

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 12-11076-SHL

4 Adversary No. 13-01355-SHL

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6 In the Matter of:

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

9 Debtors,

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11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, New York 10004

15

16 July 18, 2013

17 11:00 AM

18

19 B E F O R E:

20 HON. SEAN H. LANE

21 U.S. BANKRUPTCY JUDGE

22

23

24

25 ECRO: Amanda

1 HEARING re #872 (Scheduling Conference) Motion to Authorize  
2 Debtors' Motion for Order Confirming the Debtors' Authority to  
3 Fund Non-Debtor Eurolog Affiliates.

4

5 HEARING re Doc. #1305 Motion for Order Modifying The Automatic  
6 Stay.

7

8 HEARING re Doc. #1049 (FIRST) Motion for Omnibus Objection to  
9 Claim(s) - Debtors' First Omnibus Objection to Claims.

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11 HEARING re Doc. #1050 (SECOND) Motion for Omnibus Objection to  
12 Claim(s) - Debtors' Second Omnibus Objection to Claims.

13

14 HEARING re Doc. #1051 (THIRD) Motion for Omnibus Objection to  
15 Claim(s) - Debtors' Third Omnibus Objection to Claims.

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17 HEARING re Adversary Proceeding 13-01355 Tide Natural Gas  
18 Storage I, LP et al. v. Hopper Claimants.

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25 Transcribed by: Mary Zajackowski

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning. Please be seated. First, my apologies and my appreciation for your patience with scheduling this morning. I spent a considerable amount of extra time on the Metro North train this morning, it had to be towed into Grand Central and so I appreciate your efforts and your patience for today's hearing. So with that said.

MR. MILLET: Good morning, Your Honor.

THE COURT: Good morning.

MR. MILLET: Gibson Dunn & Crutcher by Craig Millet. I'm joined by Josh Weisser on behalf of the Arcapita Bank and Related Debtors. Would the Court like to get appearances before we proceed?

THE COURT: Yes, please.

MR. FLECK: Good morning, Your Honor, Evan Fleck of Milbank Tweed Hadley & McCloy. I'm joined by Nick Kamphaus, my colleague. We're here on behalf of the Official Committee of Unsecured Creditors.

THE COURT: All right, is there anybody else who anticipates speaking at the hearing and if so, let me get those appearances now as well.

MS. FELDSHER: Your Honor, Jennifer Feldsher from Bracewell & Giuliani on behalf of the Tide Parties. Your Honor, on the phone is Mr. Wood. We cleared his being on by

1 live phone with you, and Edmund Robb if there are questions on  
2 the District Court action. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. RECKMEYER: Good morning, Your Honor, Jeremy  
5 Reckmeyer of Andrews Kurth on behalf of the Hopper parties.

6 THE COURT: All right, good morning.

7 MR. STUART: Good morning, Your Honor, Walter Stuart  
8 with Abbey Walsh representing Freshfields, our firm, which is  
9 the claimant here.

10 THE COURT: All right thank you; good morning.

11 MR. HESSLER: Good morning, Your Honor, Paul Hessler  
12 of Linklaters LLP on behalf of Linklaters. I don't expect I'll  
13 have to say much, if anything, but I thought out of an  
14 abundance of caution I'd make an appearance.

15 THE COURT: Fair enough; thank you. All right,  
16 anyone else? And you can just grab any microphone, that's  
17 fine; the closest one.

18 MR. McGRATH: Sean McGrath on behalf of the Captain  
19 Hani Alsohaibi. I don't expect I'll have to say anything  
20 either, but I just wanted to -- thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. SIMON: And, Your Honor, on the telephone Daniel  
23 Simon from DLA Piper on behalf of National Bank of Bahrain.

24 THE COURT: All right good morning to you all.

25 MR. MILLET: Thank you, Your Honor, again Craig

1 Millet for the Debtors. In the interest of brevity, I'm going  
2 to dispense with any sort of long introduction or status report  
3 except to assure the Court we're working very hard to get to an  
4 effective date. There's an enormous amount of documentation  
5 and approvals that have to be obtained, and we're trying to get  
6 that done. Right now, I think the projected effective date is  
7 August 15, but if we can do it sooner, we're certainly going to  
8 do that. So those matters are ongoing.

9 With respect to today, we have a handful of matters  
10 before the Court, which I don't think will take too long to  
11 resolve. If it please the Court, I thought I might first  
12 address the Eurolog Funding Motion, then the GPZ matter, the  
13 motion relief from stay, claims objections, the budget, and  
14 then finally the pretrial conference the Tide vs. Hopper case,  
15 and it can be dealt with by those parties if that is acceptable  
16 to the Court.

17 THE COURT: Yeah that would be fine.

18 MR. MILLET: And the good news I suppose starting off  
19 with the first one, I hope we have lots of good news today  
20 other than the train incident since --

21 THE COURT: If that's the biggest problem I have in  
22 life, my life is pretty good.

23 MR. MILLET: The Eurolog funding motion I'm very  
24 pleased to report to the Court we reached a resolution as to  
25 all three parties. And we're in the process of finalizing



1 documentation. In a moment here, I'm going to ask Mr. Fleck  
2 who's going to inform the Court as to the terms, and we expect  
3 to have orders to the Court very soon. So that, at least,  
4 should be resolved, and we should not need a further hearing on  
5 that matter.

6 THE COURT: All right, well that's good to hear, and  
7 thank you for that news. And also thank you for the  
8 highlighted deposition transcript, which I know I now don't  
9 need, but it's enormously helpful when trying to do these  
10 things without live witnesses to see how the testimony fits  
11 together. So the list of what's being relied upon is a lot as  
12 a problem with context, so I appreciate that you sent that my  
13 way.

14 MR. MILLET: Hopefully, it won't come up again, but  
15 if it does --

16 THE COURT: All right we'll I'll hold on to it,  
17 heaven forbid, until there's --

18 MR. MILLET: -- or other matters or required  
19 depositions --

20 THE COURT: -- a final resolution of that matter  
21 since it is highlighted so nicely.

22 MR. MILLET: With that, perhaps, now will be a good  
23 time for Mr. Fleck to speak about the terms of the settlement  
24 and what we're going to do to wrap this up.

25 THE COURT: All right, Mr. Fleck.

1 MR. FLECK: Thank you, Your Honor, once again Evan  
2 Fleck on behalf of the Committee. We share Mr. Millet's  
3 pleasure that we have a resolution and, actually, it just came  
4 in this morning with respect to the third party. And as he  
5 said at the request of the Eurolog professionals, we've started  
6 the process of drafting stipulations and resolution orders that  
7 we'd like to submit to Your Honor not today -- well it may be  
8 today in the case of Freshfields, but they're in different  
9 stages of completion and then we'll submit them to Your Honor  
10 for your review.

11 We view them as resolutions of a pending motion and  
12 on that basis would submit them to you for entry if they're  
13 satisfactory to the Court as opposed to our presentment,  
14 because there's no new relief being sought.

15 THE COURT: All right.

16 MR. FLECK: Based upon the discussions with the  
17 parties, I would like to put the terms on the record so that  
18 Your Honor has them.

19 THE COURT: That's fine.

20 MR. FLECK: And there's a theme running through all  
21 of them. There's a discount being given by the Eurolog  
22 professionals with respect to the amounts that were sought in  
23 the Debtors' motion. They're offering a discount. Each case  
24 was different and in some cases, there was an allegation of  
25 preference liability. In others, there were fees, and in

1 others, there were different obligors on the engagement  
2 letters. So, I'd like to give Your Honor the terms.

3 There are percentages of discounts that I'll put on  
4 the record. The reason for the difference is that the fact  
5 pattern is different with respect to each of the professionals.  
6 I don't want one of them to feel badly that they felt like a  
7 better deal was given to one of the others. I think there was  
8 a lot of advocacy that went into this, and we're all pleased  
9 with the resolution.

10 THE COURT: I'll take it that they're all unique  
11 circumstances and, therefore, led to unique results.

12 MR. FLECK: Thank you, Your Honor. So the basic  
13 themes and I'm going to go through. There's a discount being  
14 offered and accepted by the Debtors and the Committee. The  
15 relevant professionals are agreeing that they will not seek any  
16 further amounts to be paid by the Debtors' estates. To the  
17 extent they're performing additional work, they will seek  
18 payment for that work from other clients; non-Debtor clients.  
19 Presumably, it would be the Eurolog affiliates. But the  
20 significant issue for the Committee is that they will not seek  
21 payment from the Debtors or from the Reorganized Debtors for  
22 continuing work they may perform under their engagement  
23 letters.

24 With respect to amounts that they believe may be due  
25 under the engagement letter including the amounts that are

1 being settled or any additional amounts, they will not seek  
2 those amounts from the Debtors other than the settlement  
3 payment. They also will not seek those amounts from the  
4 Eurolog affiliates. So this is not an opportunity to settle  
5 with the Debtors and then for them to recoup the discount  
6 amount from a different party. This is a full and final  
7 resolution of all amounts that are owed under the relevant  
8 engagement letters.

9           There are some other terms, Your Honor, principally  
10 that as between the Debtors and the clients of these  
11 professionals. We are working to put in place a reimbursement  
12 agreement. The way the Committee perceives this is that this  
13 is a loan being offered by the Debtors to their non-Debtor  
14 affiliates; much the same way other funding has been done in  
15 the case. And in order to set up a mechanism for those amounts  
16 to be repaid, we are working with the Debtors and the relevant  
17 parties to put in place a reimbursement agreement.

18           As between the Debtors, the Committee, and the  
19 settling professionals, that reimbursement agreement is not a  
20 condition to the deal. They have their deal, and we will live  
21 by it. They will receive administrative expenses under the  
22 plan to settle the amounts that they're seeking under their  
23 engagement letters. But it will be referenced in the  
24 stipulation that a reimbursement agreement is being negotiated  
25 and will be set up separately as between the Eurolog affiliates

1 and the Debtors so that there's an opportunity for the Debtors  
2 to receive repayment for the amounts they're paying under the  
3 settlement stipulations.

4 THE COURT: All right.

5 MR. FLECK: And now to the terms, Your Honor, I'd  
6 just like to mention the economics. With respect to  
7 Freshfields pursuant to the agreed upon settlement, the Debtors  
8 will be authorized and directed to pay Freshfields as  
9 administrative expenses on the effective date 750,231 pounds  
10 and 12 cents. That is represented a 15% reduction in the fees  
11 that were requested in the motion by Freshfields. Freshfields  
12 will also be entitled to receive their reasonable and  
13 documented out-of-pocket expenses in connection with the  
14 engagement, as well as the applicable VAT obligation.

15 With respect to KPMG, KPMG will be taking a 20%  
16 discount on all amounts that are sought under the Eurolog  
17 motion. To the extent that they too have out-of-pocket  
18 expenses, those also will be paid, as well as any VAT to the  
19 extent there's applicable VAT for KPMG.

20 Finally, with respect to Linklaters, on account of  
21 all of the amounts that are unpaid and sought in the Eurolog  
22 motion, there will be a 17% reduction in those fees and  
23 Linklaters will waive any request for reimbursement of its  
24 expenses which we understand is, at least, \$265,000.00. So the  
25 Debtors will be authorized and directed to pay as an

1 administrative expense to Linklaters \$2,266,964.45. That's in  
2 U.S. dollars with respect to Linklaters. There's an applicable  
3 exchange rate as well. Those are the basic terms of the  
4 settlement.

5 With respect to all of the parties, the Debtors and  
6 the Committee are waiving any claims with respect to preference  
7 liabilities. To varying degrees that played into the  
8 settlement amounts with each of these parties.

9 THE COURT: All right, thank you.

10 MR. FLECK: Thank you, Your Honor. I should just say  
11 to the extent that there are any issues with respect to the  
12 documentation, we'll coordinate with Chambers if we need to  
13 come back to the Court if that's okay.

14 THE COURT: That's fine. I'm happy to help if I can  
15 do that.

16 MR. FLECK: Thank you.

17 THE COURT: All right well I appreciate all the  
18 parties working together to resolve that matter. When I was  
19 looking at it recently, I realized I had spent some time and  
20 when it first came up, and I think the resolution of the matter  
21 is wise. Certainly, you all know the details of the Eurolog  
22 proposed transaction and who's doing what and why, far better  
23 than I do. I certainly would have made what call I thought was  
24 appropriate, but I recognize that the parties are a whole lot  
25 closer to those issues than I am in terms of reaching a

1 reasonable resolution, so I appreciate that.

2 MR. STUART: Thank you, Your Honor, Walter Stuart for  
3 Freshfields; if I could just say a word. As Mr. Fleck  
4 indicated in our case, we are basically completed with the  
5 documentation. I think we have now agreement on all major  
6 terms. Certainly, we had a few tweaks this morning which I  
7 believe will be acceptable. So in our case, as Mr. Fleck  
8 indicated, we hope by today or tomorrow we will have before you  
9 the necessary orders to be signed.

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

11 MR. MILLET: Your Honor, the next matter is the GPZ  
12 or the GP Zed [phonetic] motion for relief from stay. This one  
13 should be quite simple. Prepetition, there was an arbitration  
14 ongoing between the Debtors and the GPZ that basically had been  
15 completed other than the issuance of the ruling by the  
16 arbitration panel under the Rules of the International Chamber  
17 of Commerce. That, of course, was stayed as a result of the  
18 case.

19 GPZ has filed a claim in the case which, of course,  
20 needs to be liquidated in some form or fashion. And it  
21 certainly seems that completing the arbitration and simply  
22 allowing the arbitrators to issue their ruling is the best way  
23 to liquidate, at least, a significant part of their claim.  
24 There is a second part of the claim that has not yet been  
25 liquidated. It may, we have not yet figured out what we'll do

1 with that. It may be a further arbitration or whatever.

2 But as to this part, all we're doing is seeking  
3 relief from stay to allow the arbitrators to proceed to issue  
4 their decision. Then, any claim that results or any liquidated  
5 claim that results will, of course, be dealt with or disposed  
6 of pursuant to the terms of the plan. There will be no other  
7 enforcement outside the Court. We filed the motion on April  
8 26th and we've received no opposition to the motion at all.  
9 Provided that the Court does grant the motion, we would have an  
10 order before the Court later this afternoon.

11 THE COURT: All right anyone wish to be heard in  
12 connection with the GPZ motion? All right and Chambers had  
13 gotten an inquiry about whether it could essentially be signed  
14 by me without a hearing. I asked you to bring it on for a  
15 hearing today for a couple of reasons.

16 One is if something is noticed a motion sort of  
17 presupposes a hearing and I have given up trying to predict  
18 when somebody base appears to be heard on something and when  
19 they may not. So I always think it's safer to have a hearing,  
20 particularly as to lift stay motions; this seemed fairly  
21 uncontroversial, but it's my general rule to do it that way as  
22 opposed to essentially de facto presentment. And since you  
23 were coming in today, I thought it would probably take about as  
24 long as it's taken, you know, 90 seconds or so. So I will  
25 grant that motion and I will sign the order when I receive it



1 later today.

2 MR. MILLET: Thank you, Your Honor. That brings us  
3 to the claim objections which as we see it sort of fall into  
4 four general categories. The first one would be those that are  
5 adjourned and so we don't need to talk about those.

6 The next would be claims where we have no response  
7 filed in response to the objection. The third would be where  
8 we have claims where responses have been filed and the fourth  
9 is sort of specialized and that's the claim of Hani Alsohaibi  
10 which we'll talk about. If it pleases the Court, I'm going to  
11 talk about those where responses have been filed and Mr.  
12 Alsohaibi's claim and then my colleague Mr. Weisser will  
13 address the remainder after that. And also go into budget  
14 issues after we deal with the claims issues.

15 As to those claims where we have responses filed  
16 based upon our objection, those were provided at this hearing  
17 and then would act, in essence, as a status conference.  
18 There's 14 claims that we're dealing with there. The objection  
19 was originally filed on April 26th, but now with the proximity  
20 of the effective date, we think the best way to deal with these  
21 is to set up this for a further status conference so that we  
22 can go effective; allow the post-effective date governance  
23 system to take effect. We can then make the appropriate  
24 decisions as to what to do with those claims before setting  
25 them for briefing schedules or hearings or whatever.

1           We may be able to resolve some of those claims in the  
2 interim. For example, four of the claims involve claims by  
3 Tide. The principle purpose of the objection at the time was  
4 to deal with voting issues and those, of course, were dealt  
5 with a voting stipulation. We do have to wait the adjudication  
6 of the underlying claims by the District Court. And so very  
7 well, we may be able to just simply withdraw those objections  
8 without prejudice to allow the District Court to rule before  
9 addressing those.

10           THE COURT: All right.

11           MR. MILLET: In the meantime, we request they just  
12 simply be adjourned with the other claims, but hopefully before  
13 they would ever come back again before Your Honor, we would  
14 have, for instance, the Tide claims resolved simply by  
15 withdrawal of the objection without prejudice.

16           As to several of the others, there's also an  
17 opportunity that we may be able to resolve some, because some  
18 are based upon reconciliation of numbers and books and records  
19 between the parties. And, if so, we'll try to resolve those  
20 too. But, in the meantime, those that can't be resolved we  
21 would then park those to be taken up by the post-effective date  
22 governance system, the Reorganized Debtor.

23           What I think I would propose subject to Mr. Fleck or  
24 anyone else objecting, is that we put it on for the September  
25 17 omnibus hearing and let that serve as a further status

1 conference, because if we have then gone effective by the  
2 middle of August that is giving the new system 30 days to come  
3 in and take over and figure out what they want to do. I think  
4 the August 27 date might be a little too early.

5 THE COURT: I would think so if the effective date is  
6 likely to be August 15th. All right anyone who is one of the  
7 14 parties who filed responses wish to be heard? All right, I  
8 don't see anyone so I assume they are all agreeable to your  
9 proposal. I think it makes sense and we'll see where we are in  
10 mid-September.

11 MR. MILLET: Very well, Your Honor. And we'll embody  
12 this all in a unified order for the Court.

13 The next is the claim of Hani Alsohaibi and this is  
14 just a little bit special, because, of course, we have two  
15 pending appeals as to the confirmation order and the DIP  
16 replacement order that's been filed by Mr. Alsohaibi, so we're  
17 anxious to seek some sort of resolution of the claim.

18 Mr. Alsohaibi did not respond to the claim objection  
19 by the date. But, nevertheless, I was subsequently contacted  
20 by his counsel and we discussed the matter. And rather than  
21 try to obtain a resolution of the claim based upon a default,  
22 we would rather have a resolution of the claim on the merits  
23 provided we can do it quickly and get right to the issue.

24 In discussing this with counsel, we've agreed  
25 subject, of course, to the approval of the Court to a briefing

1 schedule that would provide for counsel for Mr. Alsohaibi to  
2 file his brief or a brief on his behalf by August 1. The  
3 Debtors or anyone else responding would be able to file a reply  
4 brief on August 20. And we would then have a hearing on the  
5 matter on August 27, the next omnibus hearing, in which the  
6 Court may then adjudicate the claim fully and finally based  
7 upon the briefs of the parties and any argument of counsel  
8 that's presented. So we can tie it up into a nice tight  
9 package and then allow the Court to resolve the matter at that  
10 time.

11 THE COURT: All right.

12 MR. MILLET: We've stipulated to an order to that  
13 effect, but rather than present the stipulation we thought we  
14 would present it to the Court today and if approved by the  
15 Court, we can present an order to the Court to that effect.

16 THE COURT: That schedule sounds fine with me. And  
17 all I will say is to the extent that folks have a desire to  
18 change the schedule, sometimes happens from time to time, they  
19 should attempt to work it out and then can contact Chambers  
20 with a proposed new schedule, if that's necessary. It doesn't  
21 sound like it will be, but I know these things happen from time  
22 to time.

23 MR. MILLET: Very well, Your Honor.

24 THE COURT: All right thank you.

25 MR. MILLET: That then takes us to those claim

1 objections where no response was filed what so ever and my  
2 colleague Mr. Weisser will address those.

3 MR. WEISSER: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. WEISSER: Josh Weisser, Gibson Dunn & Crutcher  
6 for the Debtors. As noted by my colleague Craig Millet, I'll  
7 be picking up the claims objections from here. With Your  
8 Honor's permission, I thought it might be helpful to go into a  
9 little bit of background regarding the Debtors' claims  
10 administration efforts to date. Very brief, I promise.

11 THE COURT: All right. Yeah I did take a look at  
12 everything that was submitted including the supplemented  
13 Debtors' omnibus claims objection which, essentially sort of  
14 funnels down where things stood for today's hearing so.

15 MR. WEISSER: That's entirely right. I mean we filed  
16 five omnibus objections in April. Immediately thereafter  
17 Garden City provided service of the claims objection notice  
18 substantially in the form that was approved by Your Honor back  
19 in January. The supplement, as you know, that's all its meant  
20 to do is to kind of summarize where we are. It doesn't change  
21 any of the relief requested as to any one of the disputed  
22 claims before the Court today. All it is is kind of a roadmap  
23 of our intent today.

24 The substance of the notice, just to be clear, that  
25 was provided to the claimants back in April said one clear

1 statement, and that statement is that, you know, you have until  
2 the response deadline to reply. If you don't reply or don't  
3 reply by that response deadline, you know, the objecting party  
4 may be able to seek an order sustaining its objection. So as I  
5 stand here today, we're seeking to sustain the objection with  
6 respect to three of our five omnibus objections.

7 The impacted claims are all, like Mr. Millet said,  
8 claims where there wasn't a response or we haven't otherwise  
9 adjourned. I think there are approximately 150 total claims.  
10 If you were to look at the supplement that was filed, they  
11 would all be listed on Exhibits A1 through C1 with a few  
12 exceptions. Since then, for various reasons, we've adjourned  
13 out as to a couple other claims. When we submit an order,  
14 provided Your Honor approves, we'll submit revised schedules  
15 that will reflect as such.

16 THE COURT: So the up-to-date list it's safe to say  
17 is still all claims where no response was filed. And I assume  
18 by response, you mean a written response, as well as any  
19 informal response you may have received.

20 MR. WEISSER: That's correct; that's correct. And  
21 for people who we received an informal response, that's our  
22 adjourned list.

23 THE COURT: All right.

24 MR. WEISSER: Amongst, you know, or a subset of our  
25 adjourned list. You know, we adjourned claims when simply

1 folks came to us and said look I'd like to resolve this. I'd  
2 like to settle this, but we need more time; or I need more time  
3 to look into the basis of my client's claim. You know with 565  
4 proofs of claims from around the world. And where there were  
5 responses, even written responses that were late or otherwise  
6 set in kind of a non-conforming manner, we have tried to  
7 include them in both of those lists in which they're not  
8 before. I can think of one claim which is on the docket for  
9 7/8 and we just had to confirm that, in fact, it was received  
10 prior by the Court, by us, and by everybody. And we did so,  
11 and we're not looking at that time to a default.

12 THE COURT: All right.

13 MR. WEISSER: There were two declarations, just to  
14 get this out of the way, that were filed with the supplement.  
15 One was by Steven Kotarba of Alvarez & Marsal, a second by  
16 Craig Johnson of GCG Inc. The Kotarba declaration, to  
17 summarize, briefly goes into the efforts of the Debtors and A&M  
18 and counsel to look at the various claims identify disputing  
19 claims, put together the objections and the schedules.

20 The GCG Inc. declaration looks more at service of the  
21 notice: how many people got it via e-mail, how many people got  
22 it first class mail, the success of delivery. Both Mr. Kotarba  
23 and Mr. Johnson are in the Courtroom today, so subject to any  
24 questions Your Honor or any other party may have, I would ask  
25 that the Court submit their declarations on the record.

1 THE COURT: All right, any objection from any party?  
2 Hearing none, I will accept both declarations.

3 MR. WEISSER: Without going at length into the  
4 disputed claims at issue, we have, our papers are fairly full  
5 in that regard. There are 10 basic categories of claims that  
6 are up for hearing. Claims for which there is an exactly  
7 duplicative claim that's on the claims register, claims which  
8 have been amended and superseded by additional claims on the  
9 register, claims that were filed after the response deadline,  
10 claims for which there was insufficient documentation or no  
11 documentation for us to analyze or figure out where they came  
12 from. And I should note when we looked at those claims, we  
13 also looked at our books and records to see if there was  
14 anything that we could supplement those claims with.

15 Claims that were filed against one Debtor that should  
16 have probably been asserted against another and pretty much  
17 both cases, I think there are only two that should have been  
18 properly asserted against Arcapita Bank; something we call  
19 investment account claims which, to briefly summarize, are  
20 claims in respect of investments that our investors have in  
21 non-Debtors. So if they gave money to Arcapita and then that  
22 money was then further invested in one of our portfolio  
23 companies, thus where those claims are, and we would say that  
24 you have your equity interest that you bargained for.

25 One financial institution claim; there's a number of



1 them that are on the objection itself, but there's only one up  
2 for a hearing today. And I believe Mr. Simon who's on the  
3 phone from DLA Piper could confirm, but I believe that there is  
4 no contest as to our one objection there. Two sets of no  
5 liability claims, one based on investments and another based on  
6 just miscellaneous which are items where we just don't believe  
7 we have any liability what so ever having looked at the  
8 documentation. And, finally, some misclassified claims which  
9 are just claims that assert priority or security without basis.

10 Without going at length as to our rationale, I think  
11 I prefer, with Your Honor's permission, just to stand on our  
12 papers with respect to that.

13 THE COURT: All right, that's fine. Anyone wish to  
14 be heard on any of the omnibus objections that have been teed  
15 up for today's hearing?

16 MR. SIMON: Your Honor, this is Daniel Simon on  
17 behalf of National Bank of Bahrain. I have spoken with Mr.  
18 Weisser and just to be clear, you know, the Debtors' second  
19 omnibus claim objection did object in two ways. One, to  
20 disallow claim number 45 against AIHL in its entirety and, two,  
21 reclassification of claim number 46 against Arcapita Bank from  
22 a secured claim to a general unsecured claim.

23 To the extent it was not otherwise clear in our  
24 papers, we responded only to the former as it relates to the  
25 claim number 45 against AIHL and not to the latter. And so I

1 believe that's consistent with Mr. Weisser's comments.

2 THE COURT: All right, Mr. Weisser.

3 MR. WEISSER: That's entirely right. And as to the  
4 claim against AIHL, they fall into the bucket that Mr. Millet  
5 discussed earlier of claims for which there was a timely  
6 response. With that, Your Honor, I would request that you  
7 sustain these three objections to the extent set forth in the  
8 supplement.

9 THE COURT: All right. I will, in fact, do that. I  
10 will grant the omnibus objections to claims number one, two,  
11 and three, to the extent being prosecuted here today, which is  
12 for claims for which there's no response in the 10 categories  
13 that have been set forth by Mr. Weisser and are laid out in  
14 detail in the supplement to Debtors' omnibus claims objections,  
15 which mirrors the Kotarba declaration, which is sufficient  
16 evidence for me to rely upon even for a claim that's prima  
17 facie valid; although, some of these claims are objected to, I  
18 don't think fall into that category. So I will grant the  
19 omnibus objections one, two and three for the claims that have  
20 been identified, and I think you said that the rough total is  
21 about a 150.

22 MR. WEISSER: Yes, sir. We'll submit orders via e-  
23 mail after the hearing. With that, as mentioned by Mr. Millet,  
24 we turn to interim cash management. This is our 17th interim  
25 order.

1           The current proposed budget covers the period through  
2 the end of August, after just a week of our next omnibus  
3 hearing date which is set for August 27. The budget itself  
4 reflects continued negotiations between the parties regarding  
5 the use of cash, though. And Mr. Kamphaus or Mr. Fleck can  
6 comment on that. It's conditionally approved for two week  
7 increments because of the length of this time.

8           Obviously, there's been a considerate amount of time  
9 by all parties going through the different line items, and we  
10 have generally reached an agreement as to most of them. But as  
11 is typical, there are one or two items which are conditionally  
12 approved. With Your Honor's approval, do you mind if I go  
13 through those items on the record?

14           THE COURT: Sure.

15           MR. WEISSER: Thank you very much. The first two are  
16 deal fundings: AGUD I and Bahrain Bay Development. Both of  
17 them are projects involving portfolio companies. I believe the  
18 conditional approval is subject to further diligence by the  
19 Committee. The next grouping of claims then, there's a couple  
20 that I can group in just to save time would best be referred to  
21 as wind down costs for Cayman, Singapore, and Hong Kong  
22 entities. They're essentially doing diligence. The Committee  
23 is doing diligence as to the extent of those wind down costs  
24 and how much should really be allocated to them. Similarly,  
25 there's some additional diligence that's required, I'm sorry,

1 with regard to tax preparation costs for the Atlanta entity.

2 Then, I guess there are two more.

3 One is not entirely a cash management issue, but it  
4 simply relates to travel. There was some issues regarding  
5 knowledge of them -- the Committee knowing what kind of  
6 business travel was being completed between now and the  
7 effective date. We're happy to work with the Committee to  
8 increase their visibility regarding future business travel.

9 And, I guess, the last point is the IPPIP. These  
10 were the incentive plans that were subject of Your Honor's  
11 global settlement order from last June. There's an outstanding  
12 issue regarding the, relating to payment of tax withholding  
13 obligations. The parties are kind of right now engaged in more  
14 diligence and discussion regarding how they want to address  
15 those tax withholdings and whether cash pay, whatever.

16 Unfortunately, because the effective date is upon us,  
17 there's kind of a short fuse on that. And our view is, you  
18 know, while we think discussion is good, we think negotiation  
19 is good, and we do want to reach a consensual resolution, we  
20 see us having a short window to do it; maybe two weeks. And if  
21 we can't do it within two weeks, we'd like to come back in  
22 front of Your Honor to discuss this issue. The Debtors view it  
23 at somewhat of a gating issue emergence, because these two  
24 things were always linked up.

25 THE COURT: All right.

1 MR. WEISSR: Subject to those points and anything  
2 else that the Committee believes is outstanding, the Debtors  
3 propose that the cash management order be entered as an interim  
4 order at this time.

5 THE COURT: All right anyone wish to be heard on, I  
6 believe it is the 17th interim cash management order?

7 MR. FLECK: Once again, Your Honor, Evan Fleck on  
8 behalf of the Committee. The Committee hopes that this is the  
9 last interim budget. In fact, we had very much been hoping  
10 that we would have been effective at the end of this month. I  
11 know that's the Debtors' desire as well. Obviously, there's  
12 some work to be done. In fact, we're hoping to lock people in  
13 a conference room next week to finalize some business points on  
14 the MSA and some of the ancillary documents, so that then the  
15 corporate lawyers can get to their part in finalizing the  
16 documentation. A significant amount to be done, but we do need  
17 those business points to be resolved. So, hopefully, this is  
18 the last budget prior to the effective date and, therefore, the  
19 last budget that we have to bring to Your Honor for approval.

20 I agree with Mr. Weisser's representations with  
21 respect to the agreement that we're going to look in two week  
22 increments. I think some of the items that he mentioned as  
23 items that have not yet been resolved as between the Committee  
24 and the Debtors fall beyond the two week period. I am most  
25 focus for these purposes on the two weeks, understanding that

1 you're being asked to enter an order for the six week period.

2 Everything after the first two weeks is fully  
3 conditional because we haven't fully engaged in that dialogue  
4 yet. But for the two week period, some of those items that he  
5 mentioned fall into that period. I view that as the tax  
6 liability for sure. There's work to be done on that. There  
7 are some expenses with respect to SEB. We've seen that before  
8 and that's a diligence item. We just need to review those  
9 expenses for reasonableness, and we'll do that as quickly as  
10 possible.

11 There's also a DNO insurance renewal item and,  
12 pursuant to, I think, first day orders, there's a review right  
13 with respect to the Committee. I believe that comes up, I  
14 think, in that first two week period as well.

15 THE COURT: All right.

16 MR. FLECK: The last item I just wanted to highlight  
17 and just give Your Honor some perspective in terms of the  
18 Committee's thinking is with respect to business development  
19 items. There's a line item in the budget for business  
20 development that includes, among other things, business travel.  
21 And I appreciate Mr. Weisser's comments. We used the time  
22 between 11:00 and 11:30 this morning to make some progress on  
23 that item as between the Committee and the Debtors.

24 And from the Committee's perspective partly because  
25 we had hoped that we'd be at the effective date already, but

1 also because we're days or weeks, hopefully, away from that  
2 time. There is some concern that the lines between the Debtors  
3 and the entity AIM that is going to work for the Debtors are  
4 naturally or could be blurred. After the effective date, all  
5 of these expenses will be in terms of visiting portfolio  
6 companies and management of assets will be governed by the MSA  
7 and many, if not all of them, will be the responsibility of  
8 AIM. But, today, we're in bankruptcy. We understand those are  
9 the responsibility of the Debtors' estates and it's really the  
10 Creditor's money that's being used.

11 So there's heightened scrutiny, particularly because  
12 of the nature of that transaction as between Debtors'  
13 management and then the asset manager as of the effective date  
14 that causes us to look at some of these items with additional  
15 scrutiny. And the Committee did identify, in particular, the  
16 business development item because it should be business  
17 development of the Debtors, as opposed to business development  
18 of AIM.

19 There's no item before the Court, Your Honor, that  
20 we're raising a concern about. We think a resolution is for us  
21 to have visibility into that line item so that we can be  
22 comfortable that all of those items do benefit the Debtors'  
23 estate of not raising anything, a red flag at this point, Your  
24 Honor. But I think we have an agreement subject to  
25 confirmation with the Debtors' management that we'll have some

1 kind of a flash report in advance, and it will be incumbent  
2 upon the Committee, if the Committee has any issue, they'll  
3 direct us to come before Your Honor to raise an issue that  
4 there's not a consent for each budget or each travel or flight  
5 that we're seeking.

6 THE COURT: Well I think we have a hearing already on  
7 July 30th so we can use that sort of as a control date to get  
8 those two week issues, hopefully, wrapped up. And it sounds  
9 like everybody has a desire to do that and that the effective  
10 date is an important thing to happen sooner rather than later  
11 for everyone.

12 MR. FLECK: Yes, thank you, Your Honor.

13 THE COURT: All right, thank you. Anyone else wish  
14 to be heard on the 17th interim cash management order? All  
15 right consistent with my granting of the first 16 interim cash  
16 management orders, I will grant this one as well and I  
17 appreciate the close cooperation between the Debtors and the  
18 Committee on working through the particular line items which  
19 has always been an important part of this case and a challenge  
20 that has been very well met by the parties involved.

21 MR. MILLET: With that, Your Honor, that resolves the  
22 matters between the Debtor and which gets involved in the  
23 Committee as well. The last item is the pretrial conference  
24 that involves Tide and Hopper and so we would turn it over to  
25 those parties then.



1 THE COURT: All right. So anybody wish to tell me,  
2 we'll talk about whatever it is there is to talk about in the  
3 context of those parties and the District Court action.

4 MR. WOOD: Your Honor --

5 THE COURT: Speak a little louder please.

6 MR. WOOD: Sorry, Your Honor, Trey Wood, can you hear  
7 me?

8 THE COURT: Yes, I can; thank you.

9 MR. WOOD: May I be heard?

10 THE COURT: Yes, please; go ahead.

11 MR. WOOD: First, Your Honor, I'd like to thank the  
12 Court for allowing me to speak by telephone.

13 THE COURT: That's fine. I understand that given the  
14 circumstances it's important to make it sufficient and cost  
15 efficient for all the parties involved.

16 MR. WOOD: Thank you, Your Honor. This adversary was  
17 filed by the Tide parties initially and sought a cause of  
18 action to subordinate the Hopper claims under 510(b). The  
19 Hopper parties have filed a counterclaim seeking to subordinate  
20 the Tide claims under 510(c) based on the same allegations that  
21 they are seeking to make before Judge Wood in the District  
22 Court that we, in essence, defrauded them. They have sought to  
23 intervene in the District Court action pending before Judge  
24 Wood. The Courts lifted the stay so those claims could go  
25 forward. As part of that order lifting the stay, we agreed

1 that they could intervene and continue to agree that they're  
2 entitled to intervene there.

3 I guess it was our position that those allegations  
4 should go before -- Judge Wood should decide those allegations  
5 before we go forward with whether our claims should be  
6 subordinated based on Judge Wood's findings. In preparing for  
7 this pretrial conference, I'll also note that as this Court's  
8 aware, the Court also has under consideration the Debtors'  
9 proposal to super subordinate our claims. And so I think what  
10 makes sense is this adversary, at least, ought to be abated  
11 probably until the Court rules on the super subordination  
12 issue.

13 We think that the case, the adversary probably ought  
14 to be abated until Judge Wood also rules. I understand the  
15 Hopper parties oppose that, but I don't know if we need to  
16 cross that bridge today, because I think it probably makes  
17 sense for everyone for the judicial resources of this Court and  
18 probably the parties economic resources to put this fight  
19 between Hopper and Tide on hold until the Court decides whether  
20 Tide's claims will be super subordinated or not.

21 THE COURT: All right, anyone else wish to be heard  
22 on this issue?

23 MR. RECKMEYER: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. RECKMEYER: Jeremy Reckmeyer, Andrew Kurth on

1 behalf of the Hopper parties. Mr. Wood is correct that we  
2 object to staying this litigation pending resolution of the  
3 District Court action. We think the issues relating to 510(c)  
4 are separate than the issues or from the issues that are going  
5 to be adjudicated by the District Court. When this Court  
6 entered the order lifting the stay to allow the District Court  
7 to proceed with that action, at least on certain limited  
8 matters, it specifically reserved 510 issues. Tide's  
9 acknowledged this. We think it's a Court proceeding. We think  
10 that we should have the ability to move forward with this  
11 action; notwithstanding the fact that a District Court action  
12 is also pending.

13 I would note that although we have moved to intervene  
14 in that action and Tide, as Mr. Wood acknowledged, has  
15 consented to that or has agreed to that, the District Court  
16 hasn't ruled on that intervention motion. So we are not, at  
17 this point, a party to that motion, "at least a named party."  
18 So we think it would be appropriate to move forward on this, to  
19 set discovery and briefing schedules; at least with respect to  
20 any kind of abstention because of the District Court action.

21 This is the first time that I've heard of Tide's  
22 request to kind of abate this just for so long as the super  
23 subordination issue is outstanding. My understanding was that  
24 their position was that they were going to file an abstention  
25 motion and that would effectively preclude our ability to move

1 forward with respect to our 510(c) claims, but not their  
2 510(b). So it seemed that they were kind of trying to have it  
3 both ways. So I mean this is the first time that I've heard  
4 that, that they want to reserve their 510(b) as well.

5 Like I said, but not to reiterate the point, we do  
6 think the issues are separate --

7 THE COURT: Well I understand that and I understand  
8 your view about the District Court, but do you have a view  
9 standing here today about whether to wait until I rule on the  
10 subordination issue that's been briefed as before me for a  
11 decision?

12 MR. WOOD: Without knowing, I guess, the timeframe  
13 for that ruling, I mean I think as a general matter, I think  
14 we'd be fine with that, because I think resolution of that  
15 would impact what happens in the adversary.

16 THE COURT: My general sense is, and you all have  
17 connected the dots in a more precise way than I have, but my  
18 general sense is that there's little downside and some  
19 potential upside to waiting until I rule on that issue, because  
20 it may shed light on what I think the law is and what the right  
21 result is in that circumstance. And that may or may not shed  
22 light on the fight between these parties and on similar kinds  
23 of issues. And so I have trouble seeing the benefit of rushing  
24 headlong to do anything else until that happens. And the law  
25 is a little bit unclear out there. And folks, I think very

1 ably briefed the issues, so I don't think it would benefit me  
2 to having anything else in front of me.

3 I think at this point parties have very effectively  
4 made it my problem to -- I'm the one who has to make the  
5 decision and it's been teed up in a way that I think really  
6 couldn't be much better than it has been. So that, of course,  
7 is subject and I think you said as you probably have to in  
8 terms of representing your client that, you know, it's not a  
9 blank check. And so if for some reason, you know, it's 2015  
10 and you hadn't heard then, you know, perhaps you would get  
11 antsy. I have no desire to have it last anywhere near that  
12 long, so it's on my list of things to do. And I hope to get to  
13 it as soon as possible, but I have certainly learned not to  
14 make promises about timing that I may or may not be able to  
15 keep, depending on intervening events.

16 So what I'd like to do is keep this on a status and  
17 we can sort of I would think September would be an appropriate  
18 time to sort of check in. I'm not promising I'll have a  
19 decision by September, but we can check in. I'm happy to have  
20 people appear by phone in the interest of keeping costs down  
21 and just touch base. And it may be just to say well we're  
22 still waiting on me, but that way if, for some reason anybody's  
23 clients have gotten particularly itchy trigger fingers in the  
24 meantime, you can make your pitch at that point and we can  
25 figure out what to do.

1 MR. WOOD: Understood. Thank you, Your Honor.

2 THE COURT: All right so I think that resolves that  
3 issue and that case right now will sort of by general  
4 acclamation, general claim be essentially stayed for the time  
5 being with everyone reserving their rights to make whatever  
6 arguments they want to make in the future as time goes by. So  
7 the only other thing that I had on my list is I think there was  
8 a request for a date for a sale motion that someone had reached  
9 out to Chambers about.

10 And I had seen that looking at the calendar that we  
11 have a hearing on July 30th and one on August 27th. And so I  
12 think this was something that you're trying to get a date  
13 somewhere between those two. I will say my schedule is a bit  
14 challenging in the middle of the month, because I'm at the  
15 Federal Judicial Center, some training things that I'm talking  
16 at in mid-August, as well as there's a fairly small  
17 confirmation hearing in American Airlines also in August.

18 So my question is can this be put on one of those  
19 other two dates in the interest of efficiency or is there a  
20 particular compelling reason we need to sandwich it in, in the  
21 middle of the month?

22 MR. MILLET: There is a desire to get this matter  
23 heard and decided before the effective date because it's going  
24 to, in effect, have to be re-done or reapproved pursuant to the  
25 systems that have been set up by the plan if it comes after the

1 effective date and that could very materially impact the  
2 possibility of a sale. We're not sure that we're going to be  
3 ready to have it heard on the 30th. We're about ready to file  
4 the papers now, but we had understood that the Court may have  
5 some time on the 8th. We don't think this will be a contested  
6 matter. Certainly all the important parties in the case and  
7 before the Court are in approval of this. So we don't think  
8 there's going to be any issues, but it's just a matter of going  
9 forward.

10 It's not a sale by the Debtor per say. It's the sale  
11 by an entity below the Debtor; however, the buyer wants to know  
12 that the Debtor is authorized, at least, to do that. So it's  
13 something of a comfort order. If the 8th is available, that  
14 would be great, because that could allow us to get the papers  
15 in and out to everybody.

16 THE COURT: All right, does the Committee share the  
17 view about the desirability of getting this done on the 8th?

18 MR. FLECK: Yes, Your Honor, subject to that working  
19 for Your Honor.

20 THE COURT: All right so what I will do is we will  
21 set it for the 8th. And if for some reason things become  
22 really problematic scheduling-wise, I will let you know in  
23 advance that it would have to get moved, but let's aspire to  
24 get it done the 8th so.

25 MR. MILLET: We'll come in and talk very fast, Your

1 Honor.

2 THE COURT: No need. So let's make it for 11:00 on  
3 August 8th.

4 MR. MILLET: Very well, Your Honor; thank you very  
5 much.

6 THE COURT: And I imagine it would just be that one  
7 motion, is that right?

8 MR. MILLET: That's all we anticipate. As discussed  
9 earlier with the effective date looming, there could be some  
10 gaiting items or budget issues. We hope not. We would  
11 certainly strive to make sure there's nothing, but it's  
12 possible if --

13 THE COURT: All right yeah I would think since we  
14 have another date end of July and end of August that everything  
15 would fall to those dates. But if there's something else that  
16 turns out to be a good idea for the 8th just give Chambers a  
17 call and give us a heads up.

18 MR. MILLET: We will do that, Your Honor.

19 THE COURT: And at that point, I'll have a better  
20 idea if there are serious impediments to weighting down the 8th  
21 with more matters.

22 MR. MILLET: And with that, I believe that resolves  
23 everything that we have before the Court in this case.

24 THE COURT: All right, anyone else wish to be heard  
25 before we adjourn? All right thank you very much.



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RULINGS

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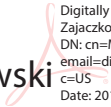
1 HEARING re Adversary Proceeding 13-01355 Tide  
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**CERTIFICATE**

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Mary  
Zajackowski



Digitally signed by Mary  
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