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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case Nos. 12-11076-shl

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In the Matter of:

ARACAPITA BANK B.S.C.(c), et al,

Debtors.

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

May 7, 2012  
11:00 AM

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

1 Hearing re: Docket. #12 (FINAL) Motion to (A) Authorizing  
2 Debtors to (I) continue Existing Cash Management System,  
3 Bank Accounts, and Business Forms and (II) Continue Ordinary  
4 Court Intercompany Transactions; and (B) Granting an  
5 Extension of Time to Comply with the Requirements of Section  
6 345(b) of the Bankruptcy Code

7  
8 Hearing re: Doc. #23 Motion to authorize Debtors Motion for  
9 Interim and Final Orders (A) Authorizing Debtors to Pay  
10 Certain Prepetition Claims of Critical and Foreign Vendors;  
11 and (B) Authorizing Financial Institutions to Honor and  
12 Process Related Checks and Transfers

13  
14 Hearing re: Doc. #24 Motion to Authorize Debtors Motion for  
15 Entry of Interim and Final Orders Authorizing the Debtors to  
16 (A) Pay Certain Prepetition Wages, Salaries, and  
17 Reimbursable Employee Expenses, (B) Pay and Honor Employee  
18 Medical and Similar Benefits, and (C) Continue Employee  
19 Compensation and Employee Benefit Programs

20  
21 Hearing re: Doc. #25 Motion to Authorize Debtors Motion for  
22 Interim and Final Orders (A) Authorizing the Debtors to  
23 Continue Insurance Coverage Entered into Prepetition and to  
24 Pay Obligations Relating Thereto; and (B) Authorizing  
25 Financial Institutions to Honor and Process Related Checks

1 and Transfers

2

3 Hearing re: Doc. #46 Application to Employ Trowers &

4 Hamlins LLP as Bahraini Counsel -- Debtors' Application

5 Pursuant to Sections 327(e) and 328 of the Bankruptcy Code

6 for an Order Authorizing the Debtors to Retain and Employ

7 Trowers & Hamlins LLP as Bahraini Counsel Nunc Pro Tunc to

8 the Petition Date

9

10 Hearing re: Doc. #47 Application to Employ Alvarez & Marsal

11 North America, LLC as Financial Advisors Debtors'

12 Application for Interim and Final Orders Approving the

13 Employment and Retention of Alvarez & Marsal North America,

14 LLC as Financial Advisors to Debtors and Debtors in

15 Possession

16

17 Hearing re: Doc. #48 Motion to Approve Motion for Order

18 Establishing Procedures for Interim Compensation and

19 Reimbursement of Expenses for Professionals and Committee

20 Members

21

22 Hearing re: Doc. #49 Motion to Authorize Debtors Motion for

23 an Order Pursuant to Sections 105(a), 327, 328 and 330 of

24 the Bankruptcy Code Authorizing Debtors to Employ and Retain

25 Certain Professionals Utilized in the Ordinary Course of the

1 Debtors Business

2

3 Hearing re: Doc. #51 Application to Employ Gibson, Dunn &  
4 Crutcher LLP as Debtors Counsel Debtors Application for an  
5 Order approving the Employment and Retention of Gibson, Dunn  
6 & Crutcher LLP as Counsel for the Debtors In Possession Nunc  
7 Pro Tunc to the Petition Date

8

9 Hearing re: Doc. #52 Motion to Authorize Debtors Motion for  
10 Order Authorizing Parties to File Under Seal Names of the  
11 Debtors Customer

12

13 Hearing re: Doc. #90 Motion t Extend Time Debtors Motion  
14 for an Order Further Extending the Time to File Reports of  
15 Financial Information Pursuant to Federal Rule of Bankruptcy  
16 Procedure 2015.3(a)

17

18 Hearing re: #91 Motion to Extend Deadline to File Schedules  
19 or Provide Required Information Debtors Motion for Entry of  
20 Order Further Extending the Time to File Schedules and  
21 Statements of Financial Affairs

22

23 Hearing re: #92 Application to Employ Linklaters LLP as  
24 Special Counsel -- Debtors' Application Pursuant to Sections  
25 327(e), 328(a), and 330(a) of the Bankruptcy Code for an

1 Order Authorizing the Debtors to Retain and Employ  
2 Linklaters LLP as Special Counsel  
3  
4 Hearing re: Doc. #95 Motion of Commerzbank  
5 Aktiengesellschaft for Entry of an Order Granting Limited  
6 Relief from the Automatic Stay

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Transcribed by: Dawn South

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

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7 BY: MICHAEL A. ROSENTHAL, ESQ.

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11 UNITED STATES DEPARTMENT OF JUSTICE

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16 BY: RICHARD MORRISSEY, ESQ.

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23 BY: DENNIS F. DUNNE, ESQ.

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13 BY: BRIAN E. GREER, ESQ.

14  
15 ALSO PRESENT:

16  
17 LAWRENCE HIRSCH

18 ART ROGERS

19 RICHARD GOOD (TELEPHONIC)

20 STEVEN KOTARBA (TELEPHONIC)

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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. All right, we're for Arcapita Bank. Proceed.

MR. ROSENTHAL: Good morning, Your Honor, Michael Rosenthal with Matt Kelsey, Janet Weiss from Gibson, Dunn & Crutcher on behalf of Arcapita Bank and it's debtor affiliates.

THE COURT: All right. Let me --

MR. ROSENTHAL: With me also --

THE COURT: -- just get -- you have other introductions?

MR. ROSENTHAL: Yes, with me --

THE COURT: All right.

MR. ROSENTHAL: -- also today is Lawrence Hirsh from Alvarez & Marsal and Art Rogers who is the director of legal with Arcapita Bank.

MR. DUNNE: Good morning, Your Honor, Dennis Dunne from Milbank, Tweed, Hadley & McCloy on behalf of the Official Committee of Unsecured Creditors, and with me is my partner, Evan Fleck.

MR. MORRISSEY: Good morning, Your Honor, Richard Morrissey for the U.S. Trustee.

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

MR. ROSENTHAL: Your Honor, I have a few

1 introductory remarks to bring the Court up to date with  
2 what's been happening and then we can go into the motion if  
3 that's okay.

4 First, I hope you received your chart with the  
5 larger text size.

6 THE COURT: I did. Thank you very much. I  
7 appreciate it. Again, I'm limiting denial that my eyes are  
8 getting worse every day, but I'm happy to get the assist.

9 MR. ROSENTHAL: I think we all appreciate the  
10 larger chart.

11 Your Honor, we've had a very productive three  
12 weeks since the -- since the last hearing. We've spend a  
13 great deal of time in discussions with the joint provisional  
14 liquidators and the committee advisors about the issues that  
15 are of most importance in the early days of this case,  
16 including the reduction enforce program that we're -- that  
17 we're drafting now, the protocol that we continue to draft  
18 with each of the committee and the joint provisional  
19 liquidator, deal funding issues, we've heard Lou Sale (ph)  
20 mentioned, we've had discussions about Lou Sale.

21 I think, Your Honor, we've established a very  
22 frank working relationship with the committee and the JPLs,  
23 and notwithstanding the little dust up we had with the  
24 committee related to some of the motions that were up today,  
25 which I'm happy to report were resolved in discussions late

1 last night and right before the hearing this morning.

2 THE COURT: The papers had the look of something  
3 that was in the middle of discussions, so I'm happy to hear  
4 that. It was a fascinating read on Sunday, but it was  
5 nonetheless -- I was cautiously optimistic you would --

6 MR. ROSENTHAL: Yes, we hoped we could have  
7 resolved it before you had to read them, but --

8 THE COURT: That's all right, that's what I'm here  
9 for.

10 MR. ROSENTHAL: In any event, we believe that the  
11 production -- that the discussions have been very positive  
12 and cooperative.

13 I've given you a report on budgets and where we --  
14 where we have been over the past I guess five or six weeks.  
15 Just a couple pieces of information.

16 From the filing of the case, which was March 19th  
17 through April 28th we were budgeted to spend a net of  
18 \$1.8 million, and actually we generated a positive  
19 \$3.8 million, so the positive variance was about  
20 \$5.7 million.

21 The budget for the coming three weeks through the  
22 next hearing on May 31st has been approved by the joint  
23 provisional liquidators and the committee, and it calls for  
24 an expenditure of a net negative number of three and a half  
25 million dollars.

1 We currently have, Your Honor, in cash  
2 approximately \$150 million. Now 35 million of that is tied  
3 up in placements with banks in Bahrain that have not turned  
4 the funds over. I reported to the Court on that at the last  
5 hearing. I have sent letters to each of those banks  
6 demanding that they turn over the funds. So far we have not  
7 received a positive response.

8 I am -- we are considering other options, turn  
9 over complaints, preference complaints, and we have a call  
10 with the committee and the JPL set up later in the week to  
11 discuss those options, but we are intent on doing everything  
12 we possibly can to have those funds repatriated back J.P.  
13 Morgan here in New York.

14 Your Honor, there's one new case that we filed  
15 that I would like to tell the Court about.

16 THE COURT: Yes.

17 MR. ROSENTHAL: We filed a case for a non-  
18 operating subsidiary of the debtors called Falcon Gas  
19 Storage. This subsidiary, Your Honor -- this case was filed  
20 in order to protect what we think is a valuable asset of the  
21 Arcapita entities, a \$70 million escrow account that  
22 resulted from a sale of the operating assets of this entity.

23 The filing was done after consultation with both  
24 the joint provisional liquidator, who consented to it, and  
25 the advisors for the committee. The -- the filing was

1 designed to make sure that the asset represented by the  
2 \$70 million can be realized by the debtors if at all  
3 possible.

4 Just briefly, Falcon was the majority owner of a  
5 -- of a company called NorTex Gas. NorTex basically was an  
6 underground gas storage facility that was located in Texas.  
7 It was sold in April of 2010 to affiliates of an entity  
8 called Alinda Capital Partners for a total consideration of  
9 \$515 million.

10 In response to litigation commenced by minority  
11 shareholders at the time of the sale there was a  
12 \$70 million escrow put aside and placed in HSBC Bank. That  
13 litigation was actually resolved and the parties went to  
14 obtain the release of the funds from the escrow only to find  
15 that Alinda refused to sign the papers that it had to sign  
16 and in fact filed its own lawsuit which is pending before  
17 Judge Wood here -- filed its own lawsuit with respect to  
18 certain alleged misrepresentations made in connection with  
19 the purchase agreement.

20 Your Honor, we -- we believe that this case should  
21 be consolidated -- procedurally consolidated with the other  
22 cases and we intend to file a motion essentially to  
23 integrate this case with all of the other Arcapita related  
24 cases.

25 THE COURT: All right. Do you anticipate needing

1 any other relief in the near term as to that particular  
2 entity?

3 MR. ROSENTHAL: We do not, Your Honor. It's an  
4 non-operating entity, so we do not.

5 And you know, I want to make sure, we've said all  
6 along that the operating non-debtor affiliates of the  
7 Arcapita entities were not in these bankruptcy proceedings,  
8 and that's still the case. This is -- this is clearly a  
9 non-operating, so.

10 So with that, Your Honor, I'll turn it over to  
11 Mr. Kelsey to talk about the first matter on the agenda.

12 MR. DUNNE: Actually, Your Honor, if I may be  
13 heard and do something similar to Mr. Rosenthal I think it  
14 would be helpful so that we don't have to stand up on each  
15 of the orders, we can explain kind of the global resolution  
16 and how the committee is seeing things in the case to date.

17 THE COURT: All right.

18 MR. DUNNE: As Mr. Rosenthal said, I'm happy to  
19 report that we've resolved the disputes. I echo  
20 Mr. Rosenthal's comments about the flow of information from  
21 and the communications with the debtor, they've been --  
22 they've been excellent in my view, but I wanted to explain  
23 to the Court some of the reasons behind the committees'  
24 approach to this case and the kind of paradigm that it's  
25 adopted because I think it's going to be relevant to the

1 settlements you'll see today as well as the issues that  
2 we're going to face in the coming weeks with respect to  
3 funding obligations and the like, because this is a very  
4 different case. It's not a garden variety U.S.  
5 restructuring, and we think -- the committee believes that  
6 it's inappropriate to kind of default to some of the usual  
7 settings and course of conduct here.

8 THE COURT: Well, I don't want to cut you off, but  
9 I do want to share this view. I did read the papers very  
10 carefully and certainly there was a back and forth about how  
11 people see the case, and I'm happy to get people's views  
12 about that, but in a vacuum I don't know that -- that it  
13 tells me much, so that's why the papers actually -- while I  
14 don't have to resolve any of those disputes -- are helpful  
15 because they were in a very particular context. We'll worry  
16 about this issue, this is how we see it.

17 So I actually think I did get some useful  
18 background in terms of what the parties have been discussing  
19 back and forth, but I certainly don't know how much of a  
20 preview I need at this point. So -- because it's all going  
21 to depend.

22 But I don't want to cut you off, but I guess what  
23 I'm saying is if you could give me the sort of shorter  
24 version of the speech that would be helpful just because I  
25 don't want to -- usually if we're doing previews then it's

1 going to no doubt invoke a response and we could be here for  
2 a while on something that isn't yet in front of me, so --  
3 and I'll be the only person in this room who won't know  
4 precisely what you're debating because I won't have the  
5 context.

6 MR. DUNNE: Right. Right. And part of this was  
7 to let you know what we're seeing and to let you know what's  
8 coming down the pike without asking for Your Honor to really  
9 to weigh in on it, because I do think that that's a -- you  
10 know, inappropriate now because you -- we don't have a ripe  
11 disagreement at all, and hopefully we never will on these  
12 issues, but this does go to the issue of, you know, the  
13 committee involvement and oversight, which we've worked out  
14 for today, and there are a couple of facts that we're all  
15 going to have to struggle with, it's just the realities on  
16 the ground as we go forward with respect to this -- these  
17 debtors, and I'll give you a couple of examples. I'll give  
18 you the condensed version.

19 One of which arises just from the nature that this  
20 is a financial institution, and what does it mean to have  
21 ordinary course decisions made by a financial institution  
22 when we're sitting on an estate that has 100 plus million  
23 dollars of cash in it and no DIP? That sounds like a lot of  
24 money, but it's only a few funding obligations away from  
25 being spent, and if you look at what the debtors would have

1 done prepetition in the ordinary course they had already  
2 made their investment decisions, they're going to continue  
3 to fund. They had -- they had made the decision that that  
4 is the best way to maximize value for themselves.

5 We view that kind of post petition that's not  
6 ordinary course, the decision whether to continue to fund or  
7 to make those investments are in fact critical. We have  
8 scarce resources and whether to sell now, hold, what's the  
9 cost of holding, what are the dollars that need to be  
10 redeployed into non-debtor affiliates in order to hopefully  
11 realize some contingent value in the future, something we're  
12 all going to struggle with?

13 I'll just make two other points. One is the fact  
14 that there's no DIP facility here, which raises two issues.  
15 We don't have another source of funds for the estate, which  
16 means the cash that's in the system may be it for us in  
17 terms of funding administration expenses as well as funding  
18 obligations to the various portfolio companies.

19 Second, and this relates to the DIP, is I think  
20 everyone here knows that if there were a DIP lender there'd  
21 be a covenant package, that covenant package would have  
22 boxed the debtors behavior in certain respects, set kind of  
23 guardrails on it, if you will, which very often the  
24 creditors' committee just piggybacks on says we too, give me  
25 the notice of this, let me know about this, let me be a

1 beneficiary of that, which we don't have here to work with  
2 so we're kind of working through those issues on the  
3 protocol as well.

4 And lastly, and this will save time on the A&M  
5 application, is that we're looking forward to an A&M's  
6 involvement. I think they -- and Mr. Rosenthal had  
7 trumpeted the Lehman team being on the scene at an earlier  
8 hearing -- and what we particularly want is to have A&M  
9 bring their independence, their knowledge, their business  
10 acumen to bear here because they are the fresh set of eyes.

11 And as I said before, with a financial institution  
12 if you go back to the same people who made the decision to  
13 deploy this capital in the first instance there may be a  
14 huge thumb on the scale to continue to fund that investment  
15 because they still believe in it, when what we need now is  
16 somebody to say, okay, prepetition decisions are one thing,  
17 we have scarce resources now, does it still make sense to  
18 fund these or do we just sell them right now?

19 That in part, Your Honor, explains the committees'  
20 mindset and proposed paradigm, but we're flexible on that,  
21 and I think both sides have been flexible in terms of what  
22 it means in any particular order, and we've worked out  
23 resolutions today, and I appreciate the debtor's willingness  
24 to accommodate us very late last night on a number of items,  
25 and hopefully none of this will really bubble up to a ripe

1 dispute, but that's what we're struggling with right now.

2 THE COURT: All right. Thank you.

3 MR. DUNNE: Thank you.

4 MR. ROSENTHAL: Your Honor, I'm going to be  
5 mindful of what you say.

6 We did have an issue about how much control the  
7 committee has in this case. We've resolved it for purposes  
8 of these motions, and if it comes up in the future I'm sure  
9 we'll be making our --

10 THE COURT: No, I did see the tension and I  
11 understand where everybody is coming from, and certainly I  
12 think the things that motivated some of the early orders and  
13 the early actions taken once the case was filed had to do  
14 with the unique facts here, but I think that the debtors did  
15 a very good job of getting in front of some of those issues,  
16 and in terms of establishing bank accounts, segregating  
17 funds, and addressing concerns about transparency given the  
18 -- that the cash and operations are overseas, so.

19 MR. ROSENTHAL: Yes, that's very important to us.

20 Mr. Kelsey will take the first motion.

21 THE COURT: All right. Thank you.

22 MR. KELSEY: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. KELSEY: For the record, Matthew Kelsey,  
25 Gibson, Dunn & Crutcher on behalf of the debtors.

1 As you know there are a lot of items on the  
2 agenda, but as Mr. Rosenthal indicated, pleased to announce  
3 that certainly with respect to the debtors and the committee  
4 resolved all issues outstanding between them.

5 So Your Honor, if you don't object I'd like to  
6 skip to agenda items 10 through 13 to describe the  
7 resolution that the committee and the debtors have reached  
8 on these what I'd consider --

9 THE COURT: All right, so we'll loop back to --

10 MR. KELSEY: And then we would move back to the  
11 beginning --

12 THE COURT: Right.

13 MR. KELSEY: -- of the agenda after that.

14 THE COURT: All right. If it works for you it  
15 works for me.

16 MR. KELSEY: Right. Thank you, Your Honor.

17 So the first item of the agenda, item 10, that  
18 we're going skipping ahead to item 10 is the debtor's motion  
19 seeking authority to employ ordinary course professionals.  
20 And there was a back and forth as you know between the  
21 committee and the debtors on what's appropriate and what's  
22 not, and I think we've reached agreement, and the agreement  
23 roughly is as follows. It's not -- I say roughly only  
24 because it hasn't been rendered into a form of order yet.

25 THE COURT: Fair enough.

1 MR. KELSEY: That if the debtors supplement their  
2 list of ordinary course professionals the debtors would  
3 provide the committee with a ten-day notice period with an  
4 opportunity to object and to seek expedited relief, and we  
5 -- and the debtors would consent in this order to the  
6 expedited relief requested by the committee.

7 Secondly, we would agree to reduce the ordinary  
8 course professional cap from what was proposed to 100,000  
9 per month with a 500,000 aggregate cap.

10 The committee had proposed 50,000 and 500,000, and  
11 while I'm okay with the aggregate cap, what I'd like to  
12 avoid is a potential foot fault of an ordinary course  
13 professional maybe going -- maybe having one particular busy  
14 month and having to file a fee application.

15 So long as the aggregate cap is 500- we think a  
16 little more flexibility on the monthly cap makes sense.

17 THE COURT: All right.

18 MR. KELSEY: And finally after discussions with  
19 the United States Trustee's Office we've agreed to withdraw  
20 Ernst & Young from our ordinary course professional list.

21 THE COURT: All right. That answers one of my  
22 questions as whether the U.S. Trustee had any particular  
23 interest in this application, and it sounds like that's --  
24 that's been answered.

25 Mr. Morrissey?

1 MR. MORRISSEY: Your Honor, what Mr. Kelsey just  
2 said about Ernst & Young I did know about that and I'm -- I  
3 was happy to hear it, because Ernst & Young cannot come in  
4 under 327(e) of the Bankruptcy Code, which was reserved for  
5 special counsel, underscoring the word counsel, so that's --  
6 that works out fine.

7 What I didn't know until Mr. Kelsey just said it  
8 was that there is an agreement to increase the cap to  
9 \$100,000 a month and \$500,000 for the whole case. I knew  
10 about the \$500,000 for the whole case, which is fine with  
11 us, we -- we think -- and again, I'm just spouting it off  
12 the top of my head right now, Your Honor -- that \$100,000 is  
13 -- is a lot for an ordinary course professional.

14 The maximum in large cases that we have had has  
15 been 50,000 a month, and the debtors and I guess the  
16 committee has agreed, propose to double that amount, and I  
17 understand what Mr. Kelsey was saying about one particular  
18 month possibly sending somebody over the top, but you know,  
19 if Mr. Kelsey was going to leave a little cushion, say  
20 55,000, something like that, I might be able to live with  
21 that, but to double the amount is in the U.S. Trustee's view  
22 quite excessive, and I'm not aware of special circumstances  
23 of this case warranting going up that high.

24 THE COURT: All right. I don't know if that view  
25 is something you've heard before, just now, or what the

1 status of conversations were because obviously I don't have  
2 any papers from the U.S. Trustee's Office on this particular  
3 issue.

4 MR. KELSEY: Well, I knew that the U.S. Trustee  
5 was advocating what the committee was advocating in the  
6 committees' papers --

7 THE COURT: All right. So essentially they didn't  
8 file because they saw what the committee had filed, which  
9 sometimes happens, and then somebody goes away, and -- all  
10 right. I see somebody rising from the committee.

11 MR. FLECK: Good morning, Your Honor, Evan Fleck  
12 of Milbank, Tweed for the committee.

13 If I may, I just wanted to add, I agree with  
14 Mr. Kelsey's representations with respect to the agreement.

15 There's one other point that may actually  
16 facilitate this issue that's been raised by the U.S.  
17 Trustee.

18 The debtors have also agreed to provide monthly  
19 reporting to the committee with respect to expenses, and  
20 that helped us to get comfortable that we're going to be  
21 monitoring those expenses.

22 THE COURT: All right.

23 MR. FLECK: The fees are very important for all of  
24 us, the committee in particular of a case of this type --

25 THE COURT: Right.

1 MR. FLECK: -- and we'll be --

2 THE COURT: So essentially you're more comfortable  
3 because it's monthly as opposed to being quarterly, which  
4 would be more of a problem with that cap.

5 MR. FLECK: That's right. So --

6 THE COURT: All right.

7 MR. FLECK: -- we'll be on top of that.

8 THE COURT: Mr. Morrissey, does that -- does that  
9 assist you in achieving a level of comfort?

10 MR. MORRISSEY: Your Honor --

11 THE COURT: Yes, but.

12 MR. MORRISSEY: Well, actually, no, but. The --

13 THE COURT: All right. Well, I gave it a shot.

14 (Laughter)

15 MR. MORRISSEY: Your Honor, yeah, I mean I don't  
16 have authority to go over \$50,000 in any case, and the case  
17 that happens --

18 THE COURT: No, that's fair enough.

19 MR. MORRISSEY: -- to be made that this is -- this  
20 case is different from all other large Chapter 11's here.

21 So with -- I'm not going to belabor the point,  
22 Your Honor, but I just can't go up that high.

23 THE COURT: No, I understand, and there is a  
24 benefit to a bright line because otherwise I spent time  
25 arguing about this in every single case and I do try to be

1 mindful. I think Judge Gerber even has a line in one of his  
2 opinions -- several of his opinions -- that basically says  
3 that where courts in this -- in this -- judges in this  
4 courthouse have done something that he defaults that absent  
5 a real good reason not to just because there is a benefit to  
6 consistency.

7 So -- and now having understood while the U.S.  
8 Trustee didn't file papers because they had the same view it  
9 has the committee I am inclined to go with the standard in  
10 the courthouse, just really as they say when people break up  
11 with each others it's not you, it's me --

12 (Laughter)

13 THE COURT: -- it's -- it really is something I  
14 think consistency is important, and again, I don't think  
15 it's fair to parties to have to refight that battle every  
16 time they come in and I don't think it's helpful for people  
17 to feel like they're just -- judges are picking numbers out  
18 of the air.

19 So that's actually one of the things I checked  
20 before I came out here was what has been done in some other  
21 large cases that I have. So -- so I'm inclined to go with  
22 that.

23 If in light of that you might want to tweak the  
24 reporting requirement bimonthly, something so that we don't  
25 run up a lot of administrative expenses -- I understand part

1 of this is about administrative expenses -- but if we go  
2 with a standard number there may be a way to kind of keep  
3 that cost done.

4 MR. FLECK: Your Honor, and the only point  
5 obviously you're the decider here, and if that's -- if  
6 that's the Court's ruling, the monthly reporting was an  
7 important issue for the committee, they're going to be  
8 looking for that from all the professionals in the case, and  
9 the reason in addition to what Mr. Morrissey was saying, if  
10 people are tripping over the line for monthly expenses and  
11 then have to go to the expense of filing retention  
12 applications and that process that obviously is costly and  
13 we wanted to just be aware of that in advance. If we see  
14 someone getting close we expect there could be a dialogue  
15 with the debtors about that professional.

16 THE COURT: No, I understand that.

17 Mr. Morrissey, does your office have a view one  
18 way or the other? Again, I'm concerned about consistency in  
19 terms of what the -- these caps are tied to in terms of  
20 monthly reporting or quarterly reporting.

21 MR. MORRISSEY: No, Your Honor, in fact that was  
22 -- my understanding and Mr. Kelsey and Mr. Fleck can correct  
23 me if I'm wrong on this -- is that this is an ad hoc or sui  
24 generis deal that they made in the context of this  
25 particular motion, but we don't have a position on whether

1 there's a special monthly or quarterly reporting requirement  
2 in --

3 THE COURT: All right.

4 MR. MORRISSEY: -- association with this.

5 THE COURT: All right. Because one of the things  
6 I do think, there was a back and forth about where the  
7 appropriate level of -- of communication here is, and I'm  
8 all in favor of communication, but I did take the debtors'  
9 point that -- that about administrative expenses and about  
10 it being micromanaged, so I do want to find an appropriate  
11 way to do that.

12 So I'd ask at a break the committee think about  
13 what -- what reporting requirements, whether there isn't a  
14 tweak that's appropriate in light of the cap being halved  
15 for months, which is a big deal, and I know it's a burden on  
16 the debtors, and again, you're sort of being sacrificed on  
17 the alter of consistency, but I don't want to sort of add  
18 reporting requirements on top of reporting requirements, I  
19 don't think that's fair.

20 MR. FLECK: Your Honor, we take the Court's point  
21 and we'll -- the committee --

22 THE COURT: All right --

23 MR. FLECK: -- will find bimonthly --

24 THE COURT: Yeah, I'm sure you can -- all right,  
25 thank you. I'm sure you can figure something out.

1 MR. KELSEY: I have some confidence that we'll  
2 figure something out as well --

3 THE COURT: All right, thank you.

4 MR. KELSEY: -- Your Honor. Okay. And we  
5 understand your ruling.

6 And moving forward I think item 11 on the agenda  
7 is the employee wage motion.

8 And the resolution we reached with the committee  
9 is that we were going to limit the committees' consent  
10 rights only to those post petition payments to employees  
11 that result from, you know, their leaving -- leaving the  
12 employment of the debtors or otherwise terminated, which is  
13 actually consistent with -- there's a -- not really a  
14 program, it's a statute in Bahrain that talks about an  
15 indemnity, but it's not an indemnity in the traditional  
16 sense that, you know --

17 THE COURT: It's really severance.

18 MR. KELSEY: -- American attorneys -- it's really  
19 a statutory severance payment, and we said, well, yeah, you  
20 know, if someone left we'd either seek the committees'  
21 consent or approval of the Bankruptcy Court to make those  
22 payments when an employee left, but otherwise post petition  
23 payments to employees in the ordinary course would be  
24 approved.

25 We have agreed to limited reporting, which is

1 after the fact in the budgeting process, we've disclosed to  
2 the committee and their professionals payments we've made  
3 post petition to employees, but to be clear because we're  
4 going to report it in the budget it's not an opportunity for  
5 the committee to take another bite at the apple of the  
6 debtor's judgment to pay their employees or in a certain  
7 amount, it's just simply a reporting function.

8 THE COURT: All right. That's fine.

9 MR. KELSEY: Great. Thank you, Your Honor.

10 Moving ahead here to item 12 is the critical and  
11 foreign vendors.

12 And the resolution we've reached with the  
13 committee on that is that we would give the committee  
14 consent or we would seek further order of the Court to make  
15 any payments to a critical or foreign vendor in excess of  
16 the \$2 million cap.

17 And then with respect to payments to yet  
18 unidentified critical or foreign vendors that would be  
19 within the cap, we would give the committee this ten-day  
20 notice period prior to payment --

21 THE COURT: All right.

22 MR. KELSEY: -- with an ability to object and be  
23 heard on an expedited basis and the debtors wouldn't object  
24 to a hearing on those grounds.

25 THE COURT: I'm sorry, I missed the beginning part

1 of that. You're saying these are ones that are up to the  
2 cap but haven't been identified --

3 MR. KELSEY: Correct.

4 THE COURT: -- by the estate?

5 MR. KELSEY: Correct, Your Honor.

6 THE COURT: Okay. Because I remember there was a  
7 particular number. I don't -- I think it was 1.55, but then  
8 there was some additional cushion built in, so you're really  
9 talking about the cushion.

10 MR. KELSEY: Correct, Your Honor.

11 THE COURT: All right. That seems a very  
12 appropriate resolution.

13 MR. KELSEY: Thank you, Your Honor. Although I  
14 give Mr. Fleck some credit on that as well.

15 THE COURT: All right.

16 MR. FLECK: Thank you.

17 MR. KELSEY: All right, so item 13 is the  
18 insurance program motion.

19 THE COURT: All right.

20 MR. KELSEY: And the resolution we've reached with  
21 the committee is with respect to the payment of prepetition  
22 deductibles in excess of \$100,000 --

23 THE COURT: All right.

24 MR. KELSEY: -- we would give the committee a  
25 consultation right, which again, we mean a ten-day notice

1 before we intend to pay with an opportunity to object and  
2 seek expedited relief with the debtors consenting to the  
3 expedited nature of the relief. You know, in this order so  
4 that the committee doesn't have to reach out to the debtors  
5 ands say, hey, we want an expedited hearing and we can't  
6 hold them up. That's --

7 THE COURT: All right.

8 MR. KELSEY: -- a feature of this, okay.

9 With respect to renewal of policies that lapse  
10 we're obtaining new policies. We would give again the  
11 committee that same consultation right, the ten-day notice,  
12 with an opportunity to object and be heard on an expedited  
13 basis provided that with respect to any new policy, Your  
14 Honor, if the debtors seek new coverage and determine that  
15 in obtaining such coverage they'd be doing something that's  
16 outside the ordinary course of the business we'd either seek  
17 the committees' consent or an order of the Bankruptcy Court.

18 THE COURT: All right. And when you say outside  
19 the ordinary course of business I assume that part of that  
20 has to do with if the new coverage is replacing preexisting  
21 coverage that has lapsed. In other words, you're going to a  
22 different carrier and getting similar kind of coverage.

23 MR. KELSEY: Right. I would think that would be  
24 ordinary course.

25 THE COURT: Right.

1 MR. KELSEY: What is or isn't ordinary course I  
2 don't know in terms of -- if we felt that it was ordinary  
3 course -- if it wasn't ordinary course we'd seek the  
4 committees' consent --

5 THE COURT: All right.

6 MR. KELSEY: -- or an order of the Court. If we  
7 thought it was ordinary course and the committee didn't they  
8 would have the right to object quickly and seek expedited  
9 relief.

10 THE COURT: All right.

11 MR. KELSEY: Okay. I think that hits the main  
12 issues of dispute other than some retentions, which will be  
13 discussed later.

14 THE COURT: All right.

15 MR. KELSEY: So with that I thought maybe we could  
16 go back item 2 of the agenda.

17 THE COURT: All right. Well, let me actually just  
18 -- since we've just discussed those motions I just want to  
19 go through them and check those off the list of things to  
20 do.

21 So the first one was number 10 -- and again, for  
22 all these I've heard -- the tweaks to the requested relief  
23 and the agreements that have been reached, so I'm only  
24 asking for if there's any additional comments anybody else  
25 who wants to be heard on something that hasn't been

1 discussed. So for number 10, ordinary course professionals  
2 I don't see anybody else who wants to be heard. I will  
3 grant that consistent with the discussion that we've had.

4 And for number 11, which is wages, I don't see  
5 anyone else commenting. Again, I will grant that consistent  
6 with the representations and agreements that have been put  
7 before me.

8 Critical and foreign vendors, same ruling.

9 And insurance coverage I don't see anyone else who  
10 has a comment, and that same ruling applies.

11 MR. KELSEY: Great. Thank you, Your Honor.

12 So moving head to item 2 of the agenda. Really  
13 item 2 and 3 are pretty closely related, and that's debtor's  
14 motions to extent the deadline to file reports pursuant to  
15 bankruptcy rule 2015.3 and the file schedules and  
16 statements. We're asking for a 45-day extension up to and  
17 through June 21st, 2012.

18 We have on the line Steve Kotarba from A&M and he  
19 submitted a declaration in support of both of these motions.

20 Your Honor, I'd like to move to enter that into  
21 the record.

22 THE COURT: All right, any objection?

23 MR. MORRISSEY: Your Honor, once again for the  
24 benefit of those on the phone, Richard Morrissey from the  
25 U.S. Trustee's Office.

1 We had discussion to this and basically agreed to  
2 this -- it's not a complicated legal issue here, Your Honor.

3 We believe that a deadline of May 21st would be  
4 more appropriate, in fact I think it's somewhat generous.  
5 Giving them 90 days from the petition date is an awful lot  
6 to file schedules.

7 Practically speaking for my office, Your Honor, we  
8 have to schedule a 341 meeting and creditors' meeting and we  
9 really can't go forward with that until the schedules and  
10 the statement of financial affairs are filed.

11 In addition as Mr. Kelsey has noted, it's also to  
12 file a 2015.3 statement. And I understand this is a big and  
13 complicated case, but once again echoing what I said earlier  
14 on another motion, the question is why is this case  
15 different from all the others here?

16 This is a very, very long period of time, 90 days  
17 to get information to the parties in interest and the Court  
18 as far as exactly what the debtor's assets are, what the  
19 liabilities are, and quite simply, Your Honor, we think that  
20 going all the way to June 21st is excessive here. So we  
21 would ask for May 21st to be the deadline.

22 THE COURT: All right. But to answer the smaller  
23 question, I don't think you have an objection to the  
24 declaration being introduced into evidence, so I'm going to  
25 accept that.

1 MR. MORRISSEY: Not at all.

2 (Debtors' Exhibit No. 1 was admitted)

3 THE COURT: I understand these things are often  
4 done sort of in a dollop at a time -- a certain amount of  
5 time and I understand the benefit to that, and in I think  
6 most cases I'm a fan of that approach. I do think that  
7 there's, as I understand it one secured creditor here and  
8 everyone else is an unsecured creditor, and for that reason  
9 and several others there obviously is a very energized,  
10 unsecured creditor community that is very adequately  
11 represented here, so I'm a little less concerned about the  
12 extension given that fact.

13 But let me ask if there's any ability to move the  
14 date up a little bit, just because deadlines are what make  
15 the world go. So if it --

16 MR. KELSEY: I would say --

17 THE COURT: -- set for June 21st the odds of it  
18 happening before then are pretty much zero.

19 MR. KELSEY: No, actually one of the reasons we  
20 asked for 45 days was we want -- we didn't want to have to  
21 come back and ask again. We think that 45 days will give us  
22 ample time to get it done.

23 THE COURT: All right.

24 MR. KELSEY: We could shorten the period if it  
25 would please Mr. Morrissey. I think two weeks is a little

1 tight, but I think, you know, June 10th. We can cut --

2 THE COURT: All right.

3 MR. KELSEY: -- cut a lot, you know, almost two  
4 weeks off --

5 THE COURT: We'll split the baby and we'll make it  
6 -- we'll make it June 10th.

7 And again, I'm comfortable -- again, I understand  
8 the desire to get this information out as it is important,  
9 and again, I think there's a benefit to consistency and  
10 setting everything at the last possible end date is -- is a  
11 bit difficult, because essentially it becomes a default for  
12 every case that comes in here.

13 So but at the same time I am -- I'm doing this in  
14 light of the fact that the record before me demonstrates a  
15 very vigorous and extended and in-depth dialogue between the  
16 committee and the debtors here, which I think allows me to  
17 rest easy as to the information that is being provided.

18 MR. KELSEY: Thank you, Your Honor.

19 Just June 10th I think is a Sunday. That's what  
20 I'm being told.

21 THE COURT: Oh, all right. Well, then let's make  
22 it -- since nobody every wants to think about things over  
23 the weekend make it -- make it June 8th.

24 MR. MORRISSEY: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. KELSEY: Okay, Your Honor, so that's 2 and 3  
2 and so the deadline will be June 8th for both.

3 And if you had any questions for Mr. Kotarba --

4 THE COURT: No.

5 MR. KELSEY: -- he's available.

6 THE COURT: Thank you.

7 MR. KELSEY: Okay. So number 4 on the agenda is  
8 the interim compensation procedures. We've looked at  
9 standing order M-412 and the proposed form of order is in  
10 substantial compliance with the standing order of the Court.

11 As the committees' onmi response indicated, the  
12 debtors have agreed to clarify the order to note that a  
13 failure to timely file quarterly fee application will result  
14 in a professional not being paid subsequent amounts on  
15 monthly fee statements until the quarterly fee application  
16 was filed and approved, but otherwise there'd be no other  
17 jeopardy that would attach.

18 THE COURT: All right. Anyone want to be heard on  
19 this application?

20 All right, I will grant the request.

21 MR. KELSEY: Thank you, Your Honor.

22 All right, moving onto agenda item number 5,  
23 that's the debtor's motion to file the list of its customer  
24 names under seal. We've received no objection.

25 You know, as a private equity firm and investment

1 bank Arcapita greatest resources obviously are its  
2 connections with its investors, and a public disclosure of  
3 the identity of those investors could severely damage the  
4 business in the form of allowing competitors to poach these  
5 investors, and so we thought it was appropriate to file this  
6 confidential, sensitive, commercial information under seal.

7 THE COURT: All right. Anyone want to be heard as  
8 to this request?

9 MR. FLECK: Your Honor, Evan Fleck again from  
10 Milbank on behalf of the committee.

11 We -- the committee has no objection to the relief  
12 requested.

13 I'd note that the committees' advisors have  
14 received the list for purposes of running conflicts and  
15 that'll be reflected in the retention applications, and  
16 obviously nothing in the motion prejudices the rights of  
17 parties, including the committee, should there be a need to  
18 conduct discovery or any other matters with respect to the  
19 names on the list.

20 THE COURT: All right. No, that all makes good  
21 sense, it's sealing it for a particular purpose and that  
22 certainly does prevent a party from coming back if we need  
23 to handle things in a different way in the future, but I  
24 will grant the motion.

25 MR. KELSEY: Great. Thank you, Your Honor.

1 I think with that we move on the professional  
2 retentions, and I'm going to cede the podium to my  
3 colleague, Janet Weiss.

4 THE COURT: All right. Thank you.

5 (Pause)

6 MS. WEISS: And good morning, Your Honor, Janet  
7 Weiss --

8 THE COURT: Good morning.

9 MS. WEISS: -- for the debtors.  
10 I'm going to move to agenda item number 6, which  
11 is the retention of Gibson, Dunn & Crutcher.

12 We're seeking retention under Section 327(a) of  
13 the Bankruptcy Code. Gibson, Dunn & Crutcher will perform  
14 the services that are typically rendered to debtors-in-  
15 possession as general bankruptcy counsel.

16 We have filed a declaration of Mr. Rosenthal who  
17 is in the court. He has in the declaration stated that we  
18 are disinterested under Section 10114 and that Gibson, Dunn  
19 does not hold or represent an interest that is materially  
20 adverse to the debtors.

21 We have discussed the issue of the retention with  
22 the U.S. Trustee's Office and we have agreed on a few  
23 things.

24 In the retention engagement letter there are two  
25 provisions that were standard in Gibson, Dunn's engagement

1 letter. One provided for an indemnity, and we are putting  
2 in the order clarifying that we are not seeking indemnity.

3 And the second is a provision for secretarial  
4 overtime, and the order now will also clarify that we're not  
5 seeking those payments.

6 THE COURT: All right.

7 MS. WEISS: In addition, in the declaration of  
8 Mr. Rosenthal we disclosed a connection with an entity  
9 called Church Street Health Management, and the U.S. Trustee  
10 requested that we disclose this a little bit more  
11 prevalently by discussing it in the court.

12 Gibson, Dunn & Crutcher represent an entity called  
13 Garrison Investment Group which is -- represents the --  
14 which is the DIP agent and a prepetition lender to Church  
15 Street. Church Street is an indirect affiliate of the  
16 debtors and the debtors own a majority of those interests.

17 Church Street itself is in a bankruptcy proceeding  
18 in the Middle District of Tennessee and is represented by  
19 King & Spaulding.

20 In that bankruptcy case the debtor has already  
21 acknowledged that there is no equity value in the company.  
22 There has been an auction, a 363 auction, and it's proposed  
23 that Garrison, along with another group of investors, will  
24 take the assets free and clear, there'll be no payment or  
25 distribution to equity, and in fact there's a valuation

1 that's being filed that shows that they're hundreds of  
2 million dollars out of the money. And so we don't see that  
3 there's a conflict.

4 They -- that entity is not a debtor, there's  
5 separate counsel representing them, but we wanted to make  
6 sure that that was clearly disclosed, and it is in the  
7 Rosenthal declaration.

8 The second of the Rosenthal declaration discloses  
9 that Credit Suisse is a client of just a little bit more  
10 than one percent of the revenues over the past year, and  
11 we've agreed with the U.S. Trustee that we will seek  
12 conflict counsel, to the extent that there are any direct  
13 litigation or direct conflict in the case with Credit  
14 Suisse.

15 THE COURT: All right. Thank you.

16 Anyone want to be heard in connection with this  
17 motion?

18 MR. MORRISSEY: Your Honor, once again Richard  
19 Morrissey for the U.S. Trustee.

20 As far as this motion, Your Honor, this U.S.  
21 Trustee that has no objection.

22 One of the things that I was discussing with  
23 Ms. Weiss and colleagues was the issue that concerns us in  
24 any large case, which is overlap between what Gibson, Dunn  
25 in this case is going to be doing and special counsel that

1 you'll be hearing about momentarily is going to be doing, so  
2 we -- we drew some lines in the sand, so to speak, in terms  
3 of line that is aren't going to be crossed, and the U.S.  
4 Trustee is satisfied at this stage that there aren't --  
5 there should not be any overlap.

6 And as far as the conflict issues Ms. Weiss went  
7 over them very clearly and completely and the U.S. Trustee  
8 has no objection to this firm's retention.

9 THE COURT: All right. I will grant the  
10 application to retain Gibson, Dunn & Crutcher.

11 MS. WEISS: Okay, thank you.

12 And one issue I also wanted to put on the record  
13 that I didn't, but that we had agreed to with Mr. Morrissey,  
14 which is there's going to be an ethical screen in place so  
15 that no member of Gibson, Dunn or no party in Gibson, Dunn  
16 who represents any party in the Church Street matter will be  
17 representing the debtors in this case.

18 THE COURT: All right. Thank you.

19 MS. WEISS: The next agenda item is number 7,  
20 which is the retention of Trowers & Hamlins.

21 Trowers & Hamlins is a firm in Bahrain, the  
22 debtors are seeking to retain them pursuant to Section  
23 327(e) of the Bankruptcy Code as special counsel. Trowers &  
24 Hamlins has advised the debtors in the past and on all  
25 matters with respect to Bahraini law.

1 Under Bahraini law it is required for special  
2 opinions and appearance before the Court that a separate  
3 firm represent the -- any party in Bahrain and that any  
4 matter under Bahraini law is -- if there was an opinion or a  
5 formal affirmative statement under Bahraini law that that be  
6 given by a special local firm.

7 In this case the Bahraini firm is going to be  
8 Hatem S. (ph) -- and excuse me if I mispronounce this --  
9 Zubee Y Partners (ph), they're going to be retained as  
10 ordinary course counsel pursuant with the terms of that  
11 order.

12 Also for Trowers & Hamlins they filed a  
13 declaration, they meet the standard of 327(e), they don't  
14 have any interest that's adverse to the debtors with respect  
15 to the matters for which they're being retained.

16 And with that we would seek their retention.

17 THE COURT: All right. Anyone want to be heard in  
18 connection with the application to retain Trowers & Hamlins,  
19 LLP?

20 MR. MORRISSEY: Your Honor, with respect to the  
21 special counsel retention, obviously the only one concern  
22 there could be overlap between what the Trowers firm is  
23 doing and what the Hatem firm is doing, but having said that  
24 we did work this out with debtor's counsel and will we have  
25 no objection to that retention.

1 THE COURT: All right. Given that representation  
2 I will grant the application.

3 MS. WEISS: Your Honor, the next item that's up is  
4 on the -- sorry -- it's agenda number 8, which is Alvarez &  
5 Marsal.

6 The committee filed in their objection cited  
7 Alvarez & Marsal that there was an objection to this  
8 retention, and the committee has stated their views  
9 regarding an incentive fee that's going to be brought before  
10 this Court in the future; however, at this time we're not  
11 seeking approvement of any incentive fee, we're seeking only  
12 retention on an hourly basis for purposes of the interim  
13 hearing, and as such there's been an agreement with the  
14 committee.

15 Also in response to the U.S. Trustee's request I  
16 want to highlight, which has also been already disclosed to  
17 the Court, that Alvarez & Marsal, a separate team, is  
18 representing Church Street in their bankruptcy case, and by  
19 coincidence in that same matter, but there's an ethical  
20 screen in place, and as we've mentioned, the debtors are out  
21 of the money and so we perceive that there's no conflict on  
22 that.

23 THE COURT: All right. Anyone want to be heard in  
24 connection with the Alvarez & Marsal application?

25 Again, I did -- I did read the committees'

1 pleadings on this and understood that they -- you've reached  
2 an agreement on a certain kind of retention now and putting  
3 the issue of the incentive fee on the back burner.

4 MR. FLECK: Yes, Your Honor. Evan Fleck once  
5 again.

6 That's correct, we're comfortable with the form of  
7 order. There are some issues that we need to work through  
8 with the company and A&M on the incentive fee, also with  
9 respect to the standard of review.

10 For purposes of the final order that's submitted  
11 the committee believes appropriate that it have a 330 review  
12 along with the U.S. Trustee Office, but that's not an issue  
13 before the Court.

14 THE COURT: All right.

15 MR. FLECK: Thank you.

16 MR. MORRISSEY: Your Honor, I'm just going to note  
17 for the record that Alvarez & Marsal is working on hourly  
18 rates as opposed to this flat fee that you often with  
19 financial advisors.

20 The U.S. Trustee obviously is fine with that and  
21 we will also be addressing the incentive fee question down  
22 the road. No objection.

23 THE COURT: All right. I will grant the  
24 application for -- and I guess you're going to title this an  
25 interim order on the employment and retention of Alvarez &

1 Marsal on the -- based on the description provided to me and  
2 we'll deal with any other issues as necessary.

3 MS. WEISS: Okay. Thank you, Your Honor.

4 The next agenda item is number 9, and this is with  
5 respect to Linklaters.

6 The debtors are seeking to retain Linklaters as  
7 special counsel pursuant to 327(e) of the Bankruptcy Code.

8 Mr. Richard Good is on the phone, he submitted a  
9 declaration in support of the application.

10 In response to the U.S. Trustee's request we're  
11 making two modifications to the scope of services that are  
12 reflected in the proposed order, which is Linklaters will  
13 not be providing any services and rendering advise with  
14 respect to either U.S. law or Bahraini law. U.S. law being  
15 the providence of Gibson, Dunn and Bahraini being the  
16 providence of Trowers and the special Bahraini firm.

17 Those two changes appear in Sections (c) and (h)  
18 in the scope of services, and as I mentioned, that's not  
19 changed in the proposed order.

20 The retention application of Linklaters had also  
21 requested that Linklaters directly hire the queens counsel  
22 who is Mr. Anthony Zachareli (ph), after discussions with  
23 the committee and the U.S. Trustee we are not seeking that  
24 treatment right now.

25 Mr. Zachareli performed services that were

1 primarily prepetition, he has a retainer, and it's not  
2 anticipated at this time that he's going to be performing  
3 future services, and so at this time we are not seeking that  
4 determination. If he performs future services we'll have to  
5 address it at that time.

6 And then with respect to the prepetition fees he's  
7 got a retainer that covers those amounts and that will be  
8 treated as a claim in the ordinary course.

9 THE COURT: All right. With that said anyone want  
10 to be heard in connection with this application?

11 MR. FLECK: Your Honor, for the record, Evan  
12 Fleck.

13 One additional clarification that reflects the  
14 agreement between the committee and the debtors.

15 We understand there's a prepetition relationship  
16 and Linklaters was -- had done work for Arcapita prepetition  
17 as well, and the -- we have reached an agreement that with  
18 respect to fees that are incurred by Linklaters that those  
19 fees will be subject to a debtor allocation agreement so the  
20 fees will be borne appropriately based upon the work and  
21 where the benefit is enjoyed among the Arcapita family, and  
22 that is the subject of further work between the committee  
23 and the debtors to arrive at that exact agreement and what  
24 that should look like.

25 THE COURT: All right. All right --

1 MR. FLECK: With that -- with that modification  
2 and understanding we have no objection.

3 THE COURT: All right.

4 MS. WEISS: Your Honor, I should point out that  
5 it's currently not anticipated that Linklaters will perform  
6 services on behalf of the deal companies, but to the extent  
7 they do perform such services there will be an allocation  
8 method.

9 THE COURT: All right. Thank you, I think that's  
10 paragraph 45 of the objection and it sounds like it's dealt  
11 with appropriately.

12 All right, in light of those comments and the  
13 agreement of the parties I will grant the application to  
14 retain and employ Linklaters as has been described.

15 MS. WEISS: Okay. Thank you, Your Honor.

16 The last issue that is up is agenda number 14, and  
17 the is an additional cash management order. This is the  
18 fourth interim cash management order, and Your Honor, we  
19 don't expect that the entire case will go forward on interim  
20 cash management orders.

21 We are working to put into place a longer term  
22 protocol that will govern how the debtors spend money in  
23 connection particularly with preserving the value and  
24 maximizing the value with the deal assets. That's in the  
25 work, that will be negotiated with the committee.

1           There's also been significant progress in  
2 negotiating that with the provisional liquidator in the  
3 Cayman Islands and we hope to have that be presented to Your  
4 Honor shortly.

5           THE COURT: All right. Well, I think a fourth  
6 interim is certainly appropriate under the circumstances and  
7 a lot of progress has been made and I appreciate that so,  
8 besides you don't have the record in this courtroom for the  
9 number of interim financing orders.

10           (Laughter)

11           THE COURT: I'd like to say you're not even close,  
12 so given the work that has been done to date and the  
13 agreement of the parties I'm happy to sign off on a fourth  
14 interim order.

15           MS. WEISS: Okay. And Your Honor, just for  
16 purposes of disclosure. The fourth interim order includes  
17 the same protections that we had in the third interim order  
18 that included granting administrative expense claims to  
19 debtors that loaned money on an intracompany basis and also  
20 included some reporting requirements specifically to  
21 Standard Charter, and those will remain in the fourth  
22 interim order.

23           THE COURT: All right. And am I safe to say that  
24 that resolves the limited objection of Standard Charter that  
25 was filed?

1 MS. WEISS: Mr. Greer is in the courtroom, he can  
2 address that.

3 MR. GREER: Good morning, Your Honor, Brian --

4 THE COURT: Good morning.

5 MR. GREER: -- Greer of Dechert LLP for Standard  
6 Charter.

7 As you know from our pleadings, Your Honor, we  
8 have serious issues with the cash management and the funding  
9 between the debtor and the non-debtor entities.

10 For today's hearing we are okay with the form of  
11 fourth interim order, but our rights are reserved and  
12 hopefully we won't be litigating the issues before Your  
13 Honor, but that could come sooner rather than later.

14 THE COURT: All right, thank you.

15 MS. WEISS: Mr. Rosenthal also reminds me that the  
16 provisional liquidator has also specifically requested that  
17 they state that their rights are preserved on the record and  
18 particularly with respect to the administrative claims, but  
19 that will be addressed as I said in the protocol.

20 THE COURT: All right. And how do you intend on  
21 teeing the protocol up? As part of a final order or just as  
22 a separate motion or just as an agreement among the parties?

23 MS. WEISS: Your Honor, there are issues in the  
24 protocol that resolve the cash management issues  
25 specifically with respect to the structure of the secured

1 claim by Standard Charter, and I don't know if there'll be a  
2 separate motion to approve the protocol, but I do as a part  
3 of that that will incorporate into the final cash management  
4 order.

5 THE COURT: All right. Thank you.

6 MS. WEISS: Okay, thank you, Your Honor.

7 And I believe that's it on the agenda.

8 THE COURT: Well, I think we have one more  
9 motion --

10 MS. WEISS: Oh, I'm sorry.

11 THE COURT: -- of Commerzbank.

12 MS. WEISS: I'm sorry, how could I forget.

13 My colleague, Mr. Kelsey will address that.

14 MR. KELSEY: Actually it's not my motion so I  
15 thought maybe Clifford Chance should start.

16 THE COURT: Oh, okay. All right. And let me cut  
17 to the chase here.

18 As I understand it nobody wants to improve their  
19 rights, you're -- this strikes me as a drafting issue where  
20 it's simply a matter of everyone preserving their rights.  
21 Meaning if you can't do something by virtue of the  
22 bankruptcy you can do this one of two ways, which is lift  
23 the stay with the understanding that you're not improving  
24 your position, or not lift the stay and put in some language  
25 to say the failure to file a notice does not -- won't in any

1 way, shape, or form be held against you.

2 MR. ANTONOFF: I'll address that, Your Honor. For  
3 the record, Rick Antonoff from Clifford Chance in New York.  
4 My colleague, Janeen (indiscernible - 01:20:28) Clifford  
5 Chance is with me.

6 We're here on behalf of Commerzbank, which is one  
7 of the largest unsecured creditors in the case. And just to  
8 again cut to the chase to take your cue, I think that if  
9 this were just a matter of U.S. law then your second  
10 approach might work, just to say that all rights are  
11 preserved and when we -- when Commerzbank does file a proof  
12 of claim it won't be detrimental to their claim that they  
13 hadn't sent a demand notice, but unfortunately this is not  
14 just a matter of U.S. law and I'm not sure that that would  
15 solve the problem. And if I can present the -- frame it for  
16 Your Honor the way that I -- the way that I see it.

17 Commerzbank holds a claim under a guarantee in an  
18 amount of 125 million Euro, which is roughly \$163 million.  
19 The guarantee is for a credit facility that was made  
20 available to -- by Commerzbank to a company called PBC Lux  
21 (ph) which is a holding company for a group of operating  
22 companies called a Profine Group, that just so you know  
23 manufactures plastic window and door products.

24 The guarantee by its terms becomes due and payable  
25 on demand; however, that demand cannot be made until at

1 least 14 days after the primary obligation of PBC Lux  
2 becomes due and payable. That primary obligation became due  
3 and payable on March 12th of this year, 14 days later was  
4 March 26th, and Commerzbank could have delivered a demand  
5 notice on the 26th but for the intervening commencement of  
6 Arcapita's bankruptcy case on March 19th and the automatic  
7 stay arising, which at least arguably and as a matter of  
8 prudence, presumably acts as a stay against the delivery of  
9 a demand notice.

10 Now as I said, if this were simply a matter of  
11 U.S. law that would be the end of the story, Commerzbank  
12 could file a proof of claim and we wouldn't be here asking  
13 for relief, but the guarantee in this case is governed by  
14 the laws of Bahrain, and it's not clear to us and apparently  
15 not clear to the debtors either whether under the  
16 substantive law of Bahrain failure to deliver a demand  
17 notice is a defense to liability under the guarantee. But  
18 if it is, and even if there's any chance that it is, then  
19 Commerzbank should be granted the relief requested in the  
20 motion to permit it to deliver the demand notice to avoid  
21 even the possibility that its guaranteed claim is lost due  
22 to the imposition of the automatic stay coming into  
23 existence in between the time that the primary obligation  
24 became due and the first day Commerzbank could have made  
25 demand 14 days later.

1           The automatic stay is not intended to deprive  
2           creditors of their claim, and this was addressed squarely by  
3           Judge Schwartzberg in a Texaco case where he made clear,  
4           although he denied the relief in this case he did so because  
5           sending a notice of acceleration in that case would have the  
6           effect of locking in a higher interest rates on notes that  
7           were issued by the debtor, and in that case would preclude  
8           the debtor from arguing that the lower rate applied.

9           Up to a point the Texaco case is similar to our  
10          situation. The issue arose in Texaco because post petition  
11          the debtor unilaterally set a lower interest rate to begin  
12          on a certain future date, the noteholder sought stay relief  
13          to accelerate their notes before that date in order to  
14          preserve the higher interest rate. Judge Schwartzberg  
15          denied the relief because the notes were not in default  
16          other than by virtue of the issuers bankruptcy filing and  
17          accelerating the notes on that basis would lock in the  
18          higher interest rate. But Judge Schwartzberg said that if  
19          that were not the case, if the noteholders only sought to  
20          preserve the status quo stay relief would be appropriate,  
21          and he said, I quote:

22                 "The debtors should not be permitted to use the  
23                 automatic stay and argue that a formal notice of  
24                 acceleration is a condition precedent to the noteholder's  
25                 right to claim the higher interest rate."

1           Now whether to grant stay relief is within the  
2           discretion of the Court and in exercising that discretion  
3           the Court is guided by the Second Circuit precedent,  
4           principally the Sonnax decision from 1990, which lists 12  
5           factors, all but one of which are not applicable in this  
6           case. The factors deal mostly with whether to permit  
7           litigation or other judicial proceedings to continue in  
8           another forum, but the one factor that is applicable is the  
9           balance of harms, and that factor weighs in favor of  
10          granting relief to Commerzbank for the simple reason that  
11          not being permitted to deliver the notice in May, no matter  
12          how uncertain the parties are about it, it may as a matter  
13          of Bahraini law jeopardize Commerzbank's claim. That's the  
14          harm to Commerzbank if relief is not granted.

15                 That possibility is measured against the fact that  
16                 delivering the notice causes absolutely no harm to the  
17                 debtors or these estates, and that's because no matter how  
18                 the notice is cast, whether it's a claim, a demand,  
19                 Commerzbank does not seek and this Court will certainly not  
20                 allow Commerzbank at that stage to have its claim allowed or  
21                 to collect anything at this stage of the case and does not  
22                 foreclose any defense Arcapita may have to challenge the  
23                 claim other than a defense that arises solely due to the  
24                 automatic stay.

25                 So I'll finish where I started. The automatic

1 stay is not intended to deprive creditors of their claims,  
2 but that is precisely what Arcapita wants the stay to do.  
3 In paragraph 6 of their objection I quote, "Absent the  
4 demand, Commerzbank has no right to collect on or assert a  
5 claim in respect to the guarantee."

6 Your Honor, that's an outrageous statement and  
7 this is precisely the evil that Judge Schwartzberg  
8 recognized in Texaco, that a debtor would use the automatic  
9 stay to argue with impunity that a condition to a claim has  
10 not occurred, and because the automatic stay prevents that  
11 condition from occurring the creditor has no claim. That's  
12 an abuse of the automatic stay and should not be endorsed by  
13 the Court.

14 And unless the Court has any questions I'll  
15 reserve further argument after others have spoken.

16 THE COURT: All right. Let me hear from other  
17 parties first, I may have a question of two after they're  
18 done.

19 MR. KELSEY: Thank you, Your Honor. Again for the  
20 record Matt Kelsey appearing on behalf of the debtors.

21 I think the blank of harms Sonnax factors are the  
22 appropriate factor for the Court to consider here. And I  
23 guess what the debtor has been struggling with here is if  
24 there's a clear right to the claim, right, not lifting the  
25 stay there's no harm to Commerzbank if the stay isn't

1 lifted.

2 THE COURT: What it sounds like what there is is  
3 uncertainty, and as people have been talking I'm been  
4 flipping through the papers to see if there's been any  
5 declaration or evidence given to me about what people's  
6 views are of the applicable foreign law, and I don't have  
7 any unless I'm missing something, and the pleadings are  
8 fairly short. Normally I'm a big fan of short pleadings,  
9 but it seems that there is a complicated issue under foreign  
10 law as to the nature of this notice, and I don't think I  
11 have any evidence one way or the other to inform me about  
12 that.

13 I'm not -- I'm not saying that people should go  
14 out and get experts and spend a lot of money on this, but  
15 what I'm saying is the parties sound like they both are  
16 unclear -- and correct me if I'm wrong -- about what the  
17 nature of this notice is, whether it's improving somebody's  
18 rights or it's simply reserving the status quo, and I'm  
19 wondering how I'm supposed to figure that out in the absence  
20 of any evidence, particularly in the parties find it complex  
21 enough that they're having trouble reaching a -- reaching a  
22 definitive answer.

23 MR. KELSEY: Right. You predicted where I was  
24 going, Your Honor. I said, you know, there's either a clear  
25 right to this or there's not.

1           The burden is on Commerzbank I think to persuade  
2 you that the cause exists to lift the automatic stay, which  
3 is prevents a demand notice and acceleration.

4           In the notice itself you've seen, right, it's a  
5 demand for payment and accelerates the obligation, it's not  
6 simply a notice of a default. The rule is that the  
7 automatic stay exists. You know, absent a showing of cause  
8 I think the burden of proof is on Commerzbank, and they've  
9 admitted, and we don't know, but I don't think it's our  
10 burden, what the impact is of setting -- of sending that  
11 notice.

12           What I would like to --

13           THE COURT: So you essentially are relying on the  
14 plain language of the notice to say that in the absence of  
15 evident to the contrary it does what it purports to do and  
16 that is to take a step forward as opposed to simply staying  
17 in place.

18           MR. KELSEY: Yes, Your Honor. I mean Commerzbank  
19 says, you know, we're wrangling over words. That's what  
20 lawyers do, and those words are pretty clear in that notice  
21 what -- what the notice purports to accelerate and advance  
22 the ball forward, and given that on nothing else we think  
23 that, you know, the automatic stay should stay, you know,  
24 absent some other evidence or testimony to demonstrate to us  
25 that the estates aren't going to be harmed.

1 I mean if it is the case as Commerzbank says that  
2 this is ministerial in all due crystallized time that's one  
3 thing, right, but then I don't see the harm, this could just  
4 happen in the claims reconciliation process. But they're  
5 saying, but it may harm us, it may be real harm, we may not  
6 have a claim. Well, then lifting the automatic stay  
7 actually hurts the debtor's estates by diluting --

8 THE COURT: But -- I'm sorry to cut your off here,  
9 but that's why I threw out the possibility of a second  
10 option as opposed to lifting the stay, which is entering  
11 into a stipulation that says the motion is resolved not to  
12 lift the stay but to simply memorialize everyone's agreement  
13 that to the extent that a notice was necessary to preserve  
14 the status quo the failure to file such notice will not be  
15 raised as a -- as a defense to that and it's a way of not  
16 having to get into parse what the actual notice would say,  
17 but really it's defining what -- taking the face value that  
18 this is a ministerial act and that that might be cleaner  
19 than lifting the stay, so that rather than having to grapple  
20 with foreign law and make a definitive determination we're  
21 essentially saying to the extent that this is the argument  
22 we're not going to make that argument, that if it's deemed a  
23 ministerial act and that we'll put essentially a pin in it  
24 for another day if we ever have to address the issue.

25 So that's why again, that may be more difficult to

1 draft than -- than I think, but at the same time if taking  
2 it at face value I don't see that the debtors would be  
3 giving -- doing something other than giving away ice in the  
4 winter, you would be saying, well, if it's ministerial act  
5 designed to retain -- keep the status quo then we're not  
6 going raise that as a defense.

7 MR. KELSEY: But without prejudice to any other of  
8 the debtor's --

9 THE COURT: Without prejudice to any other -- any  
10 other rights.

11 So again, I throw that out, I am -- I am not an  
12 expert on the applicable foreign law, which sounds like it  
13 may be difficult to parse even for folks who are, but I'm  
14 trying to find a way to sort of crack this nut without going  
15 there, because I would think if I deny this on an  
16 evidentiary basis, which when all else fails I resort to  
17 what evidence I have in front of me, and I don't think I  
18 have the evidence because I don't think I've been provided  
19 that status quo argument in an evidentiary fashion under  
20 foreign law. But if I deny it on that basis I suspect it  
21 may rebound right back to the courthouse with such a  
22 declaration, we'll be right here parsing it again. Not that  
23 I wouldn't look forward to that, but I'm wondering if we  
24 can't find a more sensible way to address it.

25 So let me hear from -- from the movant as to

1 whether there's a way to resolve the issue. I do agree --  
2 and again, I was looking for something on foreign law -- I  
3 do agree that the notice certainly seems to be looking at it  
4 with my American eyes something that advances the ball  
5 forward. So I -- that doesn't mean I don't -- that I  
6 dispute your representation that you need the notice  
7 essentially to keep the status quo. So --

8 MR. ANTONOFF: Let me -- and I realize I didn't  
9 answer your first question.

10 No, it is not intended to advance the ball in any  
11 way, and if I -- if I haven't made that clear in the two  
12 sets of pleadings that we filed already --

13 THE COURT: No, you have the problem is the  
14 proposed notice I think says one thing and the pleadings may  
15 say another.

16 MR. ANTONOFF: But that's where -- but that's  
17 where form is elevated over substance. It doesn't matter  
18 what the words say because we're not going to collect  
19 anything, we're not --

20 THE COURT: I think the words always matter. I  
21 mean if that's -- if that's the intent but the instrument  
22 says something else then I think at the end of the day any  
23 good lawyer is going resort to, well, here's the notice we  
24 sent you and it was approved by the Bankruptcy Court.

25 So I don't want to -- I'm fine with putting some

1 issues on the back burner, but I don't think that it's  
2 appropriate for me to approve the filing of a notice that on  
3 its face goes further than the status quo and then say,  
4 well, nobody meant that.

5 So I'd much rather have the notice reflect the --  
6 what it actually purports to be --

7 MR. ANTONOFF: And that's fine, and we can  
8 certainly -- and that's why we just attached a form of  
9 notice we can work on, we can take the word demand out, we  
10 can take the word payment, collect, whatever offensive words  
11 are there, we are just trying to maintain the status quo.

12 As to the second point about evidence. It's true,  
13 you don't have evidence, we didn't put it forward and the  
14 objection doesn't have any. I guess what you have is two  
15 sophisticated law firms that can't answer the question as to  
16 whether --

17 THE COURT: Right. Which is why I'm loathe to  
18 weigh in based on what I know.

19 MR. ANTONOFF: Right. And then finally the -- I  
20 very much appreciate Your Honor's innovation in coming up  
21 with a stipulation as an approach, the problem from our view  
22 with that is that we're here, we have six, seven weeks into  
23 this case, we don't know how this guaranteed claim is going  
24 to be treated ultimately under a plan and whether it will be  
25 for this Court to enforce Commerzbank's right however it's

1 treated under a plan or whether that claim still will need  
2 to be enforced under the laws of Bahrain and whether a  
3 stipulation that's says you never had to file --

4 THE COURT: Send the notice.

5 MR. ANTONOFF: -- send a demand notice would be  
6 representative there, and we hear about repatriating money  
7 from Bahrain, I don't know if we know what else they might  
8 say about failing to actually deliver a notice.

9 THE COURT: But -- well then I see that point that  
10 I may not be the only court to have to weigh in on it and a  
11 stipulation may not be worth the paper it's written on if  
12 you're in another court, but then I think you're back to  
13 what the words in the notice are, and what I'm hearing from  
14 debtors is the status quo they're okay with, but the form of  
15 the notice here is -- does not reflect that.

16 So there may be a form of vanilla notice that  
17 essentially would sound a lot like a stipulation but it  
18 would be a notice, and so it would be in form, something  
19 that would serve your interests not only in this court but  
20 in another court.

21 So -- but again, I don't think I have the  
22 information in front of me, based on the record I have in  
23 front of me I don't think it's appropriate for me to lift  
24 the stay, but I'm not naive enough to think that an order  
25 saying that is going to be the end of the matter.

1           So I would encourage the parties to see if they  
2           can come up with an appropriate status quo notice that does  
3           not advance the ball forward, because I don't think debtors  
4           can in the exercise of their fiduciary obligations agree to  
5           a notice that does anything that goes beyond that.

6           MR. ANTONOFF: Nor would we ask them to nor have  
7           we asked them to, and that's not the relief that we're  
8           asking for here. I think the problem with a truly plain  
9           vanilla status quo notice is that the words of the guarantee  
10          do say demand made. So if we send a notice that has the  
11          word demand but we're not seeking to collect, allow, or  
12          improve our position then I would ask the Court to  
13          reconsider and to allow us to do that.

14          THE COURT: Well, I don't think I can do that on  
15          this record because I don't think I have any -- I don't  
16          think I have a record as to what is required under the  
17          applicable foreign law.

18          So on the record I have in front of me, the only  
19          thing I have are representations of counsel, which are fine,  
20          and the actual notice, which on its face goes -- goes  
21          further than the status quo, and you may be able to explain  
22          to me why that language is necessary. But just as you say a  
23          stipulation won't necessarily work in another court, a  
24          notice that purports to improve your position, even if it's  
25          required outside of this courthouse, may in fact improve

1 your position, and certainly no lawyer or client is going to  
2 say, well, maybe I should get that notice filed and it  
3 actually says demand, it has various acceleration  
4 provisions, it does various things, why wouldn't we go to a  
5 court to enforce it when the time comes?

6 So I do think that's a classic -- if that's the  
7 case that is a classic reason to deny a request for relief  
8 from stay.

9 MR. ANTONOFF: I guess I'm not understanding this.  
10 If -- if we're not permitted to do anything now beyond  
11 deliver a notice and then it's at a later stage that the  
12 guarantee has to be enforced under another law Commerzbank  
13 should not be denied the ability to assert that other law  
14 because of the automatic stay.

15 THE COURT: But you're framing the question in a  
16 particular way. You're framing it and saying the notice  
17 that is required for status quo in fact reads differently  
18 than preserving the status quo. It reads in a way that is  
19 sort of a classic we now have a default, because there's a  
20 default we have these additional rights, and that is  
21 something that would be barred by the automatic stay.

22 MR. ANTONOFF: It's not additional rights --  
23 sorry, Your Honor -- it's not additional rights, it's the  
24 right to assert a claim under the guarantee, period full  
25 stop. The only addition is that we go from possibly not

1 having a claim to having a claim, and the only reason we  
2 would not have a claim is because of the automatic stay.  
3 There's no substantive improvement of the claim. The claim  
4 either exists or it doesn't exist. And if we can't deliver  
5 the notice then there's a chance least that it doesn't  
6 exist. If we do it will exist, it won't be any better than  
7 it would be if the notice had been delivered before the  
8 commencement of these cases and there was the 14-day stay  
9 period.

10 THE COURT: Well, I think for purposes of the  
11 bankruptcy I would think the argument would be that your  
12 obligation to deliver it is tolled. What we're really  
13 talking about is what happens in a foreign court I think,  
14 right?

15 MR. ANTONOFF: That -- that's correct.

16 THE COURT: But again, my concern is if that the  
17 language of the notice purports to improve your client's  
18 position that won't be in front of me where you can say, but  
19 that isn't what is meant by it, that was just meant to  
20 preserve the status quo.

21 MR. ANTONOFF: But there will be a claims  
22 resolution process in this case that Your Honor will have an  
23 opportunity to preside over disputes. So we will file a  
24 proof of claim, there will be -- if there is a basis to  
25 object there will be an objection.

1           So I still -- I'm just not seeing the harm to  
2 anyone from delivering a notice.

3           THE COURT: But we're hopping between different  
4 jurisdictions. I'm not -- I'm not worried about your rights  
5 in this particular courthouse, because I understand the  
6 argument and I think a stipulation would solve your problem,  
7 but what you said in response to that suggestion is I'm  
8 worried about the court overseas. This may not be the only  
9 place that it has to be dealt with, I'm worried about the  
10 court overseas, but I am worried then about the -- the only  
11 thing then would exist would be this notice, and if this  
12 notice on its face purports to increase your rights rather  
13 than maintain the status quo that's a problem.

14           I understand you're telling me that the document,  
15 the agreement says what has to be in the notice, but that  
16 doesn't change the fact that if that language that has to be  
17 in this notice increases your rights then it is something  
18 that is a problem for purposes of the automatic stay if  
19 you're going to be able to run off to another court.

20           So if I was the only court that dealt with this,  
21 you know, we'd be in one world, but I -- that's my -- that's  
22 my problem.

23           MR. ANTONOFF: We're not running off to any other  
24 court, we're here, we respect these proceedings, we're  
25 participating in these proceedings, we're not going to

1 violate the worldwide stay that's imposed, which is why  
2 we're here asking for this very limited relief that we're  
3 asking for.

4 THE COURT: Well, we're going in circles now, but  
5 I understand. But what I understood your position -- and  
6 please straighten me out if I've missed it -- is that a  
7 stipulation does not work because this is not just a matter  
8 for me to look at. And I'm fine with that. I have -- I --  
9 there's lots of litigation all across the globe and lots of  
10 these cases, so that's what I understood is the problem  
11 you're trying to fix, to have something that works not only  
12 in this jurisdiction but in other jurisdictions, and that's  
13 why I'm talking about the foreign court --

14 MR. ANTONOFF: No, I understand --

15 THE COURT: -- because we never know where these  
16 things will end up.

17 MR. ANTONOFF: I understand that, but there  
18 wouldn't be anything in another foreign court unless we came  
19 here and asked you if we could do it in a foreign court or  
20 it's after this case is over, the stay is gone, a plan is  
21 confirmed, and we have a claim.

22 THE COURT: But then I --

23 MR. ANTONOFF: And under a plan --

24 THE COURT: If that's the world we live in I don't  
25 know -- understand why a stipulation would not solve your

1 problem. But I may be missing something.

2 MR. ANTONOFF: With all due respect I think so,  
3 but if I can't explain it then --

4 THE COURT: No, I think I got it. But again, I  
5 don't have any evidence in front of me on the applicable  
6 foreign law, and I think the notice on its face seems to be  
7 broader than merely a status quo.

8 So on that basis I'm going to deny the request  
9 that I have in front of me without prejudice --

10 MR. ANTONOFF: Thank you.

11 THE COURT: -- to supplementing it in the future  
12 if there is something that you can say, but I also think  
13 that there probably is, given the quality of counsel here, a  
14 way to deal with Gordian knot in the non-traditional way,  
15 right? So there's probably somebody out there with a sword  
16 that can cut through this impasse in a way that may be a  
17 little creative but may allow you to maintain your rights  
18 but not expand them, and that -- again, I think that's the  
19 concern that's been raised and that's the concern I have is  
20 the expanding of the right.

21 MR. ANTONOFF: Okay. And again, we had no  
22 intention of expanding of rights, but I thank you for Your  
23 Honor's time and comments.

24 THE COURT: All right, thank you.

25 MR. ROSENTHAL: I believe that's it for today,

1 Your Honor.

2 THE COURT: All right. What I would ask is that  
3 you would give me whatever rise orders that you have all in  
4 one bunch, so maybe an e-mail or two -- e-mail one of two  
5 and so that -- because I'm always concerned about different  
6 versions floating around. I do have orders in front of me,  
7 but I suspect some of them are still good, but some of them  
8 have been superseded.

9 MR. ROSENTHAL: Yes, we'll send a revised set of  
10 all of the orders.

11 THE COURT: All right.

12 MR. ROSENTHAL: Thank you very much.

13 THE COURT: And then we are set to be here again?

14 MR. ROSENTHAL: May 31st.

15 THE COURT: May 31st.

16 MR. ROSENTHAL: I believe at 2 o'clock.

17 2 o'clock.

18 THE COURT: All right. I will just tell you in  
19 the interest of full disclosure that there are some other  
20 proceedings that are taking a lot of time and I don't quite  
21 know how the scheduling is playing out with those, so I will  
22 do everything I can to keep the 31st on the calendar even if  
23 it means moving it early, moving it later, but to the extent  
24 that there's anything of an evidentiary nature that would be  
25 more protracted on the -- on that date please let chambers

1 know, just because time is a little more limited than I  
2 would otherwise like.

3 MR. ROSENTHAL: Your Honor, the only thing that I  
4 know of is that we are -- we are in discussions with the  
5 committee and the liquidator about making a payment with  
6 respect to the Lou Sale transaction, and that payment in  
7 order to preserve the value of that property needs to be  
8 made by June 1st, and we're hopeful and we've had a number  
9 of discussions, we're hopeful we'll get to an -- we'll have  
10 an agreement with the committee and the JPLs so that we can  
11 present a stipulation for the Court. If not though we  
12 intend to file a protective motion by the 14th so that it  
13 can be heard on the 31st. We do not want to miss that. I  
14 just want to alert to Court to that -- that deadline.

15 THE COURT: All right.

16 MR. ROSENTHAL: We'd need an order on that by the  
17 31st.

18 THE COURT: Let me ask, I'm certainly not  
19 encouraging that it have to be litigated, but if it does  
20 have to be litigated what would it look like? Would there  
21 be testimony or is it just argument of counsel?

22 MR. ROSENTHAL: I think there may be some  
23 testimony involving the valuation of the property.

24 THE COURT: All right.

25 MR. ROSENTHAL: And the effect -- and the effect

1 of making the payment, yes.

2 THE COURT: All right. Is that something that you  
3 would imagine would be in the realm of the half day or are  
4 you looking at a more protracted preceding couple of days?

5 MR. ROSENTHAL: No, I think we could probably do  
6 it in a half day.

7 THE COURT: All right.

8 MR. ROSENTHAL: At most.

9 THE COURT: That's fine. Thank you. That's  
10 exactly the sort of thing I just wanted to have flagged.  
11 That's fine. If it cannot be resolved I'd ask that you just  
12 keep chambers informed so if we have to move it then we've  
13 left you enough time to litigate it, and secondly, if your  
14 expectation of what it would take to resolve it short of an  
15 agreement among fine counsel changes such that more time  
16 would be necessary please let me know that as well, because  
17 we may just have to arrange to have a nice evening session  
18 and do it that way.

19 MR. ROSENTHAL: We'll do both of those, Your  
20 Honor.

21 THE COURT: Okay.

22 MR. ROSENTHAL: Thank you very much.

23 THE COURT: Thank you very much. I see somebody  
24 rising, I don't know if there's something else that needs to  
25 be said before we adjourn?

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(Pause)

MR. ROSENTHAL: Your Honor, we'll communicate with chambers about any other scheduling issues.

THE COURT: All right, thank you.

MR. ROSENTHAL: Thank you.

(Whereupon these proceedings were concluded at 12:30

PM)

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**E X H I B I T S**

<b>PARTY</b>	<b>NO</b>	<b>DESCRIPTION</b>	<b>ID.</b>	<b>EVID.</b>
Debtor	1	Declaration of Steven Kotarba	--	34

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I N D E X

RULINGS

Page Line

Motion Authorizing Debtors to Employ and  
Retain Certain Professionals

32 2

Motion Authorizing Debtors to Pay Certain  
Prepetition Wages

32 5

Motion Authorizing Debtors to Pay Certain  
Prepetition claims of Critical and Foreign  
Vendors

32 8

Motion Authorizing Debtors to Continue  
Insurance Coverage

32 10

Motion to Extend Time to File Financial  
Information

35 23

Motion to Extend Deadline to File  
Schedules or Provide Required Information

35 23

Motion to Approve Debtors Motion for Order  
Establishing Procedures for Interim

1	Compensation and Reimbursement of Expenses	36	20
2			
3	Motion to Authorize Debtors Motion for Order		
4	Authorizing Parties to File Under Seal Names		
5	of the Debtors Customers	37	24
6			
7	Motion Approving the Employment and Retention		
8	of Gibson, Dunn & Crutcher LLP	41	9
9			
10	Motion Approving the Employment and Retention		
11	of Trowers & Hamlins LLP	43	2
12			
13	Motion Approving the Employment and Retention		
14	of Alvarez & Marsal North America, LLC	44	23
15			
16	Application to Employ Linklaters LLP as		
17	Special Counsel	47	13
18			
19	Motion to Authorize Existing Cash		
20	Management	48	13
21			
22	Motion of Commerzbank Aktiengesellschaft		
23	for Entry of an Order Granting Limited		
24	Relief from the Automatic Stay	68	8
25			

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

I, Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Dawn South**

Digitally signed by Dawn South  
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**Date: May 8, 2012**