, I think it would be subject to confidentiality requirements generally, so...</p>
143:19-145:23	<p>Q. Okay. Has KPMG told P3 that it will commence an administration action against it?</p> <p>A. No, we haven't. We -- we have had discussions with -- with Arcapita that -- that, you know, we would -- that that may be a direction that we would need to go in.</p> <p>Q. When did you have those discussions?</p> <p>A. Relatively recently.</p> <p>Q. With whom?</p> <p>A. Karim Si-Ahmed.</p> <p>Q. When?</p> <p>A. In the last few days.</p> <p>Q. So this was after the motion was filed?</p> <p>A. When was the motion filed? Yeah, it would have been. It would have been.</p> <p>Q. And was it after the Committee's -- have you seen the Committee's response to the motion?</p> <p>A. Yes.</p> <p>Q. And was it after the Committee's response to the motion?</p> <p>A. That was last Friday; wasn't it? Yes, it probably was in the last couple of days.</p> <p>Q. And you're aware that the Committee -- one of the points that the Committee made was that there was no showing that anyone was intending to put these entities into administration; is that right?</p> <p>A. Yeah, I mean, as I said, we agreed with Arcapita that we would go down this route. We -- we also agreed with them that because of the potential damage that it would cause to Arcapita</p>

	<p>and PointPark SRO including the fact that it could significantly impair a potential monetization event, we agreed with them that it would not be appropriate to take any sort of steps that would be sort of public, if you like, until such point as this process has unfolded and concluded.</p> <p>If we're in the position where the court does not sort of find in our favor, then we would obviously consider what options we actually have and will then take a decision as to how we go forward.</p>
145:24-146:25	<p>Q. How would -- you mentioned in the last answer that it could significantly impair the monetization events.</p> <p>How would any such action significantly impair potential monetization events?</p> <p>A. Well, I think there are a number of things that could happen. Firstly, if there was to be a monetization event, then P3 and Arcapita would need KPMG to be fully cooperative and to undertake some further work in order to help realize the event.</p> <p>If we're in a situation where we're having to take action against them for nonpayment of fees, then our willingness to do any further work to actually help them get through that sort of sale event is going to be pretty limited. And so they may find it very, very difficult to consummate a transaction without the help of -- of the professionals like ourselves, if we're in a position where we are effectively in a standoff about -- about sort of fees.</p>
153:13-154:9	<p>Q. And so if, for example, P3 PLC entered into a reimbursement agreement with the entities that owned the assets so that they would get reimbursed for the fees that they've incurred for the sale process, that would be a way to resolve that issue?</p> <p>A. Potentially, but, of course, that would have to happen, you know, at an appropriate sort of point. So, you know, we would need to see -- we'd need to look at -- there are probably a whole bunch of different ways that you could resolve a situation and get us sort of -- get us comfortable with things, but, you know, until we know what the specific fact pattern would be, you know, we're not going to sort of -- we're not going to give any form of sort of undertaking that everything would be okay and we're obviously going to reserve our rights.</p>

157:22-160:9	<p>Q. Do you believe that KPMG's ability to collect the 2.1 million Euro, it said it's owed, would be enhanced if it put P3 into administration?</p> <p>A. Haven't looked -- haven't looked at it, but, yeah -- haven't looked at it. We would have to think very, very carefully about what we do.</p> <p>Q. Well, do you think that would be a positive effect on your ability to recover?</p> <p>A. It would -- it may not be, but it may be something which we have to consider -- consider doing. If depending upon the alternatives available to us. So...</p> <p>Q. So the entity -- you have the entities that actually own the assets and then you have the management company?</p> <p>A. Yes.</p> <p>Q. When you said earlier it would clearly be a negative effect that you haven't quantified it if something happened to P3, it would clearly be a negative effect on P3, right?</p> <p>A. And I think it would be a negative impact on the value of the asset companies as well.</p> <p>Q. But the most direct impact would be the impact on P3, correct?</p> <p>A. Well, in the sense that that organization would be -- would then be in some form of insolvency proceedings under local law, yes.</p> <p>Q. And that's the entity -- you have no agreement with the underlying asset holders within the EuroLog entity for payment of your fees; is that right?</p> <p>MR. O'CONNOR: Objection to form.</p> <p>A. Sorry. Just sort of --</p> <p>Q. The entities that hold the underlying assets, the real estate, you don't have any agreement with those entities to pay fees --</p> <p>MR. O'CONNOR: Objection to form.</p>
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	<p>Q. -- to KPMG?</p> <p>A. So KPMG doesn't have any form of contractual relationship with the asset -- of the asset owning entities other than in some cases we are providing services directly to them in terms of audit or tax.</p> <p>Q. And those services you just described in your answer, those are not services for which you're seeking funding from Arcapita Bank?</p> <p>A. No, they are just separate services we would be providing any way in the normal course.</p>
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Dated: July 10, 2013
New York, New York

MILBANK, TWEED HADLEY & M^cCLOY LLP

/s/ Andrew M. Leblanc

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Exhibit A

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

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5 IN RE: :
6 : Chapter 11
7 ARCAPITA BANK : No. 12-11076 (SHL)
8 BSC(c), et al. :
9 :
10 :

11
12 DEPOSITION UNDER ORAL EXAMINATION OF
13 ANDY PYLE, MA ACA
14 March 13, 2013
15 New York, New York

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18 REPORTED BY: DANA N. SREBRENICK, CRR CLR

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21 TSG REPORTING

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24 JOB NO. 59265
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2 Transcript of the deposition of
3 ANDY PYLE, MA ACA, called for Oral
4 Examination in the above-captioned
5 matter, said deposition taken pursuant
6 to District Court Rules of Practice
7 and Procedure, by and before DANA N.
8 SREBRENICK, a Federally-Approved
9 Certified Realtime Reporter, a New
10 Jersey Certified Court Reporter and a
11 Certified Livenote Reporter, Notary
12 Public for the State of New York, at
13 the offices of MILBANK, TWEED, HADLEY
14 & MCCLOY, LLP, One Chase Manhattan
15 Plaza, New York, New York, commencing
16 at 11:15 a.m.

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2 I N D E X

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5 Testimony of:

6 ANDY PYLE, MA ACA

7 BY MR. LEBLANC..... 9

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15 Stipulations

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20 Question Marked

21 Page Line

22 none

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24

25

1 A. Pyle

2 (Exhibit Pyle 1, Declaration of
3 Andy Pyle in Support of Debtors'
4 Motion for an Order Confirming the
5 Debtors' Authority to Fund Nondebtor
6 EuroLog Affiliates, marked for
7 identification.)

8 (Exhibit Pyle 2, Notice of
9 Debtors' Motion for Order Confirming
10 the Debtors' Authority to Fund
11 Nondebtor EuroLog Affiliates, marked
12 for identification.)

13 - - -

14 ANDY PYLE, MA ACA, 15 Canada
15 Square, London E14 5GL, after having
16 been duly sworn, was examined and
17 testified as follows:

18 - - -

19 DIRECT EXAMINATION BY MR. LEBLANC:

20 - - -

21 Q. Good morning, Mr. Pyle. We met
22 briefly a moment ago, but could you just
23 state for the record your full name?

24 A. Yeah, my full name is Andrew
25 John Pyle.

1 A. Pyle

2 Q. And where are you currently
3 employed?

4 A. I'm a partner at KPMG, LLP in
5 the UK.

6 Q. Have you been deposed before?

7 A. Not in the U.S. courts.

8 Q. Okay. Let me just give a couple
9 of ground rules that we'll follow
10 throughout the day and it will make it
11 easier for the court reporter who's
12 sitting here. She can only record what is
13 a verbal answer to a question. She can't
14 record, for example, a nod of the head.
15 Do you understand that?

16 A. Yes.

17 Q. So I would just ask that you
18 respond to my questions with a verbal
19 response, okay?

20 A. Okay. Yep.

21 Q. She also will have difficulty if
22 you and I speak over one another. So if
23 you start answering a question before I'm
24 finished -- so I'll try not to step on
25 your answers if you do the same for me.

1 A. Pyle

2 Do you understand that?

3 A. Yes.

4 Q. And if you need a break at any
5 time, feel free to take as many breaks as
6 you want. We talked a little bit before
7 the deposition started about what my
8 expectations on timing are, but if you
9 need a break, just let me know. I would
10 just ask that you answer the question, any
11 question that's pending before we do so.

12 A. Yeah, that's fine.

13 Q. And if at any time you don't
14 understand a question that I've asked,
15 feel free to just let me know that you
16 needed it to be rephrased or you don't
17 understand it and I'll be happy to do
18 that. Do you understand that?

19 A. Yes.

20 Q. And so if you answer my
21 questions, I'll assume that you've
22 understood what I've asked, and you'll
23 tell me if you don't, okay?

24 A. Okay, yeah.

25 Q. Great.

1 A. Pyle

2 I put before you, and we
3 premarked two exhibits. The first is
4 listed -- identified as Pyle Exhibit 1.
5 Do you recognize Pyle Exhibit 1?

6 A. Yes, I do.

7 Q. And what is it?

8 A. It's my Declaration in Support
9 of the Debtors' Motion that I sort of made
10 a short while ago.

11 Q. And that's your signature on
12 page 5 of Exhibit 1?

13 A. Yes, it is.

14 Q. What is -- you described
15 yourself as a partner. Are you a partner
16 within a particular group at KPMG UK?

17 A. Yeah, I'm a partner within the
18 transaction services service line within
19 KPMG in the UK.

20 Q. And in a general sense, could
21 you describe for me what the transaction
22 services line does within KPMG in the UK?

23 A. Yeah. Okay. So we -- we work
24 with clients on transactions undertaking
25 due diligence and providing various sort

1 A. Pyle

2 of different sort of types of advice on
3 that transaction. So that might include
4 where a company, or also say a fund, is
5 looking to acquire another company or it
6 might be on an IPO or some other
7 transaction involving the public markets.
8 So -- and that's -- and we would work both
9 on effectively the buy side or possibly
10 the sell side depending upon the
11 requirements of our clients.

12 Q. And what types of services does
13 the transaction services unit provide?

14 A. Do you want me to talk
15 specifically about this case or just
16 generally?

17 Q. Just generally for now and then
18 we'll turn very quickly to this case.

19 A. Okay, yeah. So we would provide
20 things like financial due diligence, so
21 looking at the accounting and financial
22 records of a business, both sort of
23 historically and also their projections in
24 terms of sort of the future. We also have
25 a group that provides sort of a market in

1 A. Pyle

2 commercial due diligence, looking more at
3 sort of the strategy and the commercial
4 assumptions behind some objections. We
5 have a team that advises on integration
6 and separation where you've got businesses
7 that are sort of being carved out or
8 joined together as part of the deal. And,
9 additionally, we do lots of work around
10 sort of the accounting and financial
11 aspects of structuring transactions in
12 terms of helping our clients sort of
13 understand how they would need to account
14 for them and working very closely with our
15 colleagues in tax to make sure that the
16 tax and accounting work streams are sort
17 of aligned on a deal.

18 Q. Now, you -- in that answer, you
19 mentioned that, We have teams that do a
20 couple of those like the market due
21 diligence, the integration and separation
22 services, and I think you did say with
23 respect to tax. Are there others within
24 KPMG that provide the services that you
25 identified where you have a team providing

1 A. Pyle

2 those services, others than you?

3 A. Okay. So my -- so I tend to
4 specialize in the financial due diligence
5 and the -- the sort of the structuring
6 sides of things on both sort of public
7 market transactions and private
8 transactions, too. I do not personally
9 sort of lead a stand-alone engagement say
10 around commercial due diligence or
11 integration, but I will typically, as I
12 did on this transaction, act as a sort of
13 lead engagement partner, and as part of
14 that would have responsibility for the
15 full sort of suite of KPMG services on a
16 deal. And some of those services I would
17 be, you know, completely on point for, but
18 my clients would really look to me to have
19 an understanding of the totality of what
20 we were doing on any transaction.

21 Q. And what about tax services, is
22 that something that you personally would
23 provide or you might serve as the
24 engagement partner for?

25 A. No, I wouldn't serve as the sort

1 A. Pyle

2 of engagement partner for the tax services
3 specifically. They would be treated in
4 the same kind of way as the other
5 services, which transaction services my
6 group would provide, in that we would
7 often have tax services forming part of an
8 engagement letter that I may have overall
9 responsibility for as a lead engagement
10 partner, but I would have a tax partner
11 that would effectively be having signoff
12 responsibilities for that. That wouldn't
13 be me, that would be -- that would be
14 primarily responsible for that advice.

15 Q. How long have you been a partner
16 for KPMG?

17 A. I made partner on the 1st of
18 October 2007, so I'm in my sixth year.

19 Q. You've been with KPMG for how
20 many years?

21 A. 20 years this summer.

22 Q. And just briefly, what's your
23 post-primary education degree, so
24 university or after?

25 A. Yeah, so -- so I went to

1 A. Pyle

2 university at Christ's College in
3 Cambridge, and I took a degree in natural
4 sciences specializing in physics and
5 graduated from there in 1992. In terms of
6 post-grad education, the first thing I did
7 was when I joined KPMG, there was a sort
8 of three-year training contract where I
9 went through and effectively became a sort
10 of a chartered accountant and qualified
11 and had to take a sort of series of exams
12 to -- to do that, and subsequently to
13 that, in '99 and 2000, graduated from a
14 KPMG executive MBA program that was sort
15 of running -- which was running in 1999
16 and 2000 that I was asked to go on.

17 Q. In that answer you said you,
18 "Effectively became sort of a chartered
19 accountant." Are you a chartered
20 accountant?

21 A. Yes, I am. Sorry.

22 Q. And you continue to be to this
23 day?

24 A. I am, yes. Sorry.

25 Q. That's okay.

1 A. Pyle

2 And in connection with your
3 roles at KPMG, have you worked on initial
4 public offerings before?

5 A. Yes.

6 Q. In how many occasions?

7 A. Counting them up over the years,
8 it would be a relatively large number. I
9 would say north of 20, over 20.

10 Q. And since you've been a partner,
11 how many of those more than 20 have been
12 since you've been a partner?

13 A. Seven or eight, not all of which
14 have been sort of fully successful, but on
15 virtually all of those, we would have done
16 all the work as we did on this one.

17 Q. In those seven or eight, how
18 many, if any, were you the lead KPMG
19 partner?

20 A. All of those seven or eight.

21 Q. All --

22 A. The seven or eight.

23 Q. How many of the seven or eight
24 were successful?

25 MR. O'CONNOR: Objection to

1 A. Pyle

2 form.

3 Q. You can answer, if you
4 understand the question.

5 A. How do you define success?

6 Q. How many of those seven or eight
7 IPOs actually went to market?

8 A. Okay. So I don't remember the
9 precise number, but as with this IPO,
10 virtually all of them -- all but maybe a
11 couple went out to market to test, and,
12 therefore, in order to do that, we would
13 have substantially completed all of our
14 work. There were probably two that I can
15 think of which did not reach the point of
16 going out in terms of sort of marketing,
17 and of the ones that have -- that went out
18 to sort of pre-marketing that I was the
19 engagement partner on, I can recall one
20 that was sort of finally consummated and
21 the entity completed the IPO. I can't
22 remember if, without dredging through my
23 memory banks, if there were more than
24 that. I certainly recall one.

25 Q. And maybe the successful was --

1 A. Pyle

2 the word "successful," was that the one
3 that this was difficult for you to respond
4 to?

5 A. Yes. That's why I sort of --
6 that's why I said that, you know, our work
7 is done in the run-up -- substantially all
8 of our work is done in the run-up to sort
9 of going out effectively with a prospectus
10 that's used to then assess interest in the
11 IPO enterprise. That was the case on the
12 EuroLog transaction. And then if there is
13 enough interest through sort of a
14 book-building or marketing phase, then
15 there will be a final prospectus issued
16 which will have, you know, the final
17 price. And at that point, it's a done
18 deal because the IPO will have been
19 underwritten by the investment banks and
20 then it will just proceed automatically to
21 completion.

22 Q. How many of the seven or eight
23 had final prospectus completed?

24 A. That would be at least one, if
25 not -- if not -- I can recall at least

1 A. Pyle

2 one, so let's say that.

3 Q. Okay. Now, would you
4 describe the ones, the ones that were not
5 completed in the sense they didn't have a
6 completed prospectus, would you describe
7 those as failed LBOs?

8 MR. O'CONNOR: Objection to
9 form; you can answer.

10 A. I think you said LBOs. I think
11 you meant IPOs.

12 Q. I meant IPOs. But how would you
13 describe this -- how would you
14 differentiate it? How would you describe
15 the IPOs that did not reach the final --
16 reach a final prospectus?

17 A. Well, they were ones where, for
18 whatever reason, there was not enough --
19 either there was not enough interest from
20 the potential investors in the company
21 that was being put forward or -- and that
22 would be for a variety of reasons, but at
23 the price that effectively that the people
24 that were selling or leading, wanting the
25 IPO to happen, were prepared to accept.

1 A. Pyle

2 Q. I'm just trying to get -- what
3 term, as we move forward, what term would
4 you use, if any, to describe those? The
5 term "failed IPO," have you heard that
6 term before?

7 A. I -- I -- I've heard it sort of
8 used by -- by people. I think it's failed
9 as sort of quite a strong or sort of, you
10 know, pejorative sort of word, and so I --
11 I certainly wouldn't describe the things
12 that I sort of worked on as being sort of
13 a failure because in a number of cases
14 there were other transactions that sort of
15 went forward sort of subsequently. You
16 know, and when you use that word, it kind
17 of reflects badly on the people that you
18 were working with, when in truth, often
19 the issue is sort of external because it's
20 the people that have got the money that
21 need to decide whether or not they're
22 prepared to invest or not.

23 Q. So the ones that were not -- can
24 we just refer to them as uncompleted IPOs?

25 A. That's fine.

1 A. Pyle

2 Q. Is that a fair --

3 A. That's fine.

4 Q. We'll move back to that in a
5 bit. All right. Now, the declaration you
6 have before you, Exhibit 1, how was that
7 prepared?

8 MR. O'CONNOR: Objection to
9 form. You can answer.

10 THE WITNESS: Okay.

11 A. Just, can you clarify what you
12 mean in how it was prepared?

13 Q. Sure. Did you prepare Exhibit
14 1?

15 A. Right. Okay. The process that
16 we went through was this: I had some
17 conversations with my -- with our counsel
18 and provided some -- some background
19 information and then there was a drafting
20 process that arrived at some -- at this
21 sort of document, but I've signed it, and,
22 therefore, it's my declaration.

23 Q. Fair enough. And you're
24 comfortable with everything that's in the
25 declaration?

1 A. Pyle

2 A. I wouldn't have signed it given
3 the penalties involved here had I not
4 been.

5 Q. And you refer to your counsel.
6 Your counsel in that answer was referring
7 to Wilkie; is that correct?

8 A. Wilkie retained by KPMG.

9 Q. Now, we've also marked right
10 behind that Exhibit 2. And I'll just note
11 -- I'll represent for the record that this
12 is the motion filed by the debtors. It is
13 first the notice of the motion, and then
14 starting on page 4 of 29, the debtors'
15 motion, itself.

16 Have you seen this document
17 before?

18 A. I'll just flip through it.

19 Q. Of course.

20 A. Yes, I have.

21 Q. And did you see a draft of the
22 motion of the debtors prior to its being
23 filed?

24 A. Yes, I did.

25 Q. And did you have input into that

1 A. Pyle

2 draft?

3 MR. O'CONNOR: Objection to
4 form. You can answer.

5 A. Okay. Input into the draft?
6 Some of the elements of the draft were
7 prepared in using information that was in
8 the declaration and those two documents
9 were being put together in parallel. So I
10 would say I had input into the motion in
11 that sense, really specifically relating
12 to the matters on sort of pages 11 sort of
13 through to -- partway down to 13, which
14 refers specifically to KPMG's services
15 with regard to the IPO.

16 Q. And is there anything in the
17 debtors' motion to the best of your
18 recollection with which you disagree?

19 A. I don't think so, but, you know,
20 I kind of regarded the -- it's their
21 motion. And so I was not doing a review
22 of it kind of in the same way as I would
23 do a review of my own declaration. But
24 I'm not aware that there's anything in
25 here that I would -- that I would disagree

1 A. Pyle

2 with.

3 Q. And have you seen the version
4 that's before you as Exhibit 2? This is
5 the filed version of it. Have you seen
6 that version?

7 A. I was provided with a copy of
8 that after -- after it was sort of filed,
9 so yes.

10 Q. And as you -- did you review
11 that filed version?

12 A. Yes.

13 Q. And nothing, as you reviewed it,
14 jumped out at you as something that you
15 wanted to correct or you would disagree
16 with?

17 A. No, but as I say, I was more
18 reading it for kind of background in the
19 areas that didn't relate specifically
20 to -- to KPMG.

21 Q. Okay. Now, let's talk about the
22 EuroLog IPO process. Can you describe for
23 me generally what the EuroLog IPO was?

24 A. Yes. So Arcapita had put
25 together -- had -- had made a number of

1 A. Pyle

2 acquisitions and transactions over recent
3 years. I guess the last one would have
4 been in or around 2008. And there were
5 transactions, from memory, dating back to
6 sort of 2003 or 2004, is my recollection
7 of investments in real estate assets that
8 are used by sort of logistics or
9 distribution sort of companies. So these
10 are warehouses where people -- where
11 retailers or third-party distribution
12 companies would -- would hold stock, and
13 that would form part of the retailers's
14 supply chain sort of typically. So they
15 had made a series of acquisitions that
16 were held in a number of individual
17 investment structures, which Arcapita,
18 themselves had an equity interest in, and
19 alongside them, they had a network of
20 investors that had also participated in
21 each particular sort of transaction. And
22 the idea -- as part of the last
23 transaction, they acquired a series of
24 management companies which have now been
25 called PointPark Properties or P3.

1 A. Pyle

2 And so the premise for the IPO
3 was that there -- it was a -- it would be
4 marriage value in putting all of these
5 assets together, together with the
6 management sort of companies and to
7 realize value for Arcapita and their --
8 and their investors through an IPO. And
9 so that's sort of the background to -- to
10 the transaction.

11 Q. Okay. In that answer, you
12 referred to a network of investors who
13 invested beside Arcapita. Are you
14 generally familiar with the ownership
15 interests of Arcapita relative to these
16 outside -- the network of investors?

17 A. When we -- when we were doing
18 our work at the early stages, we were
19 certainly sort of made aware of Arcapita's
20 equity interests versus the external
21 investors, but I don't recall what they
22 would be. They varied structure by
23 structure, and I couldn't tell you now
24 without going back to sort of those papers
25 what -- what they were, but --

1 A. Pyle

2 Q. But you were aware at the time
3 that -- that any proceeds from an IPO
4 would benefit Arcapita and these network
5 of investors?

6 A. Yes, I was, but -- yeah, but it
7 would depend. The way that that would get
8 sort of dealt with would obviously depend
9 upon a number of factors, and I was never
10 really involved in looking at how value
11 would sort of split.

12 Q. Was the question or the issue of
13 how value would be split an issue that
14 KPMG was involved in looking at generally?

15 A. The only aspect that KPMG looked
16 at was as part of our tax structuring
17 work. One of the work streams would be
18 referred to as looking at the funds's flow
19 and that was -- that work stream was
20 effectively helping Arcapita and P3 to
21 mobile through how do you actually
22 mechanically effect the transaction. And
23 I -- my understanding is that the end
24 product of that was then able to be used
25 by Arcapita to be able to work through

1 A. Pyle

2 value split between themselves and their
3 investors, and also but not just how the
4 value is split, but the nature of the
5 money coming back to them, so whether that
6 was for sale of shares or some other form
7 of sort of a return depending upon the
8 natures of the instruments that had been
9 invested in. But -- but generally our
10 work sort of finished at a level in the
11 structures and was then sort of carried on
12 by -- by Arcapita once we had sort of
13 given our advice.

14 Q. And the -- one step in the IPO
15 process was going to be a transfer of the
16 assets into ListCo; is that correct?

17 A. Yes.

18 Q. And the assets that would be
19 transferred would be the real estate
20 assets as well as the management services;
21 is that right?

22 A. Yes, although I would say that
23 the -- it wasn't going to be the assets
24 themselves that were going to be
25 transferred because a large amount of care

1 A. Pyle

2 needed to be taken, and a lot of our tax
3 structuring work was done to make sure
4 that there was not value leakage
5 principally through real estate transfer
6 taxes that apply in the multiple
7 jurisdictions across Europe that we were
8 dealing with here.

9 And so, I think, in all cases,
10 we were transferring the ownership of
11 corporate vehicles that might then own
12 other corporate vehicles, and eventually
13 you would get to something that actually
14 had the ownership interest in the
15 underlying real estate, but it was
16 generally a corporate vehicle that was
17 being transferred.

18 Q. But at the start of the process,
19 the P3 entity didn't own even indirectly
20 interest in the underlying real estate
21 assets; is that right?

22 A. That is my understanding. What
23 they had was management agreements that
24 they were effectively responsible for
25 managing the real estate investments on

1 A. Pyle
2 behalf of Arcapita and Arcapita's
3 investors in return for a fee.

4 Q. And ultimately when ListCo, if
5 ListCo had been consummated and received
6 the assets indirectly, they would have an
7 interest -- ListCo would have had an
8 interest in those underlying real estate
9 assets?

10 A. I mean, other than a few cases
11 where the -- the investors in Arcapita
12 didn't have a hundred percent ownership of
13 the underlying sort of real estate, ListCo
14 would actually have owned a hundred
15 percent of everything. There was a small
16 number where there are some minorities.

17 Q. Now, in your declaration, which
18 is Exhibit 1, you state that -- we can
19 look at it. Page 2, paragraph 4,
20 "Pursuant to the engagement letters
21 attached hereto as Exhibit 1, the
22 engagement letters, KPMG was retained by
23 ListCo and PointPark both of which are
24 indirectly 100 percent owned by Arcapita
25 Bank to provide the services described

1 A. Pyle

2 herein." Do you see that?

3 A. Yes, do you.

4 Q. And that's an accurate
5 statement? Those are the entities that
6 you were retained by; is that correct?

7 A. That is correct in respect of
8 the reporting accountant work. I think in
9 respect of the tax structuring work, we
10 were also retained by Arcapita Limited
11 which is the -- the UK company that
12 Arcapita -- Arcapita Bank owns, I believe,
13 a hundred percent of.

14 Q. And let me just -- so ListCo is
15 the entity that we just talked about that
16 would have owned all the assets in the
17 IPO; is that correct?

18 A. Correct.

19 Q. And PointPark, that is the
20 management company that -- that was --
21 originally didn't own any of the assets,
22 correct?

23 A. Yes.

24 Q. And there's -- I just want to
25 make sure I'm clear because ListCo was

1 A. Pyle

2 also called PointPark ultimately?

3 A. It was to be called PointPark.

4 Q. But it was PointPark PLC?

5 A. That's my recollection, yes.

6 Q. And PointPark -- PointPark

7 Properties SRO was the predecessor

8 management company; is that right?

9 A. That was one of the predecessor
10 management companies. They had management
11 companies in multiple jurisdictions that,
12 I believe, were effectively either owned
13 by PointPark Properties SRO, which is a
14 Czech company. Or I think they were all
15 owned by that company.

16 Q. And Arcapita Limited, the entity
17 that you mentioned, that's a UK entity; is
18 that right?

19 A. Yes, that's right.

20 Q. And that is not a debtor in
21 these cases in the United States; is that
22 correct?

23 A. That is my understanding, yes.

24 Q. And so we'll go through the
25 engagement letters in a little bit, but

1 A. Pyle

2 none of the entities that retained KPMG
3 are debtors in any of the cases in the
4 U.S.; is that right?

5 A. That's correct.

6 Q. And none of them are debtors in
7 cases in other jurisdictions like the
8 Cayman Islands; is that right?

9 A. That's my understanding, yeah.

10 Q. Why were these particular
11 entities chosen to be the entities that
12 retained KPMG?

13 MR. O'CONNOR: Objection to
14 form. You can answer.

15 A. Yeah. So in terms of -- let me
16 take the IPO reporting accountant
17 engagement letter. The reason why those
18 companies were included on the engagement
19 letter as sort of parties to it -- and in
20 addition, the Deutsche Bank and a sponsor
21 to the IPO and Credit Suisse, I believe,
22 they were referred to as the joint book
23 runners, and joint global coordinators
24 were included -- that is, to do with the
25 specific regulation that applies to an IPO

1 A. Pyle

2 on the London stock exchange which is
3 governed by Listing Rules of the London --
4 sort of the UK Listing Authority. So in
5 order to complete an IPO, the company has
6 to prepare a prospectus and the company
7 has responsibility for that. So in that
8 case, ListCo was the entity that would
9 have responsibility formally for the
10 prospectus.

11 Deutsche Bank as sponsor, and
12 Credit Suisse as book runners, either have
13 -- in Deutsche Bank's case as sponsor,
14 have a regulatory responsibility for
15 making a certain sort of declaration to
16 the UK Listing Authority in respect of the
17 IPO applicant. And in Credit Suisse's
18 case, they effectively have are very
19 heavily associated with the prospectus.
20 So custom and practice for UK IPOs is that
21 the addressees of the engagement letters
22 are the company that has regulatory
23 responsibility for the prospectus. In the
24 case of a cash -- in the case of a shell
25 company, such as ListCo, we would -- where

1 A. Pyle

2 we were getting all of the information
3 from another company that was to form part
4 of the ListCo Group, as was the case here
5 with PointPark Properties SRO, we would
6 include them in the engagement letter,
7 too. And then we would have Deutsche Bank
8 and Credit Suisse as sponsor. And the
9 scope of our engagement letter is
10 basically -- sorry -- is designed around
11 either something that has to be put into
12 the prospectus because it's required by
13 the relevant sort of law and regulations
14 or which is linked to something which
15 Deutsche Bank needs in order to sort of
16 satisfy itself and make it sort of
17 declaration to the UKLA, or it's something
18 which Deutsche Bank and Credit Suisse need
19 as part of sort of their due diligence on
20 a business. And if you read the IPO
21 engagement letter, it is structured in --
22 along those sorts of three -- three
23 headings. So that's why those entities
24 were chosen. Because none of the Arcapita
25 entities were going to have responsibility

1 A. Pyle

2 for the prospectus. They were not a party
3 to that particular engagement letter. On
4 the -- secondly, on the tax structuring
5 letter, that letter was -- was addressed
6 to Arcapita Limited and to PointPark
7 Properties SRO, and that is because
8 Arcapita -- because as you've described
9 the value going to Arcapita and the
10 investors, they obviously did have a need
11 to understand the results of our sort of
12 tax structuring work because that would
13 have relevance to their decision as to,
14 you know, whether to proceed or not into
15 the pricing that would be acceptable to
16 them because they'd have to understand
17 what level of sort of tax leakage and what
18 would be required in order to effect the
19 IPO.

20 So that's why I believe those
21 entities were -- were chosen as addressees
22 to the two engagement letters.

23 Q. And the engagement letters also
24 identify who is being invoiced for the
25 work that's being performed, right?

1 A. Pyle

2 A. That is correct. They will do
3 that.

4 Q. Right. And the engagement
5 letters -- and we can look at them -- but
6 they indicate that you're invoicing
7 PointPark Properties, correct?

8 A. That's my recollection. I can
9 go back and refer to them if it will be
10 helpful to confirm.

11 Q. We'll go through them in a
12 little bit, but is there any document that
13 you're aware of that says that you're
14 looking to Arcapita Bank for payment of
15 fees in connection with the EuroLog IPO?

16 A. Yes. So prior to -- at the very
17 early stages of them initiating the IPO,
18 we were engaged to do some preliminary tax
19 structuring work and also what we refer to
20 as an IPO readiness review. The
21 engagement letters for -- the two
22 engagements letters for those two pieces
23 of work -- and they were, again, Arcapita
24 Limited and PointPark Properties SRO to
25 start with. But the IPO readiness

1 A. Pyle

2 engagement letter was subsequently varied
3 to bring in Arcapita Bank Bahrain, one of
4 the debtors as a party to that engagement
5 letter, but this is all prepetition, and
6 Arcapita Bahrain paid the fees for the --
7 for the IPO readiness review, for the
8 phase -- for the tax structuring first
9 phases and also paid some of the audit
10 fees that were undertaken as part of the
11 IPO engagement letter, but, again,
12 prepetition. And they paid those fees
13 directly. And it was always understood
14 by -- by KPMG and the other advisors
15 through discussions with Arcapita
16 representatives and PointPark Properties,
17 that Arcapita Bank Bahrain was the source
18 of all of the money that would be used to
19 pay KPMG's fees.

20 Q. Okay. We're going to break that
21 down some. The fees that you're seeking
22 to be paid today, the ones that are
23 unpaid --

24 A. Yes.

25 Q. -- are any of those associated

1 A. Pyle

2 with the prepetition work that you just
3 referred to?

4 A. No.

5 Q. And so you've been paid for the
6 engagement letter that had the variance
7 that included Arcapita Bank; is that
8 right?

9 A. Yes, that's right.

10 Q. So the fees that you're now
11 seeking compensation for are fees that
12 were incurred pursuant to a subsequent
13 engagement; is that fair?

14 A. In respect of the IPO reporting
15 accountant, yes. I would want to just go
16 and double check on tax structuring as to
17 whether the -- the post-petition work was
18 done through a variation to the original
19 engagement letter or whether it was done
20 through a separate engagement letter, but
21 I'm happy to come back to that later, if
22 that's what you'd like to do.

23 Q. And you said that you had always
24 understood that Arcapita Bank was where
25 the funding would come from. What was

1 A. Pyle

2 that understanding based upon?

3 A. Firstly, we were told that this
4 was how -- how it would be -- how things
5 worked in practice, and we were told that
6 by representatives from Arcapita who
7 were -- some of whom would be employees of
8 Arcapita Limited, but in -- in some of the
9 meetings, there would have been people who
10 were not based in London or who would not
11 have been -- not have been employed by --
12 by Arcapita Limited. And we were also
13 told that by the CFO of PointPark
14 Properties, who is a gentleman called
15 George Aase, which is spelled, A-a-s-e.

16 Q. Who from Arcapita Limited told
17 you that?

18 A. Okay. The people that we were
19 dealing with -- and it would have been
20 one -- one or more of -- of them -- would
21 have been Karim Si-Ahmed, Cherine
22 Aboulzelof -- how do you pronounce the
23 surname? Aboulzelof, which is
24 A-b-z-o-u-l-z-d-f {sic}, I think. I need
25 to check that. And the other person we'd

1 A. Pyle
2 been dealing with was Jamal, J-a-m-a-l,
3 Dutheil, which is D-u-t-h-e-i-l. Those
4 were the principal people that we were
5 dealing with from Arcapita Limited.

6 Q. And did that -- did those
7 statements, the representations that you
8 had received, make it into any of your
9 engagement letters in any form?

10 A. Other than the IPO readiness
11 engagement letter, I do not believe so,
12 no.

13 Q. And so for the engagements that
14 you're now seeking compensation for,
15 leaving aside the IPO readiness, none of
16 those have any written reference to
17 Arcapita Bank making the payments that
18 you're seeking; is that correct?

19 A. I think that is right, yes.

20 Q. And you're aware, are you not,
21 that KPMG has been -- KPMG generally has
22 been retained in the bankruptcy cases in
23 the United States; is that right?

24 A. Yeah, it says so in either the
25 motion or my declaration that that is

1 A. Pyle
2 correct. None of the individuals that
3 were involved in the -- the retention work
4 were involved in our work on the EuroLog
5 IPO.

6 Q. Are you aware that KPMG UK has
7 been retained in the bankruptcy case?

8 A. Yes, I am.

9 Q. And are you aware that KPMG U.S.
10 has been retained in the bankruptcy case?

11 A. Yes.

12 Q. And -- but the services for
13 which you're now seeking compensation,
14 those are not services for which KPMG has
15 ever been retained in the bankruptcy case;
16 is that correct?

17 A. That is correct.

18 Q. And you obviously -- you were
19 aware that Arcapita Bank had gone into
20 bankruptcy in March, correct?

21 A. March 2012?

22 Q. 2012, yes.

23 A. 2012, yes, I was.

24 Q. And that was around the time
25 that you were doing work with respect to

1 A. Pyle

2 the EuroLog IPO?

3 MR. O'CONNOR: Objection to

4 form. You can answer.

5 A. Okay. So we had done some work

6 that had been completed sort of

7 prepetition. And we had been discussing

8 starting some of the other work that had

9 been -- that was required. We did not

10 kick off further work until some weeks

11 after the -- the petition sort of dates.

12 So the only thing that would have been

13 running immediately before the petition

14 date would have been the December 2011

15 audit work which was undertaken in

16 January, February and, I believe, early

17 March of 2012.

18 Q. When -- for the -- the services

19 that you're seeking compensation for in

20 this motion, when were they completed?

21 When were they done?

22 A. They were --

23 MR. O'CONNOR: Let me object to

24 the form.

25 MR. LEBLANC: Let me go back.

1 A. Pyle

2 Q. When did you do the work that
3 you're now seeking to be compensated for?

4 MR. O'CONNOR: You want the time
5 period?

6 MR. LEBLANC: The time period
7 generally.

8 A. Sure, so the majority of the
9 work -- it was undertaken in phases, but
10 the majority of the work was undertaken
11 from the period April 2012 through until
12 October 2012. We did not do -- we did not
13 really do any more work after October
14 2012. There were a couple of periods
15 within that -- that time frame where we
16 were not actively working across all work
17 streams, but as you'll see from the
18 schedule that you have in front of you,
19 regarding sort of fees, some of the
20 work -- not all of the work streams were
21 basically going on all the way through
22 that period because there were a couple of
23 sort of natural gaps that were there.

24 Q. Am I right that in terms of the
25 work with respect to the IPO, something

1 A. Pyle

2 like 70 percent of it was done prior to
3 July of 2012 and then 30 percent was done
4 afterwards; does that sound right to you?

5 A. I mean, yeah, without checking
6 the numbers, that doesn't sound
7 unreasonable as the splits, but we had
8 done the majority of the reporting
9 accountant work. We had done quite a lot
10 of tax work, and we then had to go through
11 a process of updating some of that work
12 and doing some more audit work. So I'm
13 sure the maths could be checked, but --

14 Q. But that sounds generally --

15 A. Sounds ballpark.

16 MR. LEBLANC: Why don't we mark
17 this just so you don't have to --

18 (Exhibit 3, Series of
19 spreadsheets, marked for
20 identification.)

21 Q. The court reporter has handed
22 what's been marked as Exhibit 3. Do you
23 recognize this set of spreadsheets?

24 A. Yes, I do.

25 Q. And you'll just represent for

1 A. Pyle

2 the purposes of the record, this was
3 something that was provided to us in --
4 not in formal discovery, but in advance of
5 the filing of the motion.

6 Is this a KPMG-created document?

7 A. Yes, it is.

8 Q. And I want to focus on -- and
9 just, again, for the purposes of the
10 record, it was a spreadsheet with multiple
11 tabs that we printed out with multiple
12 sheets that we printed it out just as it
13 appeared, but -- so I want to actually
14 skip the first three -- the first four
15 sheets and go to the fifth one, which is
16 entitled at the top left, Project Castle -
17 Cost Update Week Ending. Do you see that
18 there?

19 A. Yeah.

20 Q. Now, does this reflect the work
21 done by KPMG for -- if you go through each
22 of the columns, for each of those weeks?

23 A. Yeah, this is -- this is a
24 summary of the time that was spent by the
25 individuals that were noted by -- these

1 A. Pyle

2 are our individual work streams which you
3 can see are tied back up to the front
4 page.

5 Q. Yeah.

6 A. So this spreadsheet was
7 effectively compiled from a download of
8 our time systems in the UK and the Czech
9 Republic and pulled together in numbers
10 and was periodically sent to Arcapita.
11 This is effectively the final version
12 which was sent to Arcapita, and then I
13 think at the request of the UCC or their
14 advisors was then sort of sent over.

15 Q. And it's difficult to do, but
16 the first two pages under this worksheet,
17 the cost update week ending, this reflects
18 the period of time from February 19
19 through, I guess, pre-kickoff through June
20 17. Do you see that?

21 A. Yeah, there's a little bit of
22 time pre-kickoff there.

23 Q. Right. And, again, it's
24 difficult to follow along, but you can see
25 if you go to the total on the second page,

1 A. Pyle

2 the largest numbers of hours appear to be
3 in the April time frame. Is that
4 April/May time frame -- is that consistent
5 with your recollection?

6 A. Yes, that's correct.

7 Q. And if you skip ahead to the
8 next two pages, that just carries the
9 spreadsheet forward to the following
10 period of time from August 16 through
11 November 22, and you can see there are
12 three-week periods there of high debt
13 utilization. Do you see that?

14 A. Yeah, I remember that.

15 Q. All right. And so that -- are
16 you comfortable looking at this, that, you
17 know, at least the majority of the work
18 that you did was done prior to July of
19 2012?

20 A. Yeah.

21 Q. Okay. And while we have Exhibit
22 3 out, I just want to make sure I
23 understood this correctly. Your rate,
24 which is listed on the first page -- I'm
25 sorry, the second -- I'm sorry -- I guess

1 A. Pyle

2 it's the third page of this sheet that
3 we're looking at, the cost update week
4 ending, is your rate \$908 pounds per hour?

5 A. That's my standard rate.

6 Q. And that standard rate, the UK
7 to dollar is about 1.5; is that right?

8 A. I haven't looked recently.

9 So...

10 Q. Okay. But if I represent to you
11 it was -- it closed yesterday at 1.49, is
12 that about \$1,350 per hour?

13 A. I think roughly that would be --
14 that would be right. Just give me a
15 second because I just want to have a look
16 at this. Okay, no. I can see. Some of
17 the -- some of the numbers are in Euro and
18 some are quoted in Sterling, but the 908
19 from the way the spreadsheet is on paper
20 that would be a Sterling rate.

21 Q. And as you look at it,
22 that's the -- the 908 Sterling, the rate
23 that is charged for all partners at KPMG?

24 A. That would be a rate that
25 specifically applies to transaction

1 A. Pyle
2 services partners, also other partners
3 involved in doing work of that particular
4 type. We use different rates for
5 different -- different partners and
6 different types of work.

7 Q. How does the rate for
8 transaction services compare to the rate
9 for valuation services?

10 A. I don't know.

11 Q. How does the rate for
12 transaction services compare to the rate
13 for tax services?

14 A. They are -- the rates are lower.

15 Q. For which one?

16 A. For transaction services work,
17 marginally lower. The differential versus
18 by -- by grade, but taxes, probably of the
19 order of 10 percent higher.

20 Q. And --

21 A. For transactional-related tax
22 advice.

23 Q. Okay. And what about for -- do
24 you know just the relative comparison
25 between valuation services and tax

1 A. Pyle
2 services -- and transaction services?

3 A. No, I don't. I've not had cause
4 to look at those charge-out rates recently
5 enough to be able to -- to make a
6 statement on that.

7 Q. Have you had any client in your
8 five years pay your standard rates?

9 A. Yes.

10 Q. And was that in connection with
11 an IPO that closed?

12 A. No, it was not. It was in
13 connection with other transactions that
14 have closed.

15 Q. Do you regularly discount your
16 standard rate?

17 MR. O'CONNOR: Objection to
18 form. You can answer.

19 A. It is -- it is more the normal
20 that some sort of discount would be given.

21 Q. How many times since you've been
22 a partner have you collected at your
23 standard rate, which is at the time of
24 this 908 Sterling?

25 A. Okay, I probably oversee a

1 A. Pyle
2 reasonably large number of -- a large
3 number of engagements every -- every year.
4 So I would have no way of really telling
5 you how many of engagements since I became
6 a partner over six years, given that some
7 of the projects are quite small in size.
8 So I couldn't really answer that.

9 Q. Now, if you could turn to
10 Exhibit 2, which you should have there,
11 this is the debtors' motion. Do you still
12 have that there?

13 A. I do.

14 Q. And, again, you've got to go
15 through the first three pages, which is
16 the notice of motion to get to the motion
17 itself, but if you want to look, if you
18 could, at paragraph 1 of the motion, which
19 is -- do you see the numbers at the top,
20 page blank of 29? Do you see that, at the
21 very top of the document, each of them are
22 labeled out of 29 pages?

23 A. Right. Okay.

24 Q. I'll refer to that because that
25 -- that is consecutively including the

1 A. Pyle

2 notice of motion. So on page 7 of 29 is
3 the first page -- the first substantive
4 page?

5 A. Yes.

6 Q. I just want to look at paragraph
7 1. And it -- the paragraph 1 says, "In
8 good faith numerous professionals worked
9 to bring a transaction that this court
10 approved to market. They did so with the
11 reasonable expectation that they would be
12 paid for their services." Do you see
13 that?

14 A. I do.

15 Q. And do you agree with that
16 statement?

17 A. Yes, I do.

18 Q. And did you have the reasonable
19 expectation that Arcapita Bank would pay
20 for your services?

21 A. I absolutely had reasonable
22 expectation that Arcapita Bank would pay
23 for those services.

24 Q. Now, if you have your
25 declaration, which is Exhibit paragraph --

1 A. Pyle
2 which is Exhibit 1, I don't see, and maybe
3 I missed it, but I don't see a reference
4 to your expectation that Arcapita Bank
5 would make the payment. Can you just tell
6 me if there's a reference in there at all?

7 A. I can't see one. The
8 declaration is setting out in detail the
9 work that we did and other matters to do
10 with that. It doesn't touch upon the
11 question of our expectation, but it is as
12 I've just said.

13 Q. So, if you had not -- if we had
14 not spoken in this deposition, this would
15 have been your testimony at the hearing,
16 right? Is that your understanding?

17 A. I believe that's the case, yes.

18 Q. And nowhere in here does it talk
19 about the conversations, for example, that
20 you had with the individuals at Arcapita;
21 is that right?

22 A. It doesn't say that, no.

23 Q. And it doesn't say in here at
24 all that you believe Arcapita Bank to be
25 the one that -- you had an expectation

1 A. Pyle

2 that Arcapita Bank would be the one paying
3 you, right?

4 A. It doesn't say that, no.

5 Q. Did your expectation that
6 Arcapita Bank would pay for the fees
7 incurred change as a result of Arcapita
8 Bank's filing for bankruptcy?

9 A. No, it did not.

10 Q. Other than your counsel, did you
11 have discussions with anybody about
12 whether or not it was reasonable to expect
13 to be paid by Arcapita Bank after they had
14 gone into bankruptcy?

15 A. We had conversations with
16 Arcapita Bank employees, the names of the
17 people that I mentioned before, about what
18 would happen with regard to payment post
19 petition, and they told me that things
20 would continue to operate as they had done
21 before and that Arcapita Bank would --
22 would fund either Arcapita Limited or
23 PointPark in order for them to be able to
24 pay for the services if Arcapita Bahrain
25 didn't pay them directly.

1 A. Pyle

2 Q. So you had the discussions that
3 you just described with representatives of
4 Arcapita Bank after they filed for
5 bankruptcy?

6 A. Yes.

7 Q. And they're the people that you
8 identified, Mr. Ahmed, Ms. Aboulzelof and
9 Mr. Dutheil?

10 A. Yes.

11 Q. Did you ever have a discussion
12 with anybody at Gibson Dunn in connection
13 with your fees?

14 A. Not -- not in relation to how
15 this sort of funding would work. I don't
16 recall ever speaking to Gibson Dunn about
17 that.

18 Q. Okay. Well, you spoke with
19 Gibson Dunn in connection with the IPO,
20 right?

21 A. The only dealings really I had
22 with Gibson Dunn, you'll see on the docket
23 and may recall that there was an indemnity
24 order that was granted, from memory, in
25 September or so. So that was UCC review

1 A. Pyle

2 our reports in connection with their
3 assessment of the IPO. So I had some
4 dealings with Gibson Dunn, I think, partly
5 by phone, but a lot by e-mail at that
6 point. And obviously there have been,
7 again, mostly dealings by e-mail in
8 connection with the -- as the motions were
9 being sort of put together and my
10 declaration was being done as well.

11 Q. Let me ask it in an opened way:

12 Were you aware that Linklaters
13 filed an application to have its fees paid
14 as part of the EuroLog IPO as part of the
15 Bankruptcy Court?

16 A. Yes, I was.

17 Q. And when did you become aware of
18 that?

19 A. Shortly before -- I think it was
20 -- was it August 16, the court hearing
21 that they were due to appear at? It would
22 have been, you know, in the -- I guess, a
23 couple of weeks before then would be when
24 I was -- I think I became aware of it.

25 Q. And how did you become aware of

1 A. Pyle

2 it?

3 A. I don't recall.

4 Q. Did you have discussions with
5 anyone other than your counsel about
6 filing a similar motion for KPMG?

7 A. No, we did not. We had some
8 internal discussions about, about what we
9 should do. We had some conversations with
10 Arcapita. And, you know, you will see on
11 the -- the front schedule of Exhibit 3
12 that there was a payment of \$500,000 that
13 was made to us. That was made to us post
14 petition. Arcapita represented to us that
15 they would seek to get us paid, you know,
16 as well. And we didn't go through the
17 process of applying for a motion. I think
18 in large part the reason for that was
19 because, had we done so and not -- not
20 worked right at the final stages to do
21 the -- to complete the work, then the
22 whole process would have been derailed, I
23 think.

24 Q. What was Linklaters' role in the
25 IPO?

1 A. Pyle

2 A. They were the lawyers to
3 effectively PointPark Properties and
4 ListCo.

5 Q. And then they -- and they filed
6 a motion asking for authority to have some
7 portion of their fees paid by Arcapita
8 Bank? They did that some time in August?

9 MS. DILUIGI: Objection to form.

10 A. That's my understanding.

11 Q. Now, let me go back to the
12 \$500,000, and I have questions later in my
13 outline about that, but who paid \$500,000
14 to KPMG post petition?

15 A. It was paid to us by PointPark
16 Properties SRO, having been funded by
17 Arcapita Bank.

18 Q. Do you know when that funding
19 was made?

20 MR. O'CONNOR: When you say "the
21 funding," the payment to KPMG?

22 MR. LEBLANC: The payment to
23 KPMG, let's start with that.

24 A. Well, it preceded the
25 Linklaters' fee motion. It would have

1 A. Pyle

2 been either in May or June of 2012. And
3 at the point at which, I think, I became
4 aware of the Linklaters' fee motion, we
5 were -- we were discussing with PointPark
6 and Arcapita Bank about a further part
7 payment. And we were told effectively
8 either in -- at some point, I guess, in
9 July that that was not -- that was not --
10 not likely to be made and that -- and, I
11 guess, it would have been about at that
12 time that I would have become aware of
13 sort of Linklaters' fee motion either
14 towards the end of July or early in August
15 just slightly ahead of the hearing.

16 Q. Yeah, I want to focus just on
17 the amount that was paid to KPMG, the
18 \$500,000. Your -- what's your best
19 recollection of the date or the time in
20 which that was paid? You can give me a
21 month.

22 A. I would -- I think either
23 towards the end of May or at some point in
24 June.

25 Q. And is it your understanding

1 A. Pyle

2 that the \$500,000 was funded by Arcapita
3 Bank to P3?

4 A. That was what CFO of P3 told me.

5 Q. And was it funded for the -- to
6 the best of your knowledge, what did he
7 tell you, everything that he told you
8 about that?

9 A. He told me that -- that they
10 were going to make us a part payment of
11 \$500,000 -- this is Euros not dollars, to
12 be clear, \$500,000 Euros. And that is
13 what Arcapita Bank were funding them as
14 part of P3's normal monthly funding.

15 Q. Normal monthly funding from
16 Arcapita?

17 A. My understanding from
18 discussions with the P3 CFO is because
19 P3's revenues from these asset and real
20 estate management contracts do not cover
21 its overheads. P3 was funded by Arcapita
22 Bank on a monthly basis to enable it to
23 pay the costs that were due, and as part
24 of that normal monthly funding process,
25 that's -- that's where sort of the

1 A. Pyle

2 \$500,000 was dealt with.

3 Q. And that's George --

4 A. George Aase.

5 Q. And you're aware that in July,
6 the debtors filed a motion seeking
7 authority from the court to go through the
8 IPO process, right?

9 A. I'm aware that there was a
10 motion for IPO approval. I couldn't tell
11 you whether that was July or another date.

12 Q. And to the best of your
13 knowledge, was there disclosure of the
14 fees that had already been incurred by
15 KPMG made in connection with that motion?

16 A. I have no idea.

17 Q. And -- but you are aware that no
18 request was made in that motion to pay the
19 fees of KPMG, right?

20 A. I haven't gone through that
21 motion in detail and I couldn't answer it.

22 Q. But you're not relying on
23 anything in that motion to say that your
24 fees -- that the court's already approved
25 the payment of your fees, are you?

1 A. Pyle

2 MR. O'CONNOR: Let me object and
3 say it calls for a legal conclusion,
4 but you can answer.

5 MR. LEBLANC: Okay.

6 A. Well, to be honest with you, I'm
7 not really best placed to comment on what
8 I'm relying upon from a legal perspective
9 because I'm -- I'm not a bankruptcy
10 lawyer.

11 Q. In your declaration, for
12 example, you don't state your view that
13 these fees have already been approved by
14 the court?

15 A. The -- what we were told, the
16 declaration should -- sorry. The legal
17 arguments as to why the fees should be
18 paid, we -- were to be covered in the
19 motion rather than the declarations that
20 were there. So it's not covered because
21 we were told by Gibson Dunn that that
22 would be covered in the motion.

23 Q. Okay. What else were you told
24 by Gibson Dunn about what should be in
25 your declaration?

1 A. Pyle

2 A. That it should cover what the
3 contents that it -- that it does. We
4 should -- we should set out in more detail
5 the services that we had provided. We
6 should explain how the significant
7 complexities of the EuroLog IPO impacted
8 our work, and we should also set out the
9 discounts effectively that were being
10 given against sort of standard scale rates
11 and discuss that. So that's why what's in
12 the declaration is -- is there.

13 Q. Gibson -- Gibson Dunn didn't ask
14 you to talk about what your expectation
15 was to who would pay the fees?

16 A. No, I don't recall them sort of
17 saying -- saying that. Again, I think
18 that was sort of covered in, you know, in
19 the motion.

20 Q. Okay. But the motion we looked
21 at refers to what KPMG's expectations
22 were, right?

23 MR. O'CONNOR: Objection to
24 form.

25 A. Sorry, what do you --

1 A. Pyle

2 Q. Sure. We looked at -- you have
3 it right there, Exhibit 2, paragraph 1
4 which is on page 7 of 29.

5 A. Yeah.

6 Q. Do you have that there?

7 A. I do.

8 Q. The second sentence says,
9 "They," and the "They" there refers to,
10 just looking at the prior sentence, "The
11 numerous professionals that worked"?

12 A. Yes.

13 Q. And that includes KPMG?

14 A. Yes, it does.

15 Q. And so this sentence refers to
16 your expectations, KPMG's expectations?

17 A. Yes, it does.

18 Q. And you weren't asked to speak
19 to that question at all in your
20 declaration?

21 A. No.

22 Q. Now, while you have Exhibit 2
23 there, if you could just move forward to
24 page -- on the top, 11 of 29. Actually,
25 yeah, that's fine. And what I -- there's

1 A. Pyle

2 a discussion here in section E which
3 begins on paragraph 10 of the prior fee
4 dispute. Do you see that?

5 A. Yes, I do.

6 Q. And I know you've reviewed it
7 before. You can review it as much as
8 you'd like, but this is generally
9 referring to the Linklaters' fee dispute,
10 correct?

11 A. Yes.

12 Q. And do you see on paragraph
13 12 --

14 A. Yes.

15 Q. -- there's the indented portion,
16 the quotes. Those are quotes from the
17 Linklaters' fee order. Do you see that?

18 A. The things that are labeled 5
19 and 6?

20 Q. Correct.

21 A. Yes, I can see those.

22 Q. Now, were you -- did you see the
23 Linklaters' fee order at or around the
24 time it was entered?

25 A. I can recall looking at the

1 A. Pyle
2 information that was on the docket
3 either around or just after the hearing.

4 Q. Okay. And with the focus on
5 paragraph 5 and, again, you can read as
6 much as this as you'd like to, paragraph 5
7 speaks to payments that would be made to
8 Linklaters, correct?

9 MR. O'CONNOR: Objection to
10 form. The document speaks for itself.
11 You can answer.

12 A. Sorry. I think Linklaters is
13 the only party referred to in paragraph 5
14 and 6.

15 Q. Did it concern you that you
16 didn't have an order like this with
17 respect to payments to KPMG?

18 A. Yeah, I -- well, I mean, the --
19 the order -- Linklaters had a much more
20 significant backlog of unpaid fees than
21 KPMG had at that point. Because KPMG had
22 been paid some money post petition but
23 also had been paid money prepetition for
24 the work that was done prepetition as
25 well. So I can't really speak about

1 A. Pyle

2 Linklaters' concerns, but -- but they had
3 a much larger amount of money outstanding
4 at the time. We had a -- a smaller sort
5 of sum of money. We were certainly
6 very -- very sort of interested and
7 looking carefully at what was happening
8 and were having conversations with
9 Arcapita and Linklaters, you know, and
10 PointPark SRO when all of this was sort
11 of -- was going -- was going on. Bear in
12 mind that in early August the -- I don't
13 think the IPO process was -- was that --
14 in early August, anyway, was just about to
15 sort bounce, sort of kick back off again,
16 so we were -- we were interested in it.
17 That would be fair to say.

18 Q. At that time in August, do you
19 recall having discussions with the
20 individuals you mentioned from the debtors
21 from Arcapita with respect to payment of
22 your fees in the future?

23 A. Around the time of the fee
24 order, I don't recall.

25 Q. And what about after into August

1 A. Pyle
2 or September? I'm just trying -- the
3 discussions that you referred to earlier,
4 can you give us a time frame for when
5 those discussions occurred?

6 A. We had quite a lot of the
7 discussions in late March and early April
8 sort of immediately after filing and
9 before we started work. And those
10 discussions were around, as is normal
11 practice for us, having a payment schedule
12 put in place, whereby we would get paid
13 for our costs as we go similar to the way
14 that, you know, retained professionals
15 would get paid through -- through a
16 Chapter 11 sort of process. We typically
17 have that form of monthly sort of payments
18 on account when we do IPO work. So we
19 were having discussions with them at that
20 point. We were also having discussions
21 with them over, you know, July and into
22 August as the situation was sort of
23 developing. After the Linklaters' sort of
24 fee motion was approved, we would have had
25 some other discussions with them, but not

1 A. Pyle
2 probably as many as we -- as we had
3 earlier in the process.

4 Q. Do you recall any
5 representatives of the debtors having a
6 discussion with you about payment of your
7 fees after the entry of the Linklaters'
8 fee order?

9 A. Yeah, we did have a conversation
10 with -- at that time would have most
11 likely have been with Karim Si-Ahmed.

12 Q. And do you recall what Mr. Ahmed
13 said?

14 A. My recollection is that -- that
15 it would be difficult without going
16 back -- sorry. In order for us to get
17 paid anything else ahead of the IPO
18 completing, that they would most likely
19 have to go back through a court process,
20 and that there would not be very much time
21 available to do that. And so effectively,
22 the discussions were, basically we will do
23 that -- if the IPO does not succeed, then
24 we will go back through the process of --
25 of -- of seeking approval. If the IPO

1 A. Pyle

2 does proceed, then, you know, we would
3 have been paid out of IPO proceeds, but in
4 the situation where the IPO does not
5 complete, then obviously it would be the
6 responsibility of -- of PointPark and
7 Arcapita Limited effectively as funded by
8 Arcapita Bahrain to pay -- to pay the fees
9 because our fees are not and cannot be
10 under UK Audit Independence Rules, cannot
11 be contingent upon the outcome of an IPO.

12 Q. Okay. So at the time that you
13 had the discussion that you just referred
14 to, which was in the period after August
15 with Mr. Ahmed, did you understand that,
16 to have further payments from Arcapita
17 Bank made on your fees, there would have
18 to be an order of the court?

19 A. I don't think it was -- my
20 recollection is that that's not quite what
21 was said. I think what was said was that,
22 there would have to be agreement reached
23 with the creditors committee, and if that
24 was not forthcoming, that they -- it would
25 need an order of the court to be able to

1 A. Pyle

2 pay the fees.

3 Q. Now, you have the debtors'
4 motion still open there. Go back to page
5 7 of 29, if you would, and this is Exhibit
6 2.

7 A. Yeah.

8 Q. The first paragraph we've looked
9 at, and we're not doing every paragraph,
10 trust me. But the second sentence in
11 particular says that, "They" -- referring
12 to you and others -- "did so with the
13 reasonable expectation that they would be
14 paid for their services." And the second
15 paragraph begins, "The Committee
16 disagrees." Do you see that?

17 A. Yes.

18 Q. Is it your understanding that
19 the Committee's position is that you
20 should not be paid for your services?

21 A. I have not had any discussions
22 with the Committee at all about what their
23 position actually is. There were some
24 attempts in January that you may be aware
25 of to try to come to some form of

1 A. Pyle

2 negotiated arrangement, and what we were
3 told, I don't recall now whether that was
4 via Gibson Dunn or Arcapita or both, was
5 that the Committee was not interested in
6 negotiating. There was a proposal that
7 Houlihan Lokey, that were retained by the
8 UCC, had suggested to Arcapita and
9 ourselves, and they had also suggested
10 that to the Committee, and KPMG Linklaters
11 and Fresh-fields had put a counter
12 proposal on the table. And we were told
13 that the Committee was not interested in
14 discussing or negotiating around either
15 the Houlihan Lokey potential deal, nor the
16 deal that we said we might be happy to
17 accept.

18 Q. My question is slightly
19 different than that.

20 A. Sorry.

21 Q. That's okay. Do you understand
22 the Committee to object to your ability to
23 get paid by P3 and Arcapita Limited?

24 A. I'm not sure it's for me to
25 comment on what the Committee's position

1 A. Pyle

2 is. The Committee is objecting to the
3 motion.

4 Q. The motion that is before the
5 court, the motion that was filed is to
6 fund money for the purpose of paying your
7 fees, right?

8 A. Yeah, I understand that.

9 Q. If P3 had the money to pay your
10 fees, do you know of any objection that's
11 been lodged to the payment of those by the
12 entity that engaged you?

13 A. I don't believe that the
14 Committee has objected to PointPark paying
15 the fees.

16 Q. So is it your understanding that
17 the Committee objects to Arcapita Bank
18 funding money for the purpose of paying
19 your fees?

20 A. That seems to be my
21 understanding, yes.

22 Q. So just to be clear, is it your
23 understanding that the Committee does not
24 want you to be paid by anybody or by money
25 funded from Arcapita Bank?

1 A. Pyle

2 A. The Committee does not want us
3 to be paid through the only current route
4 for us to be paid, which is funding
5 through Arcapita Bank.

6 Q. Do you agree that there's little
7 risk that funding of your fees in
8 connection with the IPO ultimately can be
9 made by P3?

10 MR. O'CONNOR: Can you read that
11 back?

12 (Whereupon, the question is read
13 back by the reporter.)

14 MS. DILUIGI: Objection to form.

15 MR. O'CONNOR: Objection to
16 form.

17 A. I don't understand the risk.

18 Q. Let's go to the debtors' motion
19 to page 27 of 29. And I'm really going to
20 focus you on paragraph 45, which begins on
21 the prior page.

22 A. Okay.

23 Q. This is in Exhibit 2?

24 A. Yeah, I have that.

25 Q. And I just want to focus on the

1 A. Pyle
2 last sentence of the paragraph, but read
3 as much of it as you'd like to.

4 A. Yes.

5 Q. So let me just ask this
6 question: Based upon the transaction
7 services that you've provided to date
8 for -- in connection with the EuroLog IPO,
9 do you agree with the debtors' statement
10 that there -- that, "When the debtors'
11 investment in the EuroLog affiliates are
12 monetized, there is little risk that the
13 funding of the IPO fees will not
14 eventually" -- "will not be eventually
15 repaid"?

16 MR. O'CONNOR: Objection to
17 form.

18 MS. DILUIGI: Objection to form.

19 MR. O'CONNOR: You can answer.

20 A. I can't really comment
21 definitively on that because I don't think
22 I've ever seen any analysis that --
23 although my understanding is analysis
24 exists, that shows that there is
25 substantial value to the debtors' estates

1 A. Pyle

2 that significantly exceeds the value of
3 fees that will be -- that will be talked
4 about here. And so I do agree with the
5 statement in principle. And my
6 understanding is that there are EuroLog
7 affiliates that have got substantial
8 enterprise value, and so if those entities
9 did reimburse -- enter into reimbursement
10 agreements, then -- then I think there
11 would be little risk that the funding of
12 the IPO fees would not be eventually
13 repaid, yes.

14 Q. So as far as you're aware today,
15 PointPark and Arcapita Limited have not
16 executed reimbursement agreements with the
17 EuroLog affiliates that have substantial
18 enterprise value; is that correct?

19 A. I'm not aware of whether they
20 have or have not.

21 Q. But if they did that, then you
22 would expect that the funding of the IPO
23 fees would be repaid at some point in
24 time?

25 MR. O'CONNOR: Objection to

1 A. Pyle

2 form.

3 A. Sorry, can you just repeat the
4 question for me?

5 Q. Sure. If PointPark and Arcapita
6 Limited entered into reimbursement
7 agreements with EuroLog affiliates that
8 have substantial enterprise value, then
9 you would expect that the funding of the
10 IPO fees would eventually be repaid?

11 MR. O'CONNOR: Objection to
12 form.

13 MS. LIU: Same.

14 MR. O'CONNOR: Objection to
15 form.

16 A. Can you -- okay. So in terms
17 of -- what I think you're saying is that
18 downstream, that there would be an
19 expectation that on some form of
20 monetization event, that the funding of
21 the IPO fees would be repaid. So I think
22 I -- on the basis that I explained before,
23 I would agree with that, but subject to
24 the caveats that I gave in the answer to
25 my previous question because I think it's

1 A. Pyle

2 kind of the same question again.

3 Q. It is the same question. Now,
4 let me ask a different question.

5 So if PointPark and Arcapita
6 entered into reimbursement agreements with
7 EuroLog affiliates that have substantial
8 enterprise value, wouldn't it be your
9 expectation that KPMG could get paid upon
10 a monetization value?

11 MR. O'CONNOR: Objection to
12 form.

13 MS. LIU: Same.

14 MS. DILUIGI: Objection to form.

15 A. I haven't made any -- we haven't
16 had any discussions about getting paid on
17 monetization event as to how that sort of
18 would work. So I have no -- no sort of
19 expectations one way or the other on how
20 that might work.

21 Q. Do you think that there's risk
22 that KPMG would not be paid upon a
23 monetization event of the EuroLog assets?

24 MR. O'CONNOR: Objection to
25 form.

1 A. Pyle

2 A. What do you mean by -- by --
3 what do you mean by "risk" effectively? I
4 mean, there's a question of timing and --
5 and uncertainty as to when -- when -- when
6 that would -- when that would sort of take
7 place and also as to the nature of the
8 monetization event. So -- but as I said,
9 I haven't seen -- I haven't seen the
10 analysis that -- that lets the debtors
11 make the statement that they have -- that
12 they've made. So I'm not really able to
13 say -- to think to say sort of much more
14 than I've sort of said.

15 Q. And you mentioned that there are
16 two components to it; there's the risk of
17 being paid and then there's the timing of
18 being paid. Those are the two components
19 that you mentioned in the prior answer,
20 right?

21 A. Yes.

22 Q. Those are different. I want to
23 separate the two of them for a second. Do
24 you believe that there's risk that KPMG
25 would not be paid upon a monetization

1 A. Pyle
2 event of the -- by its contract
3 counterparty upon a monetization of the
4 EuroLog assets?

5 MR. O'CONNOR: Objection to
6 form, asked and answered. I think
7 it's the same question.

8 A. I was going to say I'm not sure
9 what I can add over and above what --
10 what -- what I've added before, to be
11 honest, but it is just the same question;
12 isn't it?

13 Q. It isn't the same question. I
14 want to separate the timing from the risk.

15 Is there risk of nonpayment if
16 the EuroLog assets are monetized?

17 MR. O'CONNOR: Objection to
18 form.

19 A. Sorry. Can you try and ask a
20 different way? Because it is just the
21 same question; isn't it?

22 Q. Okay. You want Arcapita Bank to
23 fund money to pay KPMG, correct?

24 A. Yes.

25 Q. That would eliminate any risk to

1 A. Pyle

2 KPMG that it would not get paid upon a
3 monetization event of the EuroLog IPO,
4 right?

5 A. Once paid, yes.

6 Q. And you want Arcapita Bank to
7 fund money to take away any timing element
8 to it, to get paid today rather than upon
9 a monetization event, right?

10 A. Yes that's right.

11 Q. My question is on the first one.
12 Do you believe that there's risk that KPMG
13 would not get paid upon a monetization
14 events? I'm trying to understand, is it
15 just about timing or is it ultimately
16 about not getting paid?

17 MS. DILUIGI: Objection.

18 A. I think the subject to -- the
19 question is around -- why I'm maybe
20 struggling to answer is, there's going to
21 be a whole suite of different legal
22 agreements that I have no awareness of
23 that would need to be executed and
24 additionally whatever is sort of -- is
25 finally decided by the court, that would

1 A. Pyle

2 remove the risk. So, you know, it -- I
3 guess the answer to the question is that
4 if all of the steps that were necessary to
5 remove the risk were taken, then there
6 would be no risk.

7 Q. No risk on KPMG, correct?

8 A. Well, no risk on anybody. If
9 the requisite steps are taken, there's no
10 risk.

11 Q. Well, okay. If the steps that
12 are requested in the motion, namely the
13 payment of fees -- funding of money to pay
14 fees today were taken, then KPMG would no
15 longer be at risk?

16 A. Well, that's right because once
17 we've been paid, we've been paid.

18 Q. But Arcapita Bank would be at
19 risk, correct?

20 A. Arcapita Bank would effectively
21 have taken the risk from KPMG, yes.

22 Q. And if Arcapita Bank funds money
23 to pay KPMG today, KPMG would get paid as
24 soon as that funding is made, so the
25 timing element, Arcapita Bank would take

1 A. Pyle

2 that off of KPMG's hands as well, right?

3 A. Yes.

4 Q. And that's what's requested in
5 the motion, to shift the risk, both the
6 timing and of repayment from KPMG keto
7 Arcapita Bank, correct?

8 MS. LIU: Objection to form.

9 MS. DILUIGI: Objection to form.

10 MR. O'CONNOR: The motion speaks
11 for itself.

12 Q. You can answer.

13 MR. O'CONNOR: You can answer.

14 A. I think that is effectively the
15 point of -- that's what the motion is
16 trying to do. As you say, the motion
17 speaks for itself.

18 Q. Okay. Has KPMG sought
19 compensation from P3 and Arcapita Limited?

20 A. Not to date.

21 Q. Why not?

22 A. Because Arcapita Limited and P3,
23 our understanding is this, while they have
24 significant revenue streams and assets,
25 they are funded on a monthly basis by

1 A. Pyle

2 Arcapita Bahrain and so, therefore, what
3 we have done in terms of trying to seek
4 recovery of the fees is that we have -- we
5 have been pursuing the route that we're
6 doing now, and we have not gone down the
7 route of -- of pursuing these -- the
8 organizations that have the liability
9 for -- for the money pending resolution of
10 this process.

11 Q. Do you have any understanding of
12 whether P3 and Arcapita Limited could
13 borrow funds from someone other than
14 Arcapita Bank?

15 A. I don't have any understanding
16 on -- on that. I would be very surprised
17 if they could.

18 Q. And why is that?

19 A. Because they have revenue
20 streams that exceed their costs and their
21 parent is in Chapter 11.

22 Q. And they manage assets that have
23 substantial enterprise value, correct?

24 A. They manage -- they manage
25 assets that have substantial enterprise

1 A. Pyle

2 value. They do not own those assets
3 today.

4 Q. Did KPMG conduct any diligence
5 on those entities when it entered into
6 engagement letters with those two
7 entities, P3 and Arcapita Limited?

8 MR. O'CONNOR: Objection to
9 form. You can answer.

10 A. What do you mean by "due
11 diligence"?

12 Q. Were you aware that they were
13 entities that didn't own the entities with
14 substantial enterprise value?

15 A. Yeah. I mean, I think I already
16 covered the discussions that we had sort
17 of upfront about Arcapita Bank Bahrain
18 funding these organization -- Arcapita
19 Limited and PointPark to pay the fees and
20 we were aware of that because we have a
21 relatively long-standing relationship with
22 Arcapita. So we've seen that work in
23 practice among multiple occasions prior to
24 the EuroLog IPO.

25 Q. You were aware of what limited

1 A. Pyle
2 revenue streams that Arcapita and P3 had
3 at the time you signed the engagement
4 letter, right?

5 A. That is correct.

6 Q. And, again, I think I may have
7 asked this, but you didn't have any
8 document that required Arcapita Bank to
9 fund the shortfalls to pay KPMG what it
10 was owed?

11 MR. O'CONNOR: Objection, asked
12 and answered.

13 A. You have already asked that and
14 I answered it.

15 Q. Can you answer it again?

16 A. Yes, we did not have a document
17 other than the IPO readiness engagement
18 letter.

19 Q. Now, if the court were to grant
20 the motion and you were paid the amounts
21 that you're seeking, I'm just trying to
22 understand this, would you still be
23 seeking additional amounts from the
24 EuroLog -- from P3 and Arcapita Limited or
25 is this in full satisfaction of what KPMG

1 A. Pyle

2 is owed?

3 A. Well, it's the fee that's
4 outstanding for the work that we've done
5 to date. So we wouldn't be -- once we've
6 been paid, we've been paid.

7 Q. Well, it reflects -- and we'll
8 talk about these in a moment, but it
9 reflects a variety of discounts. Would
10 you seek the full payment from P3, for
11 example?

12 A. Yeah. We would seek -- the
13 amount that is here that is outstanding at
14 this point in time is the amount of money
15 that we would seek either from P3 or -- or
16 Arcapita.

17 I think if we were to -- if we
18 were to go down the route of seeking the
19 money from P3 or Arcapita Limited, then as
20 would be -- the engagement letters confer
21 rights on us to do things like charge
22 interest and to recover any costs that we
23 incur in -- in recovery. We haven't put
24 those numbers on the table as part of this
25 sort of submission, but I would not commit

1 A. Pyle

2 myself now to us not seeking to recover
3 further money linked to -- linked to
4 either sort of interest or -- other
5 reimbursement of costs incurred in getting
6 paid from Arcapita Limited or P3 based on
7 what we would be entitled to under the
8 terms of engagement that we have.

9 Q. So just so I understand that
10 answer. If the court grants the motion
11 and you're paid the amounts that you've
12 asked to be paid, you still may pursue
13 additional amounts from --

14 A. No. In the event that the court
15 does not approve and we then have to
16 basically take whatever action is
17 necessary to get paid by -- by P3 and
18 Arcapita Limited --

19 Q. Okay.

20 A. -- then in that situation we
21 would look at whether there was a
22 different sort of sum because some of the
23 discounts that we've already given have
24 been, you know -- we would look at it
25 again in terms of what we thought we would

1 A. Pyle

2 actually be entitled to get paid and what
3 we would seek to recover and it may well
4 be a higher number if we were to go to the
5 organizations that we referred to,
6 Arcapita Limited and PointPark.

7 Q. Do you have any estimate of how
8 much higher that number would be?

9 A. No, I've not given that any
10 thought and I would need to consult
11 internally what we would do as well.

12 MR. O'CONNOR: Can we take five?

13 MR. LEBLANC: Now is a perfect
14 time.

15 (Exhibit Pyle 4, Engagement
16 letter dated August 11, 2011, marked
17 for identification.)

18 (Exhibit Pyle 5, Engagement
19 letter dated January 17, 2012, marked
20 for identification.)

21 (Exhibit Pyle 6, Engagement
22 letter dated May 14, 2012, marked for
23 identification.) (Engagement letter
24 dated May 16, 2012.)

25 (Exhibit Pyle 7, Engagement

1 A. Pyle
2 letter dated May 16, 2012, marked for
3 identification.)

4 (Exhibit Pyle 8, Engagement
5 letter dated October 22, 2012, marked
6 for identification.)

7 (Exhibit Pyle 9, Engagement
8 letter dated October 30, 2012, marked
9 for identification.)

10 (Exhibit Pyle 10, Engagement
11 letter dated October 30, 2012, marked
12 for identification.)

13 (Whereupon, a brief recess is
14 taken.)

15 Q. I've promised to do this before,
16 but we're going through the engagement
17 letters quickly.

18 I'm handing you what has been
19 marked as Exhibit 4. You can see the
20 numbers on the top are the sort of the
21 stamp of the Pyle declaration. We pulled
22 these exactly as they were from your
23 declaration. And this is the first
24 engagement letter that you started with.

25 A. This is the tax structuring

1 A. Pyle

2 engagement letter which started in August
3 2011.

4 Q. And who is Richard White?

5 A. He is a tax partner, senior tax
6 partner at KPMG.

7 Q. And at this point was he the
8 primary contact with -- in connection with
9 the PointPark Properties engagement?

10 A. He -- he has lead the tax work
11 stream throughout the engagement. He and
12 I have effectively acted as the overall
13 sort of lead engagement partners on the
14 PointPark matter.

15 Q. And the services provided under
16 this engagement letter, which is Exhibit
17 4, the August 2011 one, those services
18 have been paid for; is that right?

19 A. They were -- they were paid
20 prepetition, yes.

21 Q. So no services provided under
22 this engagement letter are part of the
23 amounts you're seeking compensation for
24 now?

25 A. No, I think that this letter was

1 A. Pyle

2 -- I need to just check because this
3 letter -- there are some bits of the work
4 were not done until post petition. So
5 there is a small amount of money which on
6 Pyle Exhibit 3, the front page, if you
7 look in the unbilled stroke/unpaid column,
8 and down, there is a figure of \$28,800
9 Euros, which I think would fall under this
10 engagement letter, which has not been
11 billed. Do you got that?

12 Q. That's the row out-of-pocket
13 expenses not included in previous
14 schedule?

15 A. No, if you go about four rows
16 further up.

17 Q. I'm sorry.

18 A. 24,800.

19 Q. Tax structure and fees, too?

20 A. Yeah. So that I think is the
21 amount that was outstanding per this
22 letter. My recollection, but we can kind
23 of come to this with the other exhibits is
24 that the tax implementation costs were
25 done under a completely new engagement

1 A. Pyle
2 letter, which I think was just PointPark
3 Properties.

4 Q. So let's look at the next
5 document in your exhibit. And this is
6 now the exhibit I've handed out, what's
7 been marked as Exhibit 5 for this
8 deposition.

9 A. Yeah.

10 Q. And from your declaration it has
11 -- at the top, it's page 17 of 75?

12 A. Yes.

13 Q. Okay. What is this document?

14 A. Okay. So this document was
15 effectively varying the Pyle Exhibit 4, 11
16 of August engagement letter to bring in
17 Arcapita Bank BSC, which is Arcapita
18 Bahrain into the previous engagement
19 letter.

20 Q. When you say to bring in
21 Arcapita Bank BSC, what do you mean by
22 bringing in?

23 A. Well, if you look at the
24 documents, then it says -- effectively it
25 sets out the terms under which Arcapita

1 A. Pyle

2 Bahrain will accept the terms of the
3 engagement letter as if it had actually
4 signed a copy of it itself, and that in
5 return for that, we will basically assume
6 responsibility to them for the work that
7 was done. So this letter is -- is
8 designed to have the legal effect of
9 making Arcapita Bahrain an addressee of
10 Pyle Exhibit 4 engagement letter as though
11 it had been an addressee right from the
12 outset.

13 Q. And is it your belief that as a
14 result of that, Arcapita Bank is obligated
15 to make, for the invoices in connection
16 with the prior engagement letter?

17 MR. O'CONNOR: Objection. It
18 calls for a legal conclusion, but he
19 did ask for your understanding, so you
20 can answer.

21 THE WITNESS: Okay.

22 A. Well, under our sort of standard
23 terms and conditions, all of the addresses
24 of our engagement letters have joined in
25 several liability under UK law for our

1 A. Pyle
2 fees. So by signing this, Arcapita
3 Bahrain would effectively assume joint and
4 several liabilities to pay the fees that
5 are attached under this -- that would be
6 billable under this engagement letter.

7 Q. Did Arcapita ever sign what is
8 marked as Exhibit 5?

9 A. My recollection is that they did
10 not and that this letter was --
11 post-petition was rescinded because I
12 think, again, my recollection is that we
13 were told that that would perhaps require,
14 you know, some approvals in order to do
15 that.

16 Q. Okay. But this letter, Exhibit
17 5 was dated January 17, 2012, right?

18 A. Yeah. I think there was an
19 equivalent letter for the IPO readiness
20 review, which did get paid prepetition in
21 full and that letter was signed. That's
22 my understanding and recollection.

23 Q. When you say an equivalent
24 letter, was it a letter as to which
25 Arcapita Bank was a party?

1 A. Pyle

2 A. We had exactly the same kind of
3 original letter with Arcapita Limited and
4 PointPark Properties SRO for the IPO
5 readiness review. And we then had a
6 subsequent letter that -- like this that
7 then brought Arcapita Bahrain in, but they
8 paid those fees full.

9 Q. Okay. But Exhibit 5, you don't
10 believe was ever signed by Arcapita --

11 A. I don't think it was, no.

12 Q. So they did not become obligated
13 for the -- even under your standard terms
14 and conditions for the charges in
15 connection with Exhibit 4, the first
16 engagement letter?

17 MR. O'CONNOR: Objection to
18 form. Calls for a legal conclusion.
19 You can answer.

20 MS. DILUIGI: Objection to form.

21 A. So they didn't sign the letter,
22 but they did pay the fees.

23 Q. So the fees under this Exhibit 5
24 have been paid?

25 A. Apart from the 24,800 Euros,

1 A. Pyle

2 yes.

3 Q. Is there some reason you
4 included what is Exhibit 5 and not the
5 other letter that you recall?

6 A. The IPO readiness letter?

7 Q. Yes.

8 A. Well, the simple reason is that
9 the IPO readiness letter was paid in full
10 and we were asked to -- to provide the
11 engagement letters that pertain to the
12 unpaid fees.

13 Q. Okay.

14 A. That's the only reason.

15 Q. Fair enough.

16 Exhibit 6. Now, Exhibit 6 is
17 the next engagement letter or next
18 document in your declaration and it has at
19 the top page 19 of 75. Do you see that?

20 A. Yeah.

21 Q. Okay. And what is this?

22 A. Okay. So this is -- so this is
23 a letter that was put in place, as you can
24 see from the date, 14 of May 2012, was put
25 in place post petition. And effectively

1 A. Pyle

2 this was a letter that varied the previous
3 two letters because the third -- the
4 previous letters had a subsequent phase 3
5 of work that was intended to have been
6 done. And so this letter was effectively
7 saying that all of the work that's -- that
8 was required to be carried out under the
9 engagement letter has been completed and
10 that the work that the engagement letter
11 envisioned was to be completed, which was
12 called phase 3, was not to be undertaken.

13 Q. Okay. And this letter says
14 "draft" on the first page. Do you see
15 that?

16 A. Yeah, I do.

17 Q. And it doesn't reflect
18 signatures on the second page?

19 A. Again, I don't -- my
20 understanding is that this letter was not
21 signed either.

22 Q. And that's true, not even signed
23 by KPMG?

24 A. Well, this letter isn't signed
25 by KPMG. I'm not aware of whether we

1 A. Pyle

2 issued a letter that was signed for
3 signature. We may have done it. We may
4 not have done it. I don't know.

5 Q. All right. Exhibit 7 --

6 A. Yeah.

7 Q. What is Exhibit 7?

8 A. So Exhibit 7 is an engagement
9 letter in respect of the tax
10 implementation phase work, which was done
11 effectively for PointPark Properties SRO.
12 And it effectively replaced -- well, it
13 replaced, from my recollection, is with
14 a -- with a different scope what had been
15 contained -- or a detailed scope what had
16 been contained under the previous
17 engagement letters for phase 3.

18 Q. Okay. Now, this engagement
19 letter or, I'm sorry, this document
20 Exhibit 7 says "draft" again?

21 A. Yes.

22 Q. And if you look at the last page
23 which should be 28 of 75 at the top. Do
24 you see that?

25 A. Yes.

1 A. Pyle

2 Q. It's unsigned by either KPMG or
3 anyone from PointPark Properties; is that
4 right?

5 A. The back page of this exhibit is
6 unsigned.

7 Q. Do you know if there exists any
8 signed version of this, signed by anyone?

9 A. I think I'd give the same answer
10 as before, which was there may have been a
11 version that was sent out by KPMG for
12 signature that we did not have a copy of
13 on file, but I'm not aware that the letter
14 is signed by PointPark Properties SRO.

15 Q. You've described to us before,
16 there were phases or two sides to the
17 work. There's the tax services and then
18 you called them the reporting?

19 A. Reporting accountant.

20 Q. Reporting accountant.

21 To this point, have we looked at
22 the engagement letter for the reporting
23 accountant work?

24 A. No, we have not.

25 Q. Prior to what we just looked at,

1 A. Pyle

2 Exhibit 5, was there a reporting
3 accountant engagement letter that existed
4 prior to this date of May 16, rather
5 Exhibit 7?

6 A. We would have sent a draft
7 engagement letter out prior to -- prior to
8 sort of or at the early stages of having
9 commenced work, but I do not know the date
10 on which we first sent a draft engagement
11 letter for reporting accountant services
12 out.

13 Q. And am I right that the majority
14 of the fees you're seeking compensation
15 for now are the reporting accountant
16 services; is that right?

17 A. Yes, that's right.

18 Q. And so let's look at the next
19 exhibit, and this is Exhibit 8. And do
20 you recognize what's been marked as
21 Exhibit 8?

22 A. Yes, I do.

23 Q. And what is Exhibit 8?

24 A. It's the engagement letter for
25 reporting accountant services.

1 A. Pyle

2 Q. Now, we can go back and look,
3 but this is the first engagement letter on
4 which you are listed as the contact; is
5 that right?

6 A. Yes, that's right.

7 Q. And as of October 22, 2012, you
8 completed all of the -- virtually all of
9 the services?

10 A. Yes.

11 Q. Is there any engagement letter
12 prior to this one that we should be
13 looking at for the reporting accounting
14 services, this one being Exhibit 8?

15 A. This was the final version of
16 the letter that was issued for signature.
17 So any other versions that were issued,
18 you know, well ahead of this, were issued
19 in draft and subject to negotiation
20 principally between ourselves and Deutsche
21 Bank and Credit Suisse.

22 Q. And if you look at Exhibit 8 at
23 the last page, which is on page 52 --

24 A. Yes.

25 Q. -- this one is signed by KPMG,

1 A. Pyle

2 correct?

3 A. It's signed by KPMG -- it's
4 signed by me signing as KPMG Audit PLC.

5 Q. And do you have a version of
6 Exhibit 8 that is signed by P3 PLC?

7 A. No, the letter -- the letter
8 was -- would have been signed prior to
9 effectively the IPO completing or just at
10 the point that the prospectus would be --
11 would be signed, which is pretty common,
12 sort of standard occurrence on IPOs that
13 these letters get signed very, very late
14 in the day.

15 Q. And at this point, again, you
16 had performed all of the work and you
17 didn't have a signed engagement letter?

18 A. That's correct. That's fairly
19 normal.

20 Q. And it's normal in your
21 experience that you don't have a signed
22 engagement letter until the end of the
23 process?

24 A. Regrettably, yes.

25 Q. Now, in any of the iterations,

1 A. Pyle

2 to the best of your recollection, any
3 iterations, prior versions of Exhibit 8,
4 was there any mention of Arcapita Bank
5 making payment of charges incurred?

6 A. No.

7 Q. Now, there's reference in the
8 document, and this is in Exhibit 8 at page
9 -- well, let me -- before we get to that,
10 page 14 -- internal page 14, which is 42
11 of 75 of Exhibit 8?

12 A. Yep.

13 Q. There are general terms of
14 business at the bottom of paragraph 5?

15 A. Yes.

16 Q. And then there are, by my count,
17 I think it goes to page 23, 10 pages or so
18 of variations to those general terms of
19 business?

20 A. That's why the letters don't get
21 signed until the last minute.

22 Q. But am I correct there are about
23 ten pages of variations to your standard
24 terms and conditions?

25 A. Yeah, it runs to page 51 of 75

1 A. Pyle

2 at the top.

3 Q. Correct. We have your standard
4 terms and conditions here if you'd like to
5 look at them, but my question is, do any
6 of the variations reflect intention that
7 Arcapita Bank would make payment of the
8 fees that were incurred?

9 A. I don't think they do.

10 Q. Look for me at page 48 of 75.
11 I'll give you a little bit of a memory
12 test. There's a reference to clause 10
13 there?

14 A. Yes.

15 Q. The words "to the company" are
16 inserted after the words "invoices" in the
17 first line. Do you see that?

18 A. Yeah.

19 Q. And the company is defined in
20 this engagement letter in Exhibit 8 as P3,
21 correct?

22 A. P3 PLC.

23 Q. P3 PLC, okay.

24 And so -- I don't know if you
25 can remember this, but it's your

1 A. Pyle
2 expectation that it says in the terms and
3 conditions that invoices will be issued to
4 the -- based on this variation to P3 PLC,
5 correct?

6 A. Yes, that's right.

7 Q. And that is to make clear that
8 it's not being issued -- invoices are not
9 being issued to Deutsche Bank or Credit
10 Suisse?

11 A. Yeah, that's right.

12 Q. But there's no reference to
13 invoices being issued to anybody other
14 than P3 PLC, correct?

15 A. That's correct.

16 Q. And, again, this engagement
17 letter, even as we sit here today, it's
18 still not been signed?

19 A. It would only have been signed
20 had the -- had the IPO completed, so, no,
21 you're correct.

22 Q. Now, the last two -- actually,
23 let me step back for one second. On
24 Exhibit 8, who negotiated this on behalf
25 of KPMG?

1 A. Pyle

2 A. It was myself and a
3 consultation -- we have a second partner
4 who we have to sort of consult with and
5 she heads up our capital markets group
6 that does IPOs and other capital markets
7 transactions. And I negotiated the letter
8 and at the final -- the final bit when we
9 were dealing with the last few points from
10 Deutsche and Credit Suisse, she got
11 involved directly at that stage, but it
12 was my responsibility, but she helped at
13 the end.

14 Q. And who was responsible for
15 negotiating this on behalf of P3 PLC?

16 A. They have -- I forget his title,
17 but his name is Jonathan Farrell
18 F-a-r-r-e-l-l and he is their either
19 general counsel or, you know, equivalent
20 sort of title, but he's an in-house
21 lawyer. It was him. And, additionally,
22 from a company perspective, Linklaters is
23 the P3 PLC's counsel reviewed it, but in
24 the main, the vast majority of the
25 comments came from Freshfields, who, as

1 A. Pyle

2 you know, were acting for Deutsche Bank
3 and Credit Suisse and obviously the bank
4 themselves.

5 Q. And for the reporting accounting
6 services, this is the engagement letter
7 that we should be focused on if we want to
8 focus on that particular part of the
9 engagement; is that right?

10 A. Yes, that's the only engagement
11 letter that there is.

12 Q. Just to complete the picture,
13 I'm going to actually give you two more
14 exhibits, 9 and 10.

15 A. Okay, yeah.

16 Q. And Exhibit 9 and 10, what are
17 they? What is Exhibit 9?

18 A. Okay. So Exhibit 9 is an
19 engagement letter in respect of a
20 relatively small part of the overall
21 reporting accountant work which deals with
22 a comfort letter that's issued under SAS
23 72, which is a U.S. auditing standard.
24 And you'll see it's on -- in a paragraph
25 on page 54 of 75, "Letters for

1 A. Pyle

2 underwriters and certain other requesting
3 parties," which is issued by the AICPA.
4 And effectively it is some agreed-upon
5 procedures that we -- we undertake as sort
6 of set out in this particular sort of
7 letter in relation to sale of securities
8 that are made outside of the USA. And we
9 give a comfort letter in respect of that.

10 Exhibit 10 is sort of exactly
11 the same work effectively, but the comfort
12 letter relates only to securities that are
13 sold in the USA. And typically these
14 letters are required by the investment
15 banks, where there is an offering to
16 investors in the U.S. under Rule 144-A of
17 one of the U.S. Securities Acts. It might
18 be the 1932 or '33 Act.

19 Q. Or '34?

20 A. Or '34, whatever, but, you
21 know --

22 Q. '32 was a slow year, I think.

23 A. And so these are -- once the
24 letters are sort of quite long and, in
25 many respects, very painful to negotiate

1 A. Pyle

2 and agree, they actually represent a very,
3 very small proportion of the total
4 reporting accountant work that's done.

5 Q. And as with Exhibit 8, these two
6 were not signed by P3 PLC?

7 A. No, they were in -- all of these
8 letters were in agreed form effectively at
9 the date that we issued them. And they
10 were sent for signature, but they were not
11 signed.

12 Q. Now, we had talked earlier in
13 the morning about -- you had explained
14 that, I should say, the -- why P3 PLC,
15 Deutsche Bank and Credit Suisse were all
16 parties to the engagement letter?

17 A. Yes.

18 Q. I just want to refer back to
19 that testimony.

20 Is there any limitation on
21 having additional parties be parties to
22 your engagement letter under UK listing
23 requirements?

24 A. UK listing requirements don't
25 really cover who we address the engagement

1 A. Pyle
2 letters to. They govern the form and
3 contents of the prospectus and they cover
4 the sponsor's sort of declaration. So
5 it's more about the obligations that
6 people have to fulfill. Market practice
7 in the UK is that -- excuse me -- the main
8 IPO letter effectively, which if there was
9 no 144-A issued, would be the only letter.

10 Q. And you're holding Exhibit 8
11 there?

12 A. Sorry, I'm holding up Exhibit 8.
13 Thank you.

14 It's addressed to the company
15 and Deutsche Bank and Credit Suisse are
16 the sponsors and book runners.

17 Q. Let's just stick with that. I'm
18 not worried about the other letters.

19 A. Okay.

20 Q. I want to just focus on -- I
21 want to just understand this.

22 Have you had situations, other
23 than the EuroLog IPO, where you were
24 looking for payment of your fees from
25 someone other than the party that engaged

1 A. Pyle

2 you?

3 A. No.

4 Q. So this is the first instance
5 that you can recall where you had an
6 expectation that someone other than, for
7 example, in this case, P3 PLC would be
8 making payment to you?

9 A. That's right, yeah.

10 Q. So then you wouldn't have
11 experience as to how you would reflect
12 that in the engagement letter?

13 A. You typically -- I mean, I've
14 had situations outside of IPOs where we've
15 done that. And so you wouldn't
16 necessarily reflect it in the engagement
17 letter. You might have a side letter.
18 You might not. It would depend upon the
19 nature of the relationship and the
20 specific circumstances of the transaction.

21 Q. Have you had occasion previously
22 to work on an IPO of a portfolio company
23 of an entity that's in bankruptcy?

24 A. No. To my knowledge, this was
25 the first London IPO of an entity where

1 A. Pyle

2 there was a lead in a U.S. bankruptcy
3 anyway.

4 Q. Have you had occasion to work on
5 IPOs of portfolio companies of other
6 investment managers?

7 A. Yes, from time to time.

8 Q. And how recently were those?

9 A. The last one that I can recall
10 was the IPO of a company called Jessops,
11 which used to operate sort of a -- it was
12 a retailer in the UK, but that was quite a
13 long time ago now, maybe not ten years,
14 but I would guess sort of back in 2005 or
15 2006. Since then, they haven't been owned
16 by investment manager. They've been part
17 of a corporate or standalone sort of
18 entity.

19 Q. In the Jessops situation, who
20 paid KPMG's fees to the extent that you
21 remember?

22 A. Jessops paid the fees.

23 Q. So in that instance the
24 investment manager didn't pay the fees?

25 A. No, the IPO completed and

1 A. Pyle

2 Jessops paid the fees.

3 Q. Can you recall any example of an
4 investment manager paying the fees for an
5 IPO of one of its portfolio companies?

6 A. Not in my experience, but it's
7 not -- it has -- you do often find that
8 the -- that an entity other than the
9 company that is subject to the transaction
10 will pay the fees.

11 Q. When you say you do often find
12 that, can you give me an example of that?

13 A. You may have -- you may be
14 working for a business that's about to be
15 sold and you're doing -- so I have an
16 example at the moment where we're working
17 for a business that's going to be sold but
18 not through an IPO and the parent company
19 is going to pay the fees, but in that
20 case, the engagement letters were the
21 parent company.

22 Q. Can you think of a single
23 example of a party, other than the party
24 on the engagement letter, paying the fees
25 where that was not reflected in the

1 A. Pyle

2 engagement letter?

3 A. I can't think of a specific
4 example, but I'm sure that -- I need to
5 give that a bit more thought. I'm sure
6 there has been. I don't think this is the
7 first time where this has been the case,
8 but a specific example doesn't come to
9 mind immediately. I haven't given it any
10 thought before this hearing.

11 Q. Is it something that you've seen
12 on multiple occasions in your career?

13 A. I don't recall.

14 Q. Prior to your being a partner,
15 would you have been familiar with
16 engagement letters that KPMG had signed?

17 A. Yes.

18 Q. Now, we talked earlier about the
19 term "co-investors." Is that familiar to
20 you?

21 A. Yes.

22 Q. And certain of these investments
23 had co-investors at various levels, right,
24 these investments being the EuroLog
25 assets?

1 A. Pyle

2 A. What do you mean by "levels"?

3 Q. Various percentages.

4 A. Proportions, yes.

5 Q. Proportions.

6 A. Yeah.

7 Q. Okay. Has KPMG sought payment
8 of fees from any of the co-investors in
9 any amount?

10 A. No, we have not.

11 Q. Have you considered that?

12 A. Not to date in the same way that
13 we haven't considered or taken any action
14 to recover the fees from Arcapita Limited
15 or PointPark.

16 Q. So the only party you've
17 considered pursuing fees from is Arcapita
18 Bank?

19 MR. O'CONNOR: Objection to
20 form.

21 A. All the discussions that we've
22 had on fees has been around Arcapita Bank
23 continuing to do what it has done in the
24 past and fund the non-debtors to pay fees.
25 So -- so we have only had discussions or

1 A. Pyle

2 only really considered following this sort
3 of -- this sort of route to date because
4 that's what -- that's what we've always
5 done.

6 Q. Now, the co-investors would
7 benefit from an IPO of the EuroLog assets,
8 correct?

9 A. They would depending upon the
10 values of the underlying sort of
11 investments that were -- that were there
12 and their sort of proportionate ownership
13 of it.

14 Q. Have you formed a view as to --
15 did you form any view as to the value of
16 the IPO or is that not part of --

17 A. That wasn't part of our
18 services.

19 Q. Do you have a view as to the
20 value of the assets that would have gone
21 through the IPO?

22 A. Well, there was a formal
23 valuation that was included in the
24 prospectus and the accounts on which we
25 were to sign an audit opinion contained a

1 A. Pyle

2 valuation of those assets. So in that
3 sense, yes, we had formed a view on the
4 assets that were coming over.

5 What we were not asked to do,
6 however, was look at the underlying --
7 sorry -- the value of the real estate less
8 any debt or other sort of financial
9 instruments that were in place in the
10 individual investment structures and form
11 a view as to the value to the owners of
12 those structures as to what they held. So
13 that we didn't do. That was something
14 which Arcapita sort of did.

15 Q. Are you aware of any
16 monetization events that are on the
17 horizon for the EuroLog IPO assets?

18 MR. O'CONNOR: Objection to
19 form.

20 A. What I'm aware of is that
21 Arcapita continues to explore sort of all
22 opportunities that it sort of can to think
23 about monetization fee of the assets. I
24 don't have any sort of knowledge of
25 specific opportunities that are being

1 A. Pyle

2 discussed today. We have not been asked
3 to do any work in relation to those -- you
4 know, any specific opportunity as it
5 stands today, but I don't really have any
6 knowledge as to, you know, as to what the
7 state of play is with regard to
8 monetization opportunities.

9 Q. Does KPMG typically give a
10 discount when IPOs are not completed?

11 A. No, as I said earlier, we are
12 prohibited under something called The
13 Ethical Standards for Reporting
14 Accountants from giving any formal fee
15 arrangement that is contingent upon the
16 outcome of the IPO. We're putting a
17 public report in the prospectus to the
18 investors that the financial statements,
19 the accounts, give a true and fair view.
20 And the relevant guidelines say it is
21 inappropriate for us to have any form of
22 our fees linked to the outcome of the
23 transaction because the investors would
24 perceive that to -- to impair our
25 independence to do the work that we do.

1 A. Pyle

2 Q. But leaving aside -- have you
3 ever seen an instance where KPMG has
4 agreed to reduce its fees because an IPO
5 did not complete?

6 A. Okay. Normally what happens is
7 that we receive -- we bill and receive
8 stage payments sort of through the course
9 of our work. And at the end of an IPO, we
10 will look at what we have in terms of
11 unbilled time and expenses and we will
12 then negotiate on both the successful IPO
13 and both an unsuccessful IPO, if you like,
14 what amount of those unbilled fees should
15 actually be paid.

16 I've gone over probably about
17 four or five examples other than the
18 EuroLog IPO and looked at what had
19 happened and is there any sort of practice
20 in our experience as to, is there a
21 consistently higher discount in a
22 non-successful IPO. And -- and the honest
23 position is the variations in discounts
24 tend to be in -- are not correlated with
25 whether the IPO concluded all the way

1 A. Pyle

2 through or whether it didn't complete.

3 There will be other specific
4 factors that will drive that. And in all
5 of those cases, the level of discounts
6 against our standard scale rates that is
7 here, which is, I think we quote about 47
8 percent of standard scale is significantly
9 higher than these other -- and these are
10 other large IPOs that have taken place or
11 we've worked on in, say, the last 12 to 18
12 months. And they typically had a discount
13 rate of -- in the range of 30 to 40
14 percent off of the standard scale, but in
15 some cases the discount was -- was lower
16 than that. It was maybe in the sort of
17 mid to high 20s. And actually some of the
18 ones with the lowest discounts were IPOs
19 that hadn't completed. So our experience
20 is that we generally don't give bigger
21 discounts on -- on an -- on a
22 non-completed IPO and that the level of
23 discount that's here is actually higher
24 than any of the other ones that we've sort
25 of given and worked on, major IPOs where

1 A. Pyle

2 say our fees were above a million -- a
3 million Euros over the last sort of 12 to
4 18 months.

5 Q. Why don't we look at your chart.

6 (Exhibit Pyle 11, Document
7 entitled project Castle - Fee Overview
8 and Discounts, marked for
9 identification.)

10 Q. The court reporter has handed
11 you what's been marked as Exhibit 11. And
12 this, again, was taken right from your
13 declaration, page 75 of 75.

14 Do you recognize this?

15 A. Yes, I do.

16 Q. And what is it?

17 A. It's a schedule entitled Project
18 Castle - Fee Overview and Discounts, and
19 it effectively bridges between The Full
20 Costs Act, the applicable scale rates,
21 which is in sort of the left-hand -- or
22 the left-hand column of numbers called
23 full costs. And it bridges from that,
24 those numbers through to effectively the
25 fee numbers which are on the lead sheet of

1 A. Pyle

2 Pyle Exhibit 3.

3 Q. And the full costs, those are
4 based on the full rate, for example, your
5 908 pound Sterling?

6 A. Yes, that's right.

7 Q. And then the standard 20 percent
8 discount, what does that reflect?

9 A. So previous engagements that
10 we've worked on with Arcapita, we had
11 given them a 20 percent discount off
12 scale. The next column is an additional
13 10 percent discount, which we agreed to
14 give them on this engagement in respect of
15 certain -- certain parts of the work.

16 Q. Okay. And I want to just make
17 sure I understand. The 20 percent
18 discount that you -- that's reflected in
19 the second column there, that's -- that's
20 something that you would have given even
21 if the IPO had completed, whether it
22 completed or not, correct?

23 A. Yeah, I mean, we have a fee
24 arrangement here that was based on a flat
25 fee that is independent of whether the IPO

1 A. Pyle

2 is completed or not. In situations other
3 than IPOs where we are not allowed to give
4 a sort of contingent fee, then our
5 approach is to quote a base fee and then
6 apply a success premium and then a further
7 discount on an aborted transaction. We
8 don't have that here because we're not
9 allowed to do it.

10 Q. In other instances where you are
11 allowed to provide a discount on an
12 aborted transaction, what is the typical
13 discount you would give for an aborted
14 transaction?

15 A. There's a maximum discount that
16 The Institute of Chartered Accountants in
17 England and Wales, which is sort of our
18 regulatory body, says that we should give
19 and that's -- that's of the order of 25
20 percent -- a 25 percent reduction.

21 Q. Okay. Now, you had agreed at
22 the time of the engagement to a
23 substantial discount from your standard
24 rates, correct?

25 A. Yes.

1 A. Pyle

2 Q. And that's reflected in the 20
3 percent, plus the 10 percent?

4 A. Yeah, that's right.

5 Q. So those two discounts reflect
6 the fact that -- those are engagement --
7 I'm sorry. Those are discounts that you
8 gave at the commencement of the
9 engagement?

10 A. Yes.

11 Q. What is the column "no fee
12 inflation"?

13 A. So we originally quoted for the
14 other reporting accountant work back in or
15 around August 2011, but we didn't commence
16 the work until April 2012. So we went
17 through a further iteration of fee
18 proposals and effectively our scale rates
19 had increased between August 2011 when we
20 quoted the work and April 2012. And we
21 agreed that we would not pass that scale
22 rate increase through.

23 Q. So 908 pounds Sterling is less
24 than your scale rate for 2012?

25 A. I'd need to just double check

1 A. Pyle

2 the way that the schedule sort of work.
3 Though my recollection is that, yes,
4 that's right, 908 reflects the engagement
5 rate.

6 Q. What is your scale rate today?

7 A. It's in the region of 960
8 pounds. Sorry, but just to clarify, and
9 there's a differential between a greater
10 than five-year partner and a less than
11 five-year partner. And I think when we
12 gave these sort of quotes out, I would
13 have been in the less than five-year. And
14 the less-than-five-year number is of the
15 order of 920, 930.

16 Q. But we looked earlier at Exhibit
17 3, that had the spreadsheet with the
18 backup material --

19 A. Yes.

20 Q. -- that reflected 908, right?

21 A. Yes, it did.

22 Q. Now, the next column is "cost
23 overruns not reported." What is that?

24 A. Okay. So it varies. It varies
25 sort of case by case, but in a number of

1 A. Pyle

2 areas, we have done -- we'd spent
3 significantly more time than was built
4 into a budget that we had established at
5 the beginning. And in some instances, we
6 had agreed to effectively sort of cap
7 certain sort of elements of the fees. So
8 you'll see that there are negative numbers
9 in respect of virtually all of the
10 audit-related -- related numbers. In
11 other cases there are positive numbers
12 where we had effectively incurred
13 additional costs and where the estimates
14 were -- the fees were not on the basis of
15 the effectively fixed fee.

16 Q. What's the next column "audit
17 versus TS rates"?

18 A. Normal practice on an IPO is for
19 any -- is for audit work to be done at
20 transaction services rates or TS. In this
21 particular case, we -- we agreed to do the
22 audit work at audit rates and so that's
23 that additional discount column.

24 Q. Okay. So 1.312 million Euro
25 reflects the fact that you'd agreed to

1 A. Pyle

2 charge auditors at auditors' rates rather
3 than at TS rates?

4 A. No, we charge -- we charge --
5 because of the higher risk associated with
6 giving an opinion in a published
7 prospectus on which investors are making
8 investment decisions, standard practice is
9 for us to charge audit -- the work that is
10 done by auditors on arriving at an audit
11 opinion for the prospectus at transaction
12 services rates because the risk is very
13 significantly higher for us. And in the
14 case here, we -- we agree -- in agreeing
15 fees with Arcapita Limited and PointPark
16 SRO, we agreed that we would do the audit
17 work at -- at the normal audit rates
18 rather than seeking a premium.

19 Q. And is that agreement reflected
20 in any of the documents?

21 A. There were some proposal
22 documents that set out fee arrangements
23 and it was sort of stated -- it was stated
24 in those. I don't think that they've -- I
25 don't think that you have those, but it's

1 A. Pyle

2 not stated in the engagement letter, but
3 it was kind of understood by everybody
4 that that was the case.

5 Q. Okay. And that was something
6 though that was agreed at the beginning of
7 the engagement?

8 A. At the time that we quoted for
9 the relevant bit of -- the relevant bit of
10 the work, yeah.

11 Q. So the three biggest columns of
12 discounts are the standard 20 percent, the
13 additional 10 percent --

14 A. Yeah.

15 Q. -- and the audit versus TS
16 rates, right?

17 A. Yeah.

18 Q. And, in fact, the cost overruns
19 not reported, that's actually not a
20 discount, that's an additive; it's a
21 negative number?

22 A. Negative, yes, but, actually, it
23 may have been more helpful to put that in
24 two different columns that reflected the
25 two things but, you know, because that's

1 A. Pyle

2 really just showing -- yeah, that's sort
3 of showing the differences effectively.

4 Q. But if I totaled those three
5 columns up, standard 20 percent,
6 additional 10 percent, audit versus TS
7 rate, that effectively gets me almost all
8 the way to the total discount?

9 A. Yeah, it does.

10 Q. And so that total discount, that
11 was agreed prior to the engagement or at
12 the time that you began the engagement?

13 A. Those three line items were
14 agreed up -- up front.

15 Q. And if the IPO had been
16 completed, you had already agreed to give
17 all of the discounts that are reflected in
18 those three columns?

19 A. That's correct.

20 Q. And so this is not a situation
21 where you looked at the final set of fees
22 and made some adjustment because the IPO
23 didn't complete; is that right?

24 A. We looked at the fees and the
25 total level of discounts. As I said, we

1 A. Pyle

2 regard the level of discount that we've
3 given here as very high in relation to
4 other major IPO work that we have done
5 both completed and non-completed IPOs.
6 Therefore, our -- our belief based on the
7 other engagements that we've looked at is
8 that this is already a below-market fee
9 level and we do not see why there should
10 be a further discount when on both
11 completed and non-completed IPOs, that the
12 discount levels might be 20 percentage
13 points lower than this.

14 Q. And part of the discount that
15 you're factoring into there are discounts
16 with respect to monies you've already been
17 paid, right?

18 A. That's the way that the schedule
19 works, yes.

20 Q. And, in fact, the discount rates
21 for the monies you've already been paid
22 appear, at least just in terms of numbers,
23 to be higher than the discount rates
24 applicable to amounts that you have yet
25 been paid, right?

1 A. Pyle

2 A. I think without getting a my
3 calculator out, it's probably not worth me
4 commenting on that without just checking
5 and running the numbers through.

6 Q. The highest discounts that were
7 given were 66 percent, 63 percent and 62
8 percent, all of which were associated with
9 amounts that have already been paid?

10 A. In percentage terms, that is
11 correct, but, you know, you've also got a
12 61 percent in the bottom and you have
13 got -- you know, there's going to be a mix
14 effect because some of the bigger work
15 streams are sort of further down on the
16 completed sort of post petition.

17 Q. And the biggest work stream post
18 petition was other reporting accountant
19 work and that was discounted at 34
20 percent?

21 A. 34 percent, that's correct.

22 Q. And, in fact, in the amounts
23 that were already paid, the 20 percent
24 discount, that's the lowest discount on
25 any item, that only is associated with the

1 A. Pyle

2 \$71,000 in fees?

3 A. That's correct.

4 MR. O'CONNOR: Euros.

5 A. All of this is Euro.

6 MR. LEBLANC: I apologize.

7 Q. Okay, but just so I'm very clear
8 about this, the amount that you're asking
9 to have Arcapita Bank fund to pay KPMG is
10 exactly the amount that KPMG would have
11 been paid if the IPO had completed?

12 A. Yes, because we do not have --
13 we did not have a fee structure and we're
14 not permitted to have a fee structure that
15 varies with the outcome of the IPO.

16 Q. Right. And KPMG is not
17 proposing any discount off of what its
18 fees would be if the IPO were completed to
19 have Arcapita Bank make the payment
20 necessary to fund those fees?

21 A. No, we are not. Partly because
22 there are other costs that we, you know,
23 we talked about the other costs that we
24 may seek to recover in the event that we
25 are not successful through this route.

1 A. Pyle

2 Q. And those costs you can't tell
3 me how much they are?

4 A. No, but there's -- no, because
5 we haven't considered that yet.

6 Q. Okay. Have you looked at what
7 rates your partners are charging the U.S.
8 estates, the ones that are retained here?

9 A. No, I haven't.

10 Q. Do you have any sense of what
11 they are?

12 A. No, I don't.

13 Q. Would you be surprised if they
14 were charging at rates significantly below
15 the 908 pound Sterling?

16 A. I have no expectation for what
17 the rates would be.

18 Q. Do you know Douglas McPhee?

19 A. Yes, I do.

20 Q. What about Garreth Williams?

21 A. I don't think I know Garreth.

22 Q. David Fletcher?

23 A. I do know David.

24 Q. Jonathan White?

25 A. Yes, I know Jonathan.

1 A. Pyle

2 Q. Are those all senior partners in
3 KPMG UK?

4 A. Douglas and David Fletcher are
5 relatively senior. Jonathan White has
6 been a partner for a year or two less than
7 me.

8 Q. And would it surprise you if
9 they were billing at a rate of \$908 U.S.
10 for work to the U.S. estates?

11 A. Well, is that the number, I
12 perceive; is that the number they are
13 billing at?

14 Q. I'll represent to you that it is
15 the rate.

16 A. Just to be clear, you've talked
17 a lot about 908 pounds per hour. That, of
18 course, is the full scale rate and not the
19 rate that would actually be billed at. So
20 if we were to just sort of run through
21 that and say, let's forget the further
22 discounts and sort of things like that,
23 but if you were to take a 30 percent
24 discount against the 908, then you're
25 going to get to roughly to 600 pounds. I

1 A. Pyle

2 think that you said that the U.S. dollar
3 closed at 1.49 as of last night. So
4 that's going to take you back up to about
5 \$900 an hour. What rate did you say they
6 were charging?

7 Q. 950.

8 A. So we're cheaper.

9 Q. And that's, again, without
10 applying any discount for the fact that
11 the IPO failed; is that right?

12 A. Exactly because as I've said
13 before more than once, we're not allowed
14 to do that and we are cheaper --

15 Q. And do your UK partners charge
16 higher rates than your U.S. partners?

17 A. All of those partners that you
18 just mentioned with the exception of
19 Garreth Williams, who I don't know, they
20 are all partners of the UK firm.

21 Q. My question was, do the UK
22 partners charge higher rates than the U.S.
23 partners?

24 A. I don't know the details. I
25 believe so, but I don't know the details.

1 A. Pyle

2 Q. Are you familiar with Mary
3 Grande, G-r-a-n-d-e?

4 A. No.

5 Q. We talked earlier, I think you
6 mentioned that your expectation would be
7 that tax advice would be charged at a
8 higher hourly rate?

9 A. For the services that we have
10 billed here, the tax charge-out rates are
11 a little bit higher than the TS charge-out
12 rates that you've seen. And for
13 transaction-based tax work in the UK, the
14 scale rates are -- are higher than the TS
15 rates, but I have no knowledge about what
16 U.S. tax rates would be relative to other
17 scale rates in the U.S.

18 Q. Now, are you a -- KPMG is
19 structured -- are you a partner only of
20 the UK?

21 A. Yeah. So KPMG, I think it says
22 either in the declaration or the motion,
23 we're organized as a -- as a series of
24 national partnerships or corporations,
25 which all have membership of a Swiss

1 A. Pyle
2 cooperative, which is called KPMG
3 International. So I am a partner in KPMG
4 LLP in the UK. And I am not a partner of
5 KPMG, also called KPMG LLP in the U.S.

6 Q. Would it surprise you if a
7 partner in the KPMG U.S. entity were
8 charging an hourly rate of \$665 an hour?

9 A. Not necessarily. It would
10 depend upon what they were doing, where
11 they were, the nature of the services,
12 et cetera, et cetera.

13 Q. The EuroLog IPO was unique; is
14 that fair?

15 A. Yes, in my opinion and
16 experience.

17 Q. And it required an extraordinary
18 amount of work?

19 A. Yes.

20 Q. It was not an ordinary IPO; is
21 that fair?

22 A. Yes.

23 Q. I think you've even used the
24 line that, "The services KPMG performed
25 far exceeded those required for a typical

1 A. Pyle

2 IPO," correct?

3 A. Yes.

4 Q. Now, has KPMG ever filed a
5 bankruptcy action against a client?

6 MR. O'CONNOR: Objection to
7 form.

8 A. A bankruptcy action?

9 Q. Sure.

10 Has KPMG ever put a client of
11 it -- filed an involuntary bankruptcy
12 petition against a client?

13 MR. O'CONNOR: KPMG UK or what
14 entity?

15 Q. To the best of your knowledge,
16 has KPMG ever filed an involuntary
17 petition or put into administration or
18 sought administration against any of its
19 clients?

20 MR. O'CONNOR: I'm assuming
21 that's KPMG UK?

22 Q. It started with bankruptcy. I
23 just want to know anywhere, to the best of
24 your knowledge.

25 A. So, firstly, I have no knowledge

1 A. Pyle

2 about what any KPMG member firm outside of
3 the UK would have done.

4 Q. Okay.

5 A. Okay. With regard to KPMG UK,
6 we have done -- we have served proceedings
7 on clients with respect to recovery of
8 fees. It does not happen very often, but
9 it is something that we -- we do when we
10 feel as though it is in our best
11 commercial interest to do so.

12 Q. How many instances do you know
13 of where KPMG has served proceedings on
14 its clients?

15 A. Well, I have no knowledge as to
16 the number of times that KPMG, as a whole,
17 recognizing that there are 550 partners in
18 the UK and sort of about 12,000 people. I
19 have not personally been in the situation
20 in my career where I have had to sue a
21 client for fees. And I would like to
22 finish my career without having to sue a
23 client for payment of our fees, but I have
24 no problem with doing that if I judge it
25 to be in KPMG's best commercial interests.

1 A. Pyle

2 Q. To the best of your knowledge,
3 has anyone in transition services sued a
4 client to recover fees?

5 A. I don't have any knowledge to be
6 able to comment on that.

7 Q. And can you give me any example
8 of which you are aware in which KPMG has
9 served proceedings against a client?

10 A. Not without breaching client
11 confidentiality undertakings, which I
12 would not do.

13 Q. Even where the proceedings have
14 been commenced?

15 A. I don't have a specific name in
16 my head, but even if I did, I think it
17 would be subject to confidentiality
18 requirements generally, so...

19 Q. Okay. Has KPMG told P3 that it
20 will commence an administration action
21 against it?

22 A. No, we haven't. We -- we have
23 had discussions with -- with Arcapita
24 that -- that, you know, we would -- that
25 that may be a direction that we would need

1 A. Pyle

2 to go in.

3 Q. When did you have those
4 discussions?

5 A. Relatively recently.

6 Q. With whom?

7 A. Karim Si-Ahmed.

8 Q. When?

9 A. In the last few days.

10 Q. So this was after the motion was
11 filed?

12 A. When was the motion filed?

13 Yeah, it would have been. It would have
14 been.

15 Q. And was it after the Committee's
16 -- have you seen the Committee's response
17 to the motion?

18 A. Yes.

19 Q. And was it after the Committee's
20 response to the motion?

21 A. That was last Friday; wasn't it?
22 Yes, it probably was in the last couple of
23 days.

24 Q. And you're aware that the
25 Committee -- one of the points that the

1 A. Pyle

2 Committee made was that there was no
3 showing that anyone was intending to put
4 these entities into administration; is
5 that right?

6 A. Yeah, I mean, as I said, we
7 agreed with Arcapita that we would go down
8 this route. We -- we also agreed with
9 them that because of the potential damage
10 that it would cause to Arcapita and
11 PointPark SRO including the fact that it
12 could significantly impair a potential
13 monetization event, we agreed with them
14 that it would not be appropriate to take
15 any sort of steps that would be sort of
16 public, if you like, until such point as
17 this process has unfolded and concluded.

18 If we're in the position where
19 the court does not sort of find in our
20 favor, then we would obviously consider
21 what options we actually have and will
22 then take a decision as to how we go
23 forward.

24 Q. How would -- you mentioned in
25 the last answer that it could

1 A. Pyle
2 significantly impair the monetization
3 events.

4 How would any such action
5 significantly impair potential
6 monetization events?

7 A. Well, I think there are a number
8 of things that could happen. Firstly, if
9 there was to be a monetization event, then
10 P3 and Arcapita would need KPMG to be
11 fully cooperative and to undertake some
12 further work in order to help realize the
13 event.

14 If we're in a situation where
15 we're having to take action against them
16 for nonpayment of fees, then our
17 willingness to do any further work to
18 actually help them get through that sort
19 of sale event is going to be pretty
20 limited. And so they may find it very,
21 very difficult to consummate a transaction
22 without the help of -- of the
23 professionals like ourselves, if we're in
24 a position where we are effectively in a
25 standoff about -- about sort of fees.

1 A. Pyle

2 We may, of course, be able to
3 cut through that depending upon, you know,
4 the circumstances at the time and the
5 relationship that we have, but that would
6 be one example.

7 Q. Just so I'm clear, though, your
8 expectation was that, at least over the
9 last year, that you would have been paid
10 upon a monetization event, correct?

11 A. No. Our expectation was that we
12 would get paid either by P3 PLC on a
13 monetization event or -- sorry -- strike
14 that.

15 Our expectation was that when we
16 started the work on the IPO, we would be
17 paid periodically through the process by
18 P3 or Arcapita Limited funded by Arcapita
19 Bahrain and that on completion of the IPO
20 or a monetization event, Arcapita Bahrain
21 would effectively be made whole for the
22 costs that it had funded and that if we
23 have any remaining outstanding unbilled
24 fees at the date of the monetization
25 event, that some of those costs -- that

1 A. Pyle
2 those costs would then be paid effectively
3 at that point in time.

4 Q. So that was your expectation,
5 but that periodic payment hasn't happened
6 other than the \$500,000 that you just
7 referenced?

8 A. No, that's not right you see
9 because, of course, we did some work over,
10 you know, over 2011 and that work was paid
11 in sort of February 2012. So, I
12 appreciate you're looking at kind of post
13 petition very specifically. We look at
14 this as kind of a project that started for
15 us, you know, back in kind of spring of
16 2011 and finished in sort of October 2012.
17 And over the course of the project as a
18 whole, we were being paid. Where things
19 stopped was effectively in -- you know, we
20 were expecting some payments in July 2012
21 and, you know, that was the point at which
22 the Committee sort of objected to -- to
23 Arcapita funding -- funding payment and,
24 you know, at that point we had done a lot
25 of the work, but actually we'd been paid

1 A. Pyle
2 for a fair bit of that work at the point
3 that we had done it.

4 Q. Since July of last year, you
5 have not been paid; your expectation was
6 that you would be paid upon a monetization
7 event, or failing a monetization event,
8 that you would seek payment from --
9 through an Arcapita Bank funding; is that
10 fair?

11 A. That was the expectation that we
12 had based on the conversations that we had
13 with Arcapita, sort of post, if you like,
14 the Linklaters' fee order being done.

15 Q. Just so I'm clear about it, is
16 it your testimony that if there were a
17 monetization event on the horizon, you'd
18 be less willing to work unless you were
19 paid your fees; is that what I understand?

20 A. We would -- so if there's a
21 monetization event and we're asked to do
22 more work and we haven't been paid,
23 we're -- for the work that we've done to
24 date, then given -- given where we are
25 now, in the situation where the court

1 A. Pyle

2 decides in the Committee's favor and we
3 are not paid, we're going to think pretty
4 carefully before doing anything else in
5 respect of any of the EuroLog assets
6 before we sort of -- before we pick up our
7 pens again. We'd be nuts not to do that.

8 Q. That was the first way that it
9 would impair a monetization event. And I
10 stopped you to get some more detail on
11 that, but was there another way?

12 A. I guess, secondly, you'd have a
13 situation where, if it became publically
14 known that an action was being taken
15 against Arcapita Limited or PointPark SRO,
16 you know, all of the stakeholders and
17 other creditors and people that trade with
18 those businesses today will obviously be
19 aware of the fact that the parent is in
20 Chapter 11. And so there's -- I think
21 there's a risk that if any action that was
22 taken by some creditors against those
23 organizations became public, that you
24 could get a domino effect and you'd have a
25 whole bunch of other people, which would

1 A. Pyle

2 decide that they would soon cease to
3 trade. And P3 -- I mean, both Arcapita
4 Limited in terms of its employees and P3
5 are, in my opinion, very important if not
6 critical to the value of the EuroLog
7 assets because the level of knowledge that
8 exists within those organizations and the
9 people in those organizations about these
10 assets, the tenants, the strategy for, you
11 know, enhancing value is very significant.
12 And, you know, again, in my opinion, the
13 value of selling the individual assets
14 without the management company with all of
15 the knowledge would be. Less so there's a
16 marriage value here and a value to the
17 management company. And I think if that
18 management company was either in or at
19 significant risk of bankruptcy
20 proceedings, then if I put myself in the
21 shoes of advising a buyer, which is what I
22 do, you know, in a large part of my work,
23 you know, you would be very nervous about
24 that situation as a buyer and you'd want
25 to get -- you'd want to get the situation

1 A. Pyle
2 resolved, if it's at all possible. So
3 that would be another way.

4 Q. And do you expect that the
5 overall package of the EuroLog assets
6 would sell for greater than 11 million
7 Euro?

8 A. I don't know where you get the
9 11 million Euro number.

10 My understanding is that there
11 were terms that our Arcapita had told the
12 Committee it expected to get based on my
13 clear pricing was significantly north of
14 11 million Euros, but I don't know the
15 precise number and how that would split
16 between Arcapita and its investors.

17 Q. Let me just -- what I'm trying
18 to understand is, if you were advising
19 this buyer and the risk of bankruptcy to
20 Arcapita Limited was because it owed KPMG
21 2 million Euro and the buyer was paying
22 more than 2 million Euro, you would expect
23 that would be a way to resolve the issue,
24 correct?

25 A. Well, it would be but, of

1 A. Pyle

2 course, bear in mind that the buyer won't
3 be paying the entities that we'd be taking
4 action against the money.

5 Q. It would be buying the entities
6 that have the enterprise value, correct?

7 A. Yes, that's right. So, again,
8 it comes back to the statement in the
9 motion about needing to come to an
10 agreement that links the asset-owning
11 vehicles with effectively the management
12 companies to be able to do that.

13 Q. And so if, for example, P3 PLC
14 entered into a reimbursement agreement
15 with the entities that owned the assets so
16 that they would get reimbursed for the
17 fees that they've incurred for the sale
18 process, that would be a way to resolve
19 that issue?

20 A. Potentially, but, of course,
21 that would have to happen, you know, at an
22 appropriate sort of point. So, you know,
23 we would need to see -- we'd need to look
24 at -- there are probably a whole bunch of
25 different ways that you could resolve a

1 A. Pyle

2 situation and get us sort of -- get us
3 comfortable with things, but, you know,
4 until we know what the specific fact
5 pattern would be, you know, we're not
6 going to sort of -- we're not going to
7 give any form of sort of undertaking that
8 everything would be okay and we're
9 obviously going to reserve our rights.

10 Q. Okay. And I just wanted to --
11 the management services that are provided
12 by P3, those management services could be
13 provided by a different manager; is that
14 right?

15 A. I don't think they could be
16 provided by another manager to the same
17 sort of quality, and -- as P3 is currently
18 doing. Because in some cases these -- the
19 assets that are there were built by P3.
20 So they -- and in other cases, they've
21 managed them for a number of years. So
22 the level of institution and knowledge
23 about the assets is very high, and it
24 would take anybody else, you know, a
25 significant period of time to get up the

1 A. Pyle

2 learning curve with regard to, you know,
3 those particular sort of assets.

4 So while they might be capable
5 of being replaced, I think, you know, our
6 opinion is that there would be an impact
7 on -- on the assets if P3 were not there
8 to manage them.

9 Q. What impact? Can you quantify
10 it?

11 A. It's difficult to quantify, but
12 you know, there's -- the portfolio has
13 got -- and it varies asset by asset, but,
14 you know, each one of these buildings,
15 you've got a relationship with the tenant
16 so an understanding as to the likelihood
17 of the tenant renewing or not renewing its
18 lease. So what you would see is if there
19 would be a greater chance of a tenant's
20 leaving. There would be, I think, a
21 slowdown in the rates at which the vacant
22 space would be -- would be leased up, and
23 I think that would have a negative impact
24 on the value of the assets. Quantifying
25 it is pretty difficult considering it's a

1 A. Pyle
2 hypothetical question, but, you know, it
3 wouldn't be a positive. It would be
4 negative, and that would just be a
5 question of degree.

6 Q. And the relationship you're
7 talking about, those are between human
8 beings, right, people, and the knowledge
9 is the manager of a particular facility?

10 A. Yeah, well, you've got -- but
11 not just one person, you know. You've got
12 multiple individuals in P3. I think that
13 now we've got about 50 or so people in the
14 organization, most of whom are involved in
15 something that touches these assets sort
16 of one way or the other. So you've got
17 quite a lot of institutional experience
18 that you'd have to go and replace. It's
19 not an impossible job, but, you know, it's
20 not something that you can just click your
21 fingers and hope that it's all going to be
22 fine.

23 Q. Well, but if these individuals,
24 they are individuals, they could choose to
25 go work for someone different, including a

1 A. Pyle

2 new management company, right?

3 A. Potentially. But then if
4 they've got restrictive covenants, which,
5 you know, you often find that you've got
6 key men and women sort of requirements in
7 people's contracts. So I wouldn't like to
8 sort of speculate on whether or not what
9 you've just outlined is how easy that
10 could be achieved. And bear in mind as
11 well that all of these people are
12 employees in jurisdictions in -- in kind
13 of Europe where, you know, the labor laws
14 and the restrictions that you have as an
15 employer are off the scale compared to
16 what you would see in the U.S.

17 Q. Have you looked at the negative
18 restrictions or the restricted
19 covenants --

20 A. No, I have not had any need to
21 do that.

22 Q. Do you believe that KPMG's
23 ability to collect the 2.1 million Euro,
24 it said it's owed, would be enhanced if it
25 put P3 into administration?

1 A. Pyle

2 A. Haven't looked -- haven't looked
3 at it, but, yeah -- haven't looked at it.
4 We would have to think very, very
5 carefully about what we do.

6 Q. Well, do you think that would be
7 a positive effect on your ability to
8 recover?

9 A. It would -- it may not be, but
10 it may be something which we have to
11 consider -- consider doing. If depending
12 upon the alternatives available to us.
13 So...

14 Q. So the entity -- you have the
15 entities that actually own the assets and
16 then you have the management company?

17 A. Yes.

18 Q. When you said earlier it would
19 clearly be a negative effect that you
20 haven't quantified it if something
21 happened to P3, it would clearly be a
22 negative effect on P3, right?

23 A. And I think it would be a
24 negative impact on the value of the asset
25 companies as well.

1 A. Pyle

2 Q. But the most direct impact would
3 be the impact on P3, correct?

4 A. Well, in the sense that that
5 organization would be -- would then be in
6 some form of insolvency proceedings under
7 local law, yes.

8 Q. And that's the entity -- you
9 have no agreement with the underlying
10 asset holders within the EuroLog entity
11 for payment of your fees; is that right?

12 MR. O'CONNOR: Objection to
13 form.

14 A. Sorry. Just sort of --

15 Q. The entities that hold the
16 underlying assets, the real estate, you
17 don't have any agreement with those
18 entities to pay fees --

19 MR. O'CONNOR: Objection to
20 form.

21 Q. -- to KPMG?

22 A. So KPMG doesn't have any form of
23 contractual relationship with the asset --
24 of the asset owning entities other than in
25 some cases we are providing services

1 A. Pyle
2 directly to them in terms of audit or tax.

3 Q. And those services you just
4 described in your answer, those are not
5 services for which you're seeking funding
6 from Arcapita Bank?

7 A. No, they are just separate
8 services we would be providing any way in
9 the normal course.

10 MR. LEBLANC: Can we take a
11 three-minute break?

12 (Whereupon, a brief recess is
13 taken.)

14 MR. LEBLANC: I have no further
15 questions.

16 (Time noted: 2:33 p.m.)

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A. Pyle

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CERTIFICATION

I, DANA N. SREBRENICK, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness, ANDY PYLE, MA ACA,
whose testimony as herein set forth, was
duly sworn by me; and that the within
transcript is a true record of the
testimony given by said 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 13th day of March 2013.

DANA N. SREBRENICK, CRR, CLR

* * *

1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

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18 Page _____ Line _____ Reason _____

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