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Attorneys for Charles H. Ogburn

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	**Chapter 11**
ARCAPITA BANK, B.S.C.(c), *et al.*,	**Case No. 12-11076 (SHL)**
Debtors.	**Jointly Administered**

RESPONSE OF CHARLES H. OGBURN TO
DEBTORS' FIFTH OMNIBUS OBJECTION TO CLAIMS

Charles H. Ogburn respectfully submits this response in opposition to the *Debtors' Fifth Omnibus Objection to Claims (Employee Claims)* filed by Arcapita Bank, B.S.C.(c) (the "Bank") and certain of its subsidiaries and affiliates (together with the Bank, the "Company") on April 26, 2013 (the "Objection") [Doc. No. 1053]. Capitalized terms used, but not otherwise defined, herein have the meanings ascribed to them in the Objection.

Preliminary Statement

Mr. Ogburn is a former executive of the Company, whose title was Executive Director, Global Head of Corporate Investment of the Bank and President of the Bank's US subsidiary, Arcapita Inc. ("Inc."). He is owed well in excess of $3 million as a result of (i) deferrals of compensation that he made under certain benefit plans sponsored by the Bank, and (ii)

contractual commitments the Bank made to fund certain capital commitments on his behalf. Mr. Ogburn timely filed his proof of claim in August of 2012. [Claim No. 305]. After being advised on numerous occasions by officers of the Bank that his claim for deferred compensation would be treated as a general unsecured claim against the Bank in this bankruptcy case, the Bank changed course and objected to his claim in April of 2013. But this objection was based solely on an erroneous characterization of Mr. Ogburn's participation in the Global Settlement, a settlement in which Mr. Ogburn did <u>not</u> participate. After Mr. Ogburn pointed this error out to the Bank, the Bank has raised other issues with respect to Mr. Ogburn's claim, which have no merit.[1] The Bank has also never amended its objection to Mr. Ogburn's claim.

Efforts to obtain information from the Bank's pre-confirmation counsel, Gibson, Dunn & Crutcher LLP, regarding the Bank's issues with Mr. Ogburn's proof of claim have taken many months, with little meaningful information being provided. As a result, Mr. Ogburn served requests for production of documents upon the Debtors, and the responsive documents are not due to be produced until October 15, 2013. He has also had to file this response to reserve his rights with respect to the Objection. For the reasons set forth below, the Objection should be overruled as it applies to Mr. Ogburn and his claim should be allowed for at least $3,923,965.02.

<u>**Overview**</u>

1. On April 26, 2013, the Debtors filed the Objection, stating that they have "determined that the proofs of claim listed under the heading '*Employee Claims Subject to*

[1] Out of the millions owed to him, Mr. Ogburn is willing to exclude $75,000 from his original proof of claim, which represents estimated proceeds of exits or liquidity events from the Bank's portfolio that were never distributed to investors; he accepts the Bank's assertion that these amounts are due from the Bank to an affiliate, AIPL (and incorporated in AIPL's claim against the Bank), and not directly to the employee investors, although he has received no communication from the Bank or AIPL on this matter.

Adjustment' on ***Exhibit A***. . . are asserted in amounts greater than the corresponding amounts reflected in the Debtor's books and records… ." [Doc. No. 1053 at 5 of 30, ¶ 2].

2. The exhibit to the Objection identifies "Employee 1001" — which is Mr. Ogburn — asserting an unsecured claim of $3,998,965.02. [Doc. No. 1053 at 18 of 30]. According to the Debtors, this claim should be modified to "reflect[] the employee payable on the Debtor's books and records as of the bankruptcy petition date."[2] The "modified amount" set forth in the Objection is $510,203.75. This is the amount of capital contributions the Bank contractually committed to pay on Mr. Ogburn's behalf, which were never made.

3. Mr. Ogburn's deferred compensation claim arises from his participation as a US employee in the Investment Incentive Program (the "IIP") and the related "deferral investment program" (the "Deferral Program"). According to the Objection, the IIP linked employee compensation to the performance of Arcapita Investments. IIP Participants, such as Mr. Ogburn, did not co-invest directly in Arcapita Investments, but instead participated in a deferred compensation program (i) pursuant to which the "Company" is obligated to pay to IIP Participants up to the amount of the basis of such IIP Participant's investment, and (ii) through which they received profit interests in AIPL. [Doc. No. 1053 at 9 of 30, ¶ 16].

4. The Debtors further state in the Objection that IIP Participants like Mr. Ogburn have no right under the IIP to "personally assert claims" against the Bank "other than for amounts outstanding under the IIP in deferral accounts (which amounts were addressed in the Global Settlement…)." [Doc. No. 1053 at 10 of 30, ¶ 18]. The Debtors also claim that all IIP Participants participated in the Global Settlement and that "by electing to do so, in return for a

[2] The first three items on this exhibit to the Objection refer to the "Debtor's" (singular) books and records, whereas the second three items refer to the "Debtors'" (plural) books and records. It is not apparent from the face of the Objection why this is so.

release from [the Bank], waived their right to enforce claims for deferred amounts under the IIP. . . ." [Id.].

5. These assertions are erroneous with respect to Mr. Ogburn. First, Mr. Ogburn does hold claims directly against the Bank (as well as Inc. and other affiliates included in the definition of "Company") under the IIP and the Deferral Program. Second, Mr. Ogburn resigned from the Company prior to the Petition Date and did not participate in the Global Settlement. Thus, he has not released the Bank from any liability under the IIP, the Deferral Program, or otherwise. As discussed in more detail below, he is therefore entitled to a claim against the Bank for at least $3,923,965.02.[3]

Background Regarding Mr. Ogburn's Claim against the Bank

6. Under employee benefit plans adopted in 2006, the Bank established the IIP and the Deferral Program to allow US employees to participate in portfolio investments using deferrals of annual bonus compensation. The IIP and Deferral Program are benefit plans sponsored by the Bank. Both the IIP and the Deferral Program use the defined term "Company" to collectively refer to the Bank and its subsidiaries, including Inc.

7. The Deferral Program set forth the mechanism by which employees elected to defer portions of their compensation for eventual investment through the IIP into Arcapita portfolio companies. Section 7.1 of the Deferral Program provides that it "shall create a contractual obligation on the part of the Company to cause payments to be made to the Participants as set forth herein. Amounts payable hereunder shall be subject to the claims of the Company's general creditors in the event of the Company's bankruptcy or insolvency." Section

[3] As noted above, Mr. Ogburn is not including a $75,000 estimated claim in this calculation that was included in his proof of claim. The $75,000 estimation relates to cash proceeds from liquidity events that the Bank failed to distribute. Mr. Ogburn understands that this amount should be included in calculating claims of AIPL against the Bank.

7.2 of the Deferral Program provides that, in the event of insolvency, a participant's claim is "equivalent to that of an unsecured general creditor of the Company."

8. Section 5.1.C of the IIP provides that, upon termination of employment, a participant "shall receive payment in the form of a 'Contingent Payment Obligation' with respect to the Participant's Allocated Deferral Accounts."

9. In February of 2010, Mr. Ogburn submitted his letter of resignation. In July of 2010, Mr. Ogburn entered into a Separation and Release Agreement with the Bank and Inc. (the "Separation Agreement"), and he thereafter left the Company's employment. The Settlement Agreement provided that all amounts that may have been owed by Mr. Ogburn under the IIP and related benefit plans were deemed to be "paid up." The Separation Agreement also requires that proceeds of any investment portfolio exits be paid to Mr. Ogburn "promptly."[4]

10. A few months after Mr. Ogburn's departure, the Bank sent him a form of "Contingent Payment Obligation" ("CPO") as called for under the IIP. This first CPO was delivered by Peter Karacsonyi in his capacity as "Executive Director - Corporate Management" of the Bank. The first CPO contained numerous errors, which Mr. Ogburn called to the Bank's attention. In December of 2010, a "revised" CPO was delivered to Mr. Ogburn by Jim Beck in his capacity as "Human Resources Director" for the Bank. Both Mr. Karacsonyi and Mr. Beck lived and worked in Bahrain as officers of the Bank, and neither was an officer of Inc.

[4] That requirement notwithstanding, in November of 2011, an entity known as "Arcapita Ventures" sold its interest in a portfolio company named Prenova at a significant profit. Instead of making a prompt distribution of proceeds to Mr. Ogburn (as required by the Separation Agreement), the Bank caused Arcapita Ventures to deposit the proceeds in the Bank, and no distribution was ever made to investors in Arcapita Ventures, including Mr. Ogburn. This amount now is (or should be) part of AIPL's claim against the Bank. Similar "liquidity events" resulted in cash proceeds from (a) a release of escrow money related to Navini Networks, Inc., and (b) a dividend on IIP shares in Freightliner. These amounts were never distributed by the Bank.

11. The Bank, as part of its Chapter 11 case, listed an amount due to Mr. Ogburn of $510,203.75 on its Schedules and Statements (the "Scheduled Amount"). In advance of the August 30, 2012, deadline for proofs of claim, on August 8, 2012, Mr. Ogburn sent an email to the Company to inquire about the source of the Scheduled Amount. By email dated August 14, 2012, Mr. Karacsonyi replied that the Scheduled Amount related "to undrawn amounts in respect of IIP that were paid as part of your final settlement. We have verified that these will be treated as unsecured claims." In the same email, Mr. Karacsonyi said that "It should also be noted that the CPO which was issued to you on your departure would also be subject to unsecured creditor claim [*sic*]." A copy of this correspondence is attached as Exhibit A.

12. In another email of August 14, 2012, addressed to numerous current employees of the Company, Karacsonyi said:

> We have taken advice from [Gibson, Dunn & Crutcher LLP] on how US IIP participants should proceed in respect of the proof-of-claims process.
>
> The view was that IIP deferrals constitute claims against Arcapita Bank. As a result, IIP participants — including those who may participate in the Global Settlement — should file proofs-of-claim against Bank in respect of their deferral accounts. Employees who subsequently participate in the Global Settlement will agree to forgo their claims versus Arcapita Bank as part of the settlement, because the deferral amounts would go away via the ultimate settlement of claims. However, because the Global Settlement won't be implemented until after the bar date, employees should consider filing a protective proof of claim for these amounts (despite their contingent nature), and then the Company can address the claim in the claims reconciliation process once the contingent claim crystallizes (or goes away per the Global Settlement). (emphasis added).

A copy of this correspondence is attached as Exhibit B.

13. In an email dated August 27, 2012, Mr. Karacsonyi reiterated that the CPO issued to Mr. Ogburn was a claim against the Bank:

> Arcapita is not required to list all valid claims or any contingent claims that might arise in future. It is the responsibility of the creditors to check the information provided by Arcapita and to supplement it with any other claim they believe relevant. To the extent you believe additional amounts are owed by Arcapita or

> another debtor to you, you may assert that claim by filling out and submitting a timely proof of claim.
>
> Under the IIP, you maintained separate interests in any profits generated by the applicable Arcapita Investment (your Profits Interest) and separately a deferral account (the Deferral Account) through which you previously received deferred compensation in the form of the cost of the Arcapita Investment. The CPO provided to you as a result of your termination is a Contingent Payment Obligation where payment falls due based on deal exits. The CPO represented a valuation, at the time, of the deferred compensation you paid into the Deferral Plan. It did not include any profits interest which would be realized on deal exit. The reason you were required to pay employment tax on the CPO was because it is treated as deferred compensation. As a deferral participant you will be aware that the right to receive payments under the Deferral Plan has always been treated as equivalent to that of an unsecured general creditor of the Company as defined in clause 7.2 of the Deferral Plan.

A copy of this correspondence is attached as Exhibit C.

14. The Company also sent an "FAQ" to its employees in the summer of 2012 regarding the IIP, a copy of which is annexed hereto as Exhibit D. Item 10 of this document provides as follows:

> *Do I need to file a proof of claim to protect my rights to the Deferral Account under the IIP?*
>
> IIP Participants should file proofs of claim versus Arcapita Bank in respect of their deferral amounts. This is equally true notwithstanding whether you have chosen to participate in the "Global Settlement" which was approved by the Bankruptcy Court in the bankruptcy proceedings. For participants in the Global Settlement, deferral accounts of participating employees will be closed and such employees will be left with deal shares at AIPL. IIP participants who are continuing employees cannot elect to participate until November and the Claim Deadline is August 30. Accordingly, you should file a proof of claim and, if down the road, you choose to participate [in] the Global Settlement, Arcapita Bank will seek denial of the claim so long as it provides you with deal shares in AIPL.

15. Item 11 of the "FAQ" states, in pertinent part, as follows:

> *How do I estimate my claim?*
>
> Your asserted claim in the proof of claim should reflect the total balances of the columns listed as "Total Deferred" and "Vesting" on your IIP statement. Those columns reflect Arcapita's investment cost in, and not the current fair market

> value of, the shares of the particular Arcapita Investment, so the actual aggregate value of your claim will differ from the aggregate number shown in these columns. Employees should try to capture all amounts owed to them by Arcapita Bank or another debtor in the chapter 11 proceedings in any context in their proof of claim form and any appendix thereto. After filing your proof of claim, however, you may seek to amend it, and Arcapita Bank will work with you to properly estimate your claim. (emphasis added).[5]

16. All of these communications from the Bank are consistent and all support the fact that Mr. Ogburn's CPO claim is indeed a claim for which the Bank is liable.

17. Following and relying upon the advice and directives received from the Bank, Mr. Ogburn timely filed a proof of claim in the Bank's bankruptcy case in the amount of $3,998,965.02 (the "Proof of Claim") [Claim No. 305]. Mr. Ogburn's claim consists of (a) the Scheduled Amount ($510,203.75), plus (b) the CPO value as delivered by the Bank ($3,413,161.27), plus (c) an estimate of the amounts the Bank failed to distribute from liquidity events (estimated at $75,000).[6]

The Bank Changes Position Regarding Mr. Ogburn's Claim

18. Curiously, by email dated May 26, 2013, almost a year after the foregoing correspondence, Mr. Beck reversed course from the Bank's earlier pronouncements. Mr. Beck wrote to Mr. Ogburn that the "Deferral Program governing documents provide participating employees with CPOs representing rights against their employer — in your case, Arcapita Inc." A copy of this correspondence is attached as Exhibit E. While this grounds for objecting to Mr. Ogburn's Proof of Claim was not advanced in the Objection, this theory for disallowance also has no merit in the governing documents. In those documents, the Bank and its affiliates (including Inc.), as the "Company" are all collectively, and jointly and severally liable for the

[5] There have been suggestions that even if Mr. Ogburn's claim were allowed against the Bank the amount of his claim would be substantially less than the face amount asserted in his proof of claim. Based upon the language of the governing documents, Mr. Ogburn does not agree with this position.

[6] It is this latter amount of $75,000 that Mr. Ogburn is now excluding as a part of his claim against the Bank.

CPO claims. The Bank should also be estopped from taking this position given the litany of advice that it gave to IIP Participants regarding how to preserve their claims for unpaid deferred compensation.

19. Mr. Ogburn responded to Mr. Beck's May 26 email on two occasions in June of 2013 and asked for information regarding the status of Inc. (as Inc. is not in bankruptcy), including its financial position. Mr. Beck did not respond to Mr. Ogburn's inquiries. By letter dated July 22, 2013, Mr. Ogburn's counsel requested similar information from Debtors' counsel and included copies of Mr. Ogburn's emails to Mr. Beck. All of this correspondence is attached hereto as Exhibit F. Despite repeated inquiries to the Bank's pre-confirmation counsel, the Bank only responded to the July 22 letter over 45 days later, on September 6, 2013. That letter, a copy of which is attached as Exhibit G, provides nothing more than a cursory statement of the Bank's recent position that Mr. Ogburn does not hold a claim under the CPO against the Bank (rather, he only holds a claim against Inc.). But as demonstrated above, this position has no factual basis in the underlying IIP or Deferral Program documents, and no legal basis (and the Bank has cited no authority for the stance it is now taking).[7]

20. As for the Objection itself, the Debtors' basis for objection to the Proof of Claim boils down to the reasons set forth in paragraph 18. There, the Debtors state that all IIP Participants participated in the Global Settlement. This is wrong, as Mr. Ogburn did not participate in that settlement. The Debtors contend further that the IIP Participants who participated in the Global Settlement obtained a release from the Bank in exchange for the

---

[7] The Debtors' assertion that Mr. Ogburn only holds a claim Inc. such that Inc. would be liable to pay Mr. Ogburn his IIP basis payouts, is suspect, to say the least. Recently, the Company closed the sale of one of its portfolio companies, 3PD, Inc., for $365 million in cash. This sale represented a profitable investment in that the sale price far exceeded the amount of the Company's investment basis (and accordingly is supposed to provide a payout to AIPL profits interest holders). But the Company has not made any distribution of Mr. Ogburn's basis nor has Mr. Ogburn received any payment, or assurances of payment, in respect of his basis, from any party.

waiver of their "right to enforce claims for deferred amounts under the IIP." [Doc. No. 1053 at 10 of 30, ¶ 18]. The Bank, then, must have had liability to such settling IIP Participants prior to entering into the Global Settlement. Mr. Ogburn has not granted the Bank such a release or waiver, and he therefore retains his claims against the Bank. Accordingly, the Bank has no valid basis to object to his Proof of Claim.

21. As noted above, both the Bank and Inc. (as well as other affiliates of the Company) are all liable for the deferred compensation claims. The Bank is a part of the collective "Company" that is contractually liable for such claims. In addition to asserting this claim against the Bank, Mr. Ogburn specifically and expressly reserves his rights and claims against Inc. and any other affiliates that comprise the Company.

22. Further, at least one other former employee of the Company filed a proof of claim based on a CPO delivered by the Bank, and the Bank did not challenge that claim in the Objection, implying that the Company will permit that former employee's claim to advance against the Bank without further challenge.

Conclusion

23. For all of the foregoing reasons, the Objection to Mr. Ogburn's Proof of Claim should be overruled and Mr. Ogburn's claim should be allowed for at least $3,923,965.02.

Dated: October 2, 2013

By: *Eric W. Anderson*
Eric W. Anderson
(admitted *pro hac vice*)

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Attorneys for Charles H. Ogburn

EXHIBIT A

August 14, 2012 Correspondence

From: Peter Karacsonyi <PKaracsonyi@arcapita.com>
To: Charles Ogburn <ogburnc@gmail.com>, Henry Thompson <hthompson@arcapita.com>
Cc: Michael W Johnston <mjohnston@kslaw.com>, "jgraves@gibsondunn.com" <jgraves@gibsondunn.com>, John Monroe <JMonroe@fordharrison.com>, Jim Beck <jbeck@arcapita.com>
Sent: Tue, Aug 14, 2012 12:29:04 EDT
Subject: RE: Proof of Claim Form

Charlie,

The amounts shown on your POC relate to undrawn amounts in respect of IIP that were paid as part of your final settlement.

We have verified that these will be treated as unsecured claims.

It should also be noted that the CPO which was issued to you on your departure would also be subject to unsecured creditor claim.

Best regards,

Peter

Peter J. Karacsonyi

Executive Director | Corporate Management

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pkaracsonyi@arcapita.com | www.arcapita.com

From: Charles Ogburn [mailto:ogburnc@gmail.com]
Sent: Wednesday, August 08, 2012 4:01 PM
To: Peter Karacsonyi; Henry Thompson
Cc: Michael W Johnston; jgraves@gibsondunn.com; John Monroe
Subject: Proof of Claim Form

Peter and Henry:

A couple of weeks ago, I received a "Proof of Claim" form in connection with Arcapita Bank's Chapter 11 proceeding. The form refers to me as "Employee 1001" and lists a dollar amount. I note that this employee number and the dollar amount match entries in the liabilities scheduled by Arcapita Bank. However, I don't have any information about how the dollar amount was derived, and so I am not in a position to confirm this amount (or dispute it). I have twice spoken to representatives of Garden City Group, the information agent; they do not have information about how the dollar amount was derived. They promised to pass along my request, but I thought I would send this message as well. Would you please provide me with how the dollar amount was derived, or pass this request along to the appropriate party who can provide this information?

Thanks in advance for your help. I hope you both are well.

Charlie

--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

This email has been scanned by the Symantec Email Security.cloud service.
For more information please contact the Arcapita helpdesk.

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--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

EXHIBIT B

August 14, 2012 Correspondence

From: Peter Karacsonyi
Sent: Tuesday, August 14, 2012 7:14 PM
To: Ali Houshmand; Bill Lundstrom; Deborah Baker; Stockton Croft; Ransom James; John Huntz; John Sweeny; Kevin Keough; Linnea Geiss; Michael Casey; Ramsay Battin; Scott Buschmann; Arthur Rogers; Christopher Combs; John Wisniewski; Amy Kim; John Madden; Thor Johnsen; Matthew Pollard
Cc: Henry Thompson; Jim Beck; Martin Tan
Subject: Update on the US IIP and the Proof-of-Claim process

We have taken advice from GDC on how US IIP participants should proceed in respect of the proof-of-claims process.

The view was that IIP deferrals constitute claims against Arcapita Bank. As a result, IIP participants – including those who may participate in the Global Settlement – should file proofs-of-claim against Bank in respect of their deferral accounts. Employees who subsequently participate in the Global Settlement will agree to forgo their claims versus Arcapita Bank as part of the settlement, because the deferral amounts would go away via the ultimate settlement of claims. However, because the Global Settlement won't be implemented until after the bar date, employees should consider filing a protective proof of claim for these amounts (despite their contingent nature), and then the Company can address the claim in the claims reconciliation process once the contingent claim crystallizes (or goes away per the Global Settlement).

Peter J. Karacsonyi

Executive Director | Corporate Management

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EXHIBIT C

August 27, 2012 Correspondence

From: **Peter Karacsonyi** <PKaracsonyi@arcapita.com>
Date: Mon, Aug 27, 2012 at 10:15 AM
Subject: RE: Proof of Claim Form
To: Charles Ogburn <ogburnc@gmail.com>
Cc: Henry Thompson <hthompson@arcapita.com>, Michael W Johnston <mjohnston@kslaw.com>, "jgraves@gibsondunn.com" <jgraves@gibsondunn.com>, John Monroe <jmonroe@fordharrison.com>, Jim Beck <jbeck@arcapita.com>

Dear Charlie,

It's not for Arcapita to decide whether you maintain an allowed general unsecured claim against Arcapita or another of the other chapter 11 debtors in respect of the Contingent Payment Obligation. The allowance of valid claims against Arcapita or the other debtors is a matter for the bankruptcy court.

The decision to assert a claim or not, by contrast, rests with you, but you should be aware that if you don't assert a claim in the US proceedings, the US Court may not entertain a later claim.

It's also not for Arcapita to advise you on the issue of what your claim should comprise, and we recommend that you take appropriate legal advice.

There are a number of facts you have queried and our response is limited to those queries.

The POC details that were already submitted by Arcapita and shown on your POC form reflected "undrawn capital" in respect of investments—i.e., situations where you had paid in your share of future capital calls as part of your final settlement. The committed amounts that you paid at the final settlement, but which have not yet been drawn for investment in a portfolio company, are as follows:

Charles H. Ogburn

USD	
Bahrain Bay II	56,000.00
Dalkia	175,000.00
Arcapita Ventures	150,000.00
USD Total	381,000.00
SGD	
Ascendas	162,500.00
SGD Total	162,500.00

The $ 162,500 converted at 0.7951 would equate to $129,203.75 for a total of $510,203.75.

Those funds were paid by you to Arcapita Bank for its use in funding future investments, which investments have not yet occurred.

The CH 11 claims procedure requires Arcapita to file publicly a list of known claims based on the accounting status on the petition date. The amounts listed above are shown as due to you on that date, as they had not been drawn against the respective investments.

Arcapita is not required to list all valid claims or any contingent claims that might arise in future. It is the responsibility of the creditors to check the information provided by Arcapita and to supplement it with any other claim they believe relevant. To the extent you believe additional amounts are owed by Arcapita or another debtor to you, you may assert that claim by filling out and submitting a timely proof of claim.

Under the IIP, you maintained separate interests in any profits generated by the applicable Arcapita Investment (your Profits Interest) and separately a deferral account (the Deferral Account) through which you previously received deferred compensation in the form of the cost of the Arcapita Investment. The CPO provided to you as a result of your termination is a Contingent Payment Obligation where payment falls due based on deal exits. The CPO represented a valuation, at the time, of the deferred compensation you paid into the Deferral Plan. It did not include any profits interest which would be realized on deal exit. The reason you were required to pay employment tax on the CPO was because it is treated as deferred compensation. As a deferral participant you will be aware that the right to receive payments under the Deferral Plan has always been treated as equivalent to that of an unsecured general creditor of the Company as defined in clause 7.2 of the Deferral Plan.

IIP Participants maintain a profits interest in AIPL. Recovery on those profit interests will come via AIPL's realization of a profit on its investment. No employee proof of claim against Arcapita Bank is necessary to protect the rights of IIP participants in respect of profit interests (though IIP participants are free to file a proof of claim if they wish).

I trust this makes clear the distinction between the deferred compensation and profits interest and that the CPO you received related solely to a valuation of the deferred compensation, which in our opinion would be an unsecured creditor claim as to which you should consider filing a proof of clam.

On the question of Prenova, Arcapita Bank currently takes the position that an Arcapita portfolio company, like other investors, maintains general unsecured claims in respect of amounts deposited with Arcapita Bank. You will receive a distribution of the appropriate profits interest from AIPL from any recovery it receives on Prenova claims against Arcapita.

Please be advised that the deadline for the submission of a proof of claim form is 5:00 P.M., U.S. Eastern Daylight Time (GMT -4), AUGUST 30, 2012. No electronic or facsimile submission is accepted. The completed proof of claim form, together with any supporting documentation, must be ACTUALLY RECEIVED BY THE DEADLINE by GCG.

I hope this information is helpful but it's ultimately your decision what to include in the claim.

Regards

Peter J. Karacsonyi

Executive Director | Corporate Management

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From: Charles Ogburn [mailto:ogburnc@gmail.com]
Sent: Friday, August 24, 2012 5:46 PM

To: Peter Karacsonyi
Cc: Henry Thompson; Michael W Johnston; jgraves@gibsondunn.com; John Monroe; Jim Beck
Subject: Re: Proof of Claim Form

Peter:

Thanks for your reply, but I still need to know exactly how the dollar amount shown in the POC was derived. I understand that this relates "to undrawn amounts in respect of IIP that were paid as part of [my] final settlement." But these amounts were fully paid in July 2010, and should not be subject to any creditor claims. Also, I need to know whether the amount shown in the POC includes the amounts Arcapita failed to distribute for IIP exits where it received cash many months ago (e.g., Prenova) and how much this would be. Feel free to have Tony Nambiar or any one else contact me directly with the relevant data as to how the amount in the POC was derived.

I dispute that the CPO received by me would be subject to creditor claims. This would essentially mean that my profits interest in the IIP portfolio is an asset of Arcapita Bank and subject to creditor claims. As of July 2010, I had a fully paid up profits interest in a series of share issuances by AIPL, a non-Chapter 11 entity, completely outside of the Chapter 11 process; I have already paid tax on the value of the CPO. All of my subscriptions for program shares were with AIPL, not Arcapita Bank. I understand that other former Arcapita employees have received assurance that their profits interest in the IIP portfolio is not at risk due to the bankruptcy.

From your reply, I infer that the CPO value is not included in the amount shown in my POC and is therefor not regarded as a "claim" by Arcapita Bank or any other Chapter 11 entity. If this in incorrect, please advise me ASAP.

Regards,

Charlie

--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

On Tue, Aug 14, 2012 at 12:28 PM, Peter Karacsonyi <PKaracsonyi@arcapita.com> wrote:

Charlie,

The amounts shown on your POC relate to undrawn amounts in respect of IIP that were paid as part of your final settlement.

We have verified that these will be treated as unsecured claims.

It should also be noted that the CPO which was issued to you on your departure would also be subject to unsecured creditor claim.

Best regards,

Peter

Peter J. Karacsonyi

Executive Director | Corporate Management

Arcapita Bank B.S.C.(c) | Arcapita Building

Bahrain Bay | P.O. Box 1406

Manama | Kingdom of Bahrain

Tel: +973 17 218333 | Dir: +973 17 218040

Mob: +973 36 041004 | Fax: +973 17 218143

pkaracsonyi@arcapita.com | www.arcapita.com

From: Charles Ogburn [mailto:ogburnc@gmail.com]
Sent: Wednesday, August 08, 2012 4:01 PM
To: Peter Karacsonyi; Henry Thompson
Cc: Michael W Johnston; jgraves@gibsondunn.com; John Monroe
Subject: Proof of Claim Form

Peter and Henry:

A couple of weeks ago, I received a "Proof of Claim" form in connection with Arcapita Bank's Chapter 11 proceeding. The form refers to me as "Employee 1001" and lists a dollar amount. I note that this employee number and the dollar amount match entries in the liabilities scheduled by Arcapita Bank. However, I don't have any information about how the dollar amount was derived, and so I am not in a position to confirm this amount (or dispute it). I have twice spoken to representatives of Garden City Group, the information agent; they do not have information about how the dollar amount was derived. They promised to pass along my request, but I thought I would send this message as well. Would you please provide me with how the dollar amount was derived, or pass this request along to the appropriate party who can provide this information?

Thanks in advance for your help. I hope you both are well.

Charlie

--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

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--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

EXHIBIT D

2012 "FAQ"

ADDENDUM

On July 11, 2012, the Bankruptcy Court for the Southern District of New York (the Bankruptcy Court) entered an order approving the proposal of Arcapita Bank and its fellow chapter 11 debtors (collectively, the Debtors) with respect to the Debtors' proposed proof of claim process and further approved the form of proof of claim which the Debtors subsequently distributed to potential creditors, including employees (the Bar Date Order). To the extent you believe you maintain a claim versus one or more of the Debtors and have not, to date, received a proof of claim form, they are available on demand.

The current deadline to submit a proof of claim form is August 30, 2012 at 5:00 p.m. (prevailing U.S. Eastern Time). Arcapita Bank does not have authority to waive compliance with this deadline, so it is important, if you choose to submit a claim versus one or more of the chapter 11 debtors, that you do so in a timely manner. After you file a timely proof of claim, there may be an opportunity to amend that proof of claim as additional information becomes available to you.

Arcapita sponsors the Investment Participation Program for non-U.S. employees and the Investment Incentive Program for US employees. Numerous questions have arisen in connection with the IPP and the IIP in the context of the claims process.

If you are an IIP participant, Arcapita is providing you with a statement which outlines broadly your interests in one or more investments or portfolio companies (each, an Arcapita Investment) which you received via your participation in the IIP. Also included in that statement is information regarding any remaining financial obligations you may have to Arcapita Bank or an Arcapita Bank affiliate in connection with your participation.

This addendum is meant to supplement any information Arcapita has provided you detailing the current status of your participation in the IPP and/or IIP. If you have additional questions regarding the claims process, Arcapita encourages you to obtain qualified legal counsel to protect your interests.

Please note, however, the information herein does not constitute an admission of liability by, nor is it binding on, any of the Debtors. Further, the information herein does not constitute a waiver of the Debtors' right to contest the validity, priority or amount of any claim.

Below, we address the following FAQs:

Investment Participation Program (IPP) Participants—generally, non-US employees:

1. Through the IPP, I invested in an Arcapita Group investment or portfolio company that has not yet been sold. How will I receive a recovery in respect of that interest?

   Subject to any vesting issues surrounding your investment, you maintain a direct interest in the actual Arcapita Investment through AIPL, which is not a Debtor in the bankruptcy cases. As a result, any recovery you receive will come directly from that investment or portfolio company through your investment in AIPL.

2. The Arcapita Investment may in the future be sold or otherwise generate cash distributions to economic stakeholders. Do I need to do anything to protect my right to future distributions?

You maintain an interest through AIPL in a specific Arcapita Investment, not Arcapita Bank. Accordingly, your recovery in respect of your interests in an Arcapita Investment will come from AIPL passing through the proceeds of the Arcapita Investment. Neither AIPL nor the applicable Arcapita Investment is a Debtor in Arcapita Bank's jointly administered chapter 11 cases. As a result, there is no need or ability to file a proof of claim against the applicable Arcapita Investment. Except as otherwise set forth herein, you do not need to do anything at this time to protect your interests in future distributions made by the Arcapita Investment.

3. *What are my rights with respect to proceeds of deal exits (e.g. sales) currently maintained at Arcapita Bank which should be distributed to AIPL and then me.*

   Arcapita Bank currently takes the position that Arcapita Investments, like other investors, maintain general unsecured claims in respect of proceeds of deal exits deposited with Arcapita Bank. You will receive a distribution from AIPL from any recovery it receives on those claims. Arcapita Investments, which are owned or controlled by Arcapita Bank, are not required to file proofs of claim under the Bar Date Order. As explained above, although Arcapita Bank takes the position that amounts deposited at Arcapita Bank by an Arcapita Investment represent an unsecured intercompany claim held in the name of the Arcapita Investment, IPP participants may choose to submit a proof of claim asserting a right to the IPP participant's pro rata portion of such amounts, but have no obligation to do so. You will not be permitted to double collect on that claim (once via your interest in AIPL and a second time via a proof of claim filed versus Arcapita Bank) in the chapter 11 claims administration process. **[see Navini]**

   More information regarding intercompany claims held against Arcapita Bank may be found on the Schedules of Assets and Liabilities filed in the chapter 11 cases on June 8, 2011. On the Schedules, these types of intercompany claims are termed "Deal Company Claims." For each Deal Company Claim, Arcapita Bank identifies the applicable transaction or affiliate. The Schedules of Assets and Liabilities are posted on the Debtors' claims and noticing website at the following address:

   http://www.gcginc.com/cases/arcapita/schedules.php

4. *Do I have a claim if the Arcapita Investment in which I hold deal shares has made a profit or appreciated in value, but has not made a distribution to its shareholders?*

   No. If the Arcapita Investment has not been sold, or if no distribution has been made by the Arcapita Investment, you do not have a claim as an IPP participant with respect to that Arcapita Investment.

5. *What if the Arcapita Investment in which I maintain an interest has deposited cash in an account with Arcapita Bank?*

   Arcapita Bank currently takes the position that Arcapita Investments, like other investors, maintain general unsecured claims in respect of amounts deposited with Arcapita Bank. You will receive a distribution from AIPL from any recovery it receives on those claims. Arcapita Investments, which are owned or controlled by Arcapita Bank, are not required to file proofs of claim under the Bar Date Order. As explained above, although Arcapita Bank takes the position that amounts deposited at Arcapita Bank by an Arcapita Investment represent an unsecured intercompany claim held in the name of the Arcapita

Investment, IPP participants may choose to submit a proof of claim asserting a right to the IPP participant's pro rata portion of such amounts, but have no obligation to do so. You will not be permitted to double collect on that claim (once via your interest in AIPL and a second time via a proof of claim filed versus Arcapita Bank) in the chapter 11 claims administration process. ***[see Prenova, Vogica]***

More information regarding intercompany claims held against Arcapita Bank may be found on the Schedules of Assets and Liabilities filed in the chapter 11 cases on June 8, 2011. On the Schedules, these types of intercompany claims are termed "Deal Company Claims." For each Deal Company Claim, Arcapita Bank identifies the applicable transaction or affiliate. The Schedules of Assets and Liabilities are posted on the Debtors' claims and noticing website at the following address:

http://www.gcginc.com/cases/arcapita/schedules.php

6. *If the Arcapita Investment in which I maintain an interest has deposited cash in an account with Arcapita Bank, can I use my pro rata portion of that amount to reduce my outstanding IPP obligations?*

   Under the IPP, you maintain an economic interest in an Arcapita Investment. Concurrently, you may owe money to Arcapita Bank in connection with the program. United States bankruptcy law does not provide for triangular set-off. Accordingly, you may not set-off these two claims.

   One exception to the foregoing statement concerns reductions in IPP obligations which, under the terms of the program, took place on your behalf automatically when the applicable Arcapita Investment distributed cash to AIPL, which then made such amounts available to Arcapita Bank. For example, in the case of Vogica, the reduction in the IPP obligations occurred automatically when funds were made available to Arcapita Bank.

   Since the reduction in your IPP obligations would have taken place automatically in such a manner prior to the commencement of the bankruptcy proceedings, the onset of bankruptcy would not in and of itself reverse such reduction. **[*see Vogica*]**

7. *How do I estimate my claim?*

   Your asserted claim amount in the proof of claim should reflect all of your economic rights to payment from the applicable Debtor, taking into account any applicable losses or distributions that you have received. Employees should try to capture all amounts owed to them by Arcapita Bank or another debtor in the chapter 11 proceedings in any context in their proof of claim form and any appendix thereto. After filing your proof of claim, you may seek to amend it, and Arcapita Bank will work with you to properly estimate your claim.

Investment Incentive Program (IIP) Participants—generally, US employees:

8. *What types of potential claims do I maintain in connection with my IIP participation?*

   Under the IIP, you maintain separate interests in any profits generated by the applicable Arcapita Investment (your Profits Interest) and separately a deferral account (the

Deferral Account) through which you previously received deferred compensation in the form of the cost of the Arcapita Investment

9. *Do I need to file a proof of claim to protect my rights to the Profit Interest under the IIP?*

   No. IIP Participants maintain a profits interest in AIPL. Recovery on those interests will come via AIPL's realization of a profit on its investment. No employee proof of claim against Arcapita Bank is necessary to protect the rights of IIP participants (though IIP participants are free to file a proof of claim if they wish).

10. *Do I need to file a proof of claim to protect my rights to the Deferral Account under the IIP?*

    Yes. IIP Participants should file proofs of claim versus Arcapita Bank in respect of their deferral amounts. This is equally true notwithstanding whether you have chosen to participate in the "Global Settlement" which was approved by the Bankruptcy Court in the bankruptcy proceedings. For participants in the Global Settlement, deferral accounts of participating employees will be closed and such employees will be left with deal shares at AIPL. IIP participants who are continuing employees cannot elect to participate until November and the Claim Deadline is August 30. Accordingly, you should file a proof of claim and, if down the road, you choose to participate the Global Settlement, Arcapita Bank will seek denial of the claim so long as it provides you with deal shares in AIPL.

11. *How do I estimate my claim?*

    Your asserted claim amount in the proof of claim should reflect the total balances of the columns listed as "Total Deferred" and "Vesting" on your IIP statement. Those columns reflect Arcapita's investment cost in, and not the current fair market value of, the shares of the particular Arcapita Investment, so the actual aggregate value of your claim will differ from the aggregate number shown in these columns. Employees should try to capture all amounts owed to them by Arcapita Bank or another debtor in the chapter 11 proceedings in any context in their proof of claim form and any appendix thereto. After filing your proof of claim, however, you may seek to amend it, and Arcapita Bank will work with you to properly estimate your claim.

12. *Do I have a claim if the Arcapita Investment in which I am participating has made a profit or appreciated in value, but has not made a distribution to its shareholders?*

    No. Under the IIP, you maintain an economic interest in an Arcapita Investment, but you do not have a claim as an IIP participant with respect to that Arcapita Investment, regardless of whether the Arcapita Investment has been sold or a distribution has been made by the Arcapita Investment.

13. *If the Arcapita Investment in which I maintain an interest has deposited cash in an account with Arcapita Bank, can I use my pro rata portion of that amount to reduce my outstanding IIP obligations?*

    Under the IIP, you maintain an economic interest in an Arcapita Investment through your Deferral Account with Arcapita Bank. Concurrently, you may owe money to AIPL in

connection with the program. United States bankruptcy law does not provide for triangular set-off. Accordingly, you may not set-off these two claims.

One exception to the foregoing statement concerns reductions in IIP obligations which, under the terms of the program, took place on your behalf automatically when the applicable Arcapita Investment upstreamed cash to Arcapita Bank. For example, in the case of Vogica, the reduction in the IIP obligations occurred automatically when funds were made available to Arcapita Bank.

Since the reduction in your IIP obligations would have taken place automatically in such a manner prior to the commencement of the bankruptcy proceedings, the onset of bankruptcy would not in and of itself reverse such reduction. **[*see Vogica*]**

14. *Under the IIP, if the Arcapita Investment in which I maintain an interest has returned capital to AIPL by depositing cash in an account with Arcapita Bank, can I use my pro rata portion of that amount to reduce my outstanding IIP obligations?*

    A return of capital by an Arcapita Investment to AIPL, which AIPL uses to repay amounts previously advanced by Arcapita Bank, will reduce an IIP participant's potential loss under the Contingent Loss Reimbursement Agreement and thus offset such plan participant's obligations under the IIP. ***[see Freightliner]***

15. *The IIP Program provides that I have a right to co-invest alongside Arcapita in the applicable Arcapita Investment on the same terms as Arcapita Bank. Does this provide me with a claim on any fees Arcapita Bank has received in connection with an investment?*

    No. Your right to invest on the same terms as Arcapita Bank does not provides you with a right to share in any fees earned by Arcapita Bank, and therefore no claim for these amounts would be appropriate.

16. *If I file a claim regarding my Deferral Account, and then later accept the Global Settlement, I understand that Arcapita Bank will seek to deny the claim that I filed. Does that mean that I am forfeiting value when Arcapita Bank seeks to deny my claim?*

    That is not the intent of the Global Settlement. Here is the background:

    a. The IIP was originally designed to defer taxable income to employees, which meant that the value of the program would not be taxed to the employees as value was created, but only when the employee received funds from Arcapita Bank from the sale of an Arcapita Investment.

    b. The Chapter 11 filing has complicated Arcapita Bank's role as an intermediary in the IIP, since Arcapita Bank has no authority to pay out amounts due under the IIP.

    c. Since the IIP was originally designed to provide benefits similar to an equity investment in the Arcapita Investments, the Global Settlement takes Arcapita Bank out of its role as an intermediary, and gives the employees actual equity in AIPL in exchange for their IIP claim against Arcapita Bank, as modified by the Global Settlement.

d. The Global Settlement has been approved in principal by the Bankruptcy Court, but final details will require sign-off from the creditors committee.

The Global Settlement is designed not to change the value of the IIP participant's Deferral Account, but to change the form of the investment from a claim against Arcapita Bank to shares in AIPL. Accordingly, if as modified by the Global Settlement an IIP participant had a deferral balance with a current fair market value of $10,000, the IIP participant would receive in the Global Settlement AIPL shares with a current fair market value of $10,000, less applicable income and employment tax withholding.

EXHIBIT E

May 26, 2013 Correspondence

From: Jim Beck <jbeck@arcapita.com>
Date: May 26, 2013, 10:44:49 AM EDT
To: Charles Ogburn <ogburnc@gmail.com>
Cc: Henry Thompson <hthompson@arcapita.com>
Subject: RE: VOTING ON THE DEBTORS' JOINT CHAPTER 11 PLAN

Dear Charlie

This note is being sent to you because you previously participated in the Investment Incentive Plan (**IIP**) and the related Arcapita Deferral Investment Plan (the **Deferral Program**) and received contingent payment obligations (**CPOs**) at the time you left Arcapita's employment. The purpose of this note is to inform you of the company's position regarding your rights under the CPOs.

The company established and maintained the Deferral Program to provide you and other Arcapita employees with the opportunity to defer a portion of your compensation to participate in the IIP. Through your IIP participation, amounts were invested on your behalf in Arcapita portfolio companies (the investments, the **deal shares**), and you accepted all economic risks attendant to the deal shares. The Deferral Program governing documents provide participating employees with CPOs representing rights against their employer—in your case, Arcapita Inc.

Participating employees may not seek to recover on their CPO payment rights from all Arcapita Inc. assets. The company established the Deferral Program to facilitate employees' IIP participation. Consistent with that purpose and governing plan documents, the aggregate current value of the CPOs you received when you left Arcapita's employment equals the ultimate future proceeds of the investment made on your behalf less any value represented by your existing profit shares, not necessary the amount of your initial deferral. In addition, your CPO payment rights are unsecured. The company did not execute security documents in connection with the Deferral Program or take any other steps to create a security interest under the Deferral Program.

We encourage you to speak with Human Resources regarding your participation in the Deferral Program and assertions of claims relating to the CPOs. In particular, upon request, we will be able to inform you regarding the current estimated value of your deal shares based on the most recent KPMG mid-point valuation of the portfolio companies.

Regards,

Jim Beck

HR Director

Arcapita Bank B.S.C.(c) | Arcapita Building

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Manama | Kingdom of Bahrain

Tel: +973 17 218333 | Dir: +973 17 218381

Mob: +973 39 562300 | Fax: +973 17 218989

jbeck@arcapita.com | www.arcapita.com

Licensed as an Islamic wholesale bank by the Central Bank of Bahrain

From: Charles Ogburn [mailto:ogburnc@gmail.com]
Sent: Wednesday, May 15, 2013 6:45 PM
To: Jim Beck
Cc: Henry Thompson; Bob Crosby; eanderson@phrd.com
Subject: Re: VOTING ON THE DEBTORS' JOINT CHAPTER 11 PLAN

Jim:

Attached is my signature page for the Stipulation. Please send me a countersigned copy. If you need a copy of the entire document, please let me know. I will be in the UK through next Monday, so I will not be able to get back to you right away if you need anything further from me.

As noted in the Stipulation, this is solely for the purposes of voting, and I do intend to submit a ballot before the voting deadline. This stipulation in no way constitutes an acknowledgment on the amount of my claim, which I continue to believe is accurately reflected in my Proof of Claim filed last August. The primary difference between the scheduled amount and my claim is the CPO value. Before I filed my proof of claim, Arcapita told me that this amount was subject to the claims of creditors and should be considered for inclusion in my claim. I believe Arcapita Bank is the obligor for the CPO under the relevant plans. If Arcapita Bank is not the obligor of the CPO, who is? I have not received any explanation of Arcapita's assertion that this amount should not be included in my claim, and I note that the paragraphs of the Omnibus Objection relating to employee claims do not apply to me, as I was not a party to the Global Settlement. Any light you can shed on this would be appreciated. Above, I have copied counsel I have retained for this matter.

Charlie

--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

On Fri, May 10, 2013 at 4:36 AM, Jim Beck <jbeck@arcapita.com> wrote:

Dear Charlie

Please find attached a voting stipulation for the class 5(a) employee claimant. This is required because there is a variation in the claim filed and the Debtors view of allowable claims. This stipulation does not affect the employees' or Arcapita's rights regarding the validity or amount of the claims filed; they are only intended to allow the employees to vote on Arcapita's proposed plan of reorganization.

Appreciate if you can sign and return to me.

Many Thanks

Jim

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--

Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

EXHIBIT F

June and July, 2013 Correspondence

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(678) 533-7721
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LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

OFFICES IN:
ATLANTA, GEORGIA
TALLAHASSEE, FLORIDA

July 22, 2013

VIA E-MAIL @ jweisser@gibsondunn.com

Josh Weisser, Esq.
Gibson Dunn & Crutcher
200 Park Avenue
New York, NY 10166-0193

RE: In re Arcapita Bank, B.S.C.(c), et al., Case No. 12-11076 (SHL) —
Fifth Omnibus Objection to Claims (Employee Claims) / Charles H. Ogburn

Dear Josh:

As you know, this firm represents Charles H. Ogburn, a former Arcapita executive and a creditor of Arcapita Bank, B.S.C. (the "Bank"). The Bank has disputed the amount of Mr. Ogburn's proof of claim, and a hearing on that dispute is scheduled for August 27, 2013, with our reply to the Bank's objection due by August 1. We intend to file our response by that time.

In the meantime, as we discussed in our telephone conversation a couple of weeks ago, it would be helpful to us if you could assist with the information requested below. After nearly a year of communicating to all parties that deferrals under the Arcapita Investment Incentive Program (the "IIP") by US participants were claims against the Bank and subject to the claims of creditors, on May 26 of this year the Bank sent to our client an email from Jim Beck, asserting that our client's claim was actually against Arcapita Inc., a US subsidiary of the Bank that is not in bankruptcy. On June 10 and again on June 28, our client requested information about Arcapita Inc., including its financial position, in order to assess the communication from Mr. Beck. The Bank's Henry Thompson was copied on these requests, which are included in this correspondence. Mr. Ogburn has not received any reply to these requests.

Please provide current financial statements for Arcapita Inc., including balance sheet, income statement and cash flow statement. Also, please provide any other information shedding light on Arcapita Inc.'s ability to make payments due under the IIP deferrals. We note that many of the IIP investments are not even US companies, and thus, the management fees receivable in the US by Arcapita Inc. would not seem to be available to make such payments. We reserve the

right to assert our client's claims against the company, including both the Bank and Arcapita Inc.

Also, we are aware of the company's recent sale of Bijoux Terner and its agreement to sell 3PD Delivery. Please provide us with details of these exits (e.g., copies of closing statements or the like, and a description of the sale timeline and structure) and the Bank's and Arcapita Inc.'s intentions with respect to IIP deferrals in these cases. Thank you and we look forward to your reply.

Very truly yours,

Eric W. Anderson

cc: Mr. Charles H. Ogburn (*via e-mail*)
J. David Freedman, Esq. (*via e-mail*)

From: Charles Ogburn [mailto:ogburnc@gmail.com]
Sent: Friday, June 28, 2013 9:45 AM
To: Jim Beck
Cc: Henry Thompson; Eric W. Anderson

Subject: Re: VOTING ON THE DEBTORS' JOINT CHAPTER 11 PLAN

Jim:

I am just following up on my request for financial information about Arcapita Inc. I don't believe I have had a reply on this subject. My attorney, Eric Anderson (of Parker, Hudson, Rainer & Dobbs) has also requested similar information from Josh Weisser at GDC. Please let me hear from you on this.

Thanks,

Charlie

--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

On Mon, Jun 10, 2013 at 6:22 PM, Charles Ogburn <ogburnc@gmail.com> wrote:

Jim:

Your email below (from May 26) was intended to inform me of Arcapita's position regarding my rights under the CPO I received from Arcapita. For the first time, Arcapita now asserts that the CPO only runs to Arcapita Inc., implying that any recovery by me under the CPO should come from Arcapita Inc. This does not make any sense to me, as Arcapita Inc. is not in the path of any of the deal structures that would generate proceeds when an investment is sold. But for the sake of clarity, please provide me with financial information about Arcapita Inc. (e.g., balance sheet, income statement, is it profitable?). How would it ever be in a position to make payments on the underlying basis of the IIP investments?

Thanks,

Charlie

--
Charles H. Ogburn
+1 404 932 7441
ogburnc@gmail.com

EXHIBIT G

September 6 Letter from Gibson, Dunn & Crutcher LLP

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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New York, NY 10166-0193
Tel 212.351.4000
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Josh Weisser
Direct: +1 212.351.5372
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JWeisser@gibsondunn.com

September 6, 2013

Eric W. Anderson
Parker Hudson Rainer & Dobbs LLP
285 Peachtree Center Avenue
Suite 1500
Atlanta, Georgia 30303

Re: Re: Arcapita Bank B.S.C.(c) proof of claim no. 305

Dear Eric:

We are in receipt of your letter dated July 22, 2013 and acknowledge your representation of Mr. Charles H. Ogburn (**Mr. Ogburn**), a former Arcapita Inc. employee who has filed a claim (the **Disputed Claim**) against Arcapita Bank B.S.C.(c) (**Arcapita Bank**) designated as Claim No. 305 on the official claims register maintained in Arcapita Bank's chapter 11 cases (the **Chapter 11 Cases**).

On April 26, 2013, Arcapita Bank and its affiliated debtors (collectively, the **Debtors**) filed the *Debtors' Fifth Omnibus Objection to Claims* [Docket No. 1053 in the Chapter 11 Cases] (the **Omnibus Objection**). Pursuant to the Omnibus Objection, the Debtors objected to the Disputed Claim, among other claims. On June 26, 2013, at your request, Arcapita Bank adjourned the hearing on the Omnibus Objection as to the Disputed Claim from July 17, 2013 to August 27, 2013, in order to continue discussions with you regarding the substance of the Disputed Claim and the Debtors' objection thereto [Docket No. 1308]. To allow the new board of the reorganized Debtors to review and assume control over pending claim objections, the Debtors have further adjourned the hearing on the Disputed Claim to the monthly omnibus hearing scheduled on October 24, 2013, which should be after the effective date of Arcapita Bank's chapter 11 plan.

The Disputed Claim has three claim components: (a) a $510,205.75 claim arising from uncalled capital calls; (b) a $75,000 estimated claim purportedly relating to Arcapita Bank's alleged failure to transfer cash to Mr. Ogburn in connection with the monetization of Arcapita Bank portfolio companies and/or investments (each, a **Portfolio Operating Company** and collectively, the **Portfolio Operating Companies**); and (c) a $3,413,489.27 Contingent Payment Obligation (**CPO**) claim relating to unmatured obligations and potential future monetization of Portfolio Operating Companies. In the aggregate, the Disputed Claim

equaled $3,998,965.02 By the Omnibus Objection, Arcapita Bank requested entry of an order by the bankruptcy court administering the Chapter 11 Cases disallowing the Disputed Claim to the extent it exceeded $510,205.75.

Arcapita Bank agrees with the amount and validity of the Disputed Claim's first component. The Debtors included a claim in the amount of $510,205.75 in favor of Mr. Ogburn in Arcapita Bank's schedules of assets and liabilities, filed with the Bankruptcy Court on June 6, 2013 [Docket No. 212] (the **Arcapita Bank Schedules**) and did not identify the claim as contingent, disputed or unliquidated. However, the Debtors dispute the second and third components of the Disputed Claim.

Turning to the second component, Mr. Ogburn asserts a $75,000 claim for cash allegedly held by Arcapita Bank as of the petition date which Arcapita Bank allegedly failed to distribute relating to the Prenova, Navini, Vogica and Freightliner Portfolio Operating Companies. This component of the Disputed Claim assumes that Mr. Ogburn had obtained title to cash on deposit with Arcapita Bank as of the petition date that he was then unable to withdraw due to the bankruptcy filing; however, the $75,000 referenced in the Disputed Claim, to the extent it existed at all, was part of much larger sums deposited by and held in accounts owned by one or more Portfolio Operating Companies. Mr. Ogden has no right to payment against Arcapita Bank for proceeds deposited into an Arcapita Bank account maintained by or for a Portfolio Operating Company. Arcapita Bank will only become liable to Mr. Ogburn for his share of the proceeds if and when such proceeds are later transferred to an Arcapita Bank account maintained by or for Mr. Ogburn.

At the petition date in the Chapter 11 Cases, RailInvest Funding Limited, RailInvest HV Capital IV Limited and RailInvest Investments Limited (collectively, **RailInvest**), on behalf of Freightliner, and Arcapita Ventures I (**AVI**), on behalf of Prenova, maintained deposits with Arcapita Bank (for their own accounts, not on behalf of their investors). The deposits give rise to claims against Arcapita Bank, as reflected on the Arcapita Bank Schedules. RailInvest has three claims against Arcapita Bank that have been scheduled at $79,013.82, $1,500,442.66 and $21,027.35 respectively and arise from undistributed return on capital and unused funds intended to capitalize the entity. AVI has a claim against Arcapita Bank that has been scheduled at $11,182,334.35. The company informs us that the AVI claim is based on (i) Prenova exit proceeds deposited by AVI with Arcapita Bank and (ii) $4 million intended to capitalize Prenova that AVI deposited on Prenova's behalf with Arcapita Bank. Mr. Ogburn holds no direct claim against Arcapita Bank related to any of the above claims.

The Debtors also dispute the third component of Mr. Ogburn's claim relating to purported CPO obligations. As you know, Mr. Ogburn participated in the Investment Incentive Plan (**IIP**) and the related Arcapita Investment Deferral Plan (**Deferral Program**). The company

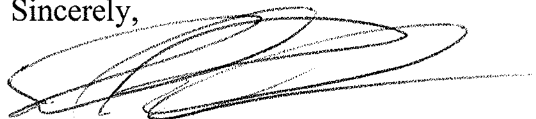
established and maintained the Deferral Program to provide Mr. Ogburn and other Arcapita Bank and Arcapita Inc. employees with the opportunity to defer a portion of their compensation through IIP participation. Through the IIP and Deferral Program, a total of $3,413,489.27 in deferred compensation due Mr. Ogburn was invested on his behalf in Portfolio Operating Companies which carried with them investment risk. Mr. Ogburn will receive future CPO distributions under the Deferral Program along-side other investors, including other IIP participants, who similarly maintain indirect equity interests in the same Portfolio Operating Companies. The amount due Mr. Ogburn will depend upon Portfolio Operating Company monetization events and thus cannot be known until monetization events occur.

The Debtors objected to the validity and/or amount of Mr. Ogburn's CPO claim on two separate grounds. First, under the Deferral Program's terms, Mr. Ogburn should look to Arcapita Inc., Mr. Ogburn's employer, not Arcapita Bank for payment. Second, because Mr. Ogburn's payment rights will mature in the future, the aggregate amount of his right to payment is unascertainable at this time and may be far less or far more than $3,413,489.27. Mr. Ogburn's rights under the IIP remain unaltered by the Chapter 11 Cases and he retains whatever rights he has under the program.

In response to your request for additional information as to Arcapita Inc., the Debtors are not able to provide you or Mr. Ogburn with confidential financial information regarding Arcapita Inc. or to project the proceeds from the monetization of Portfolio Operating Companies. Since Mr. Ogburn's CPO rights do not give rise to a matured claim presently enforceable against Arcapita, Inc., its present financial condition has little relevance to what the aggregate recovery on Mr. Ogburn's CPO rights may be. Nevertheless, should you have questions regarding the Debtors' sale of their economic interests in either 3PD, Inc. or 3PD Holding, Inc. (in either case, **3PD**), we direct you to the motion filed with the Court on July 18, 2013 [Docket No. 1366]. A copy of the purchase and sale agreement intended for use in a 3PD sale is annexed to that motion as Exhibit D. In addition, as to Bijoux Terner, the seller received approximately $50,000 of sale proceeds, which were used to partially pay down outstanding indebtedness of approximately $3.0 million. Although the Bijoux Terner seller may receive future additional distributions from the sale of up to $4.5 million, there remains $22 million of outstanding indebtedness (including subordinated indebtedness), which must be satisfied prior to a payment to either equity holders or IIP participants.

Please let us know if you would like to discuss resolving the pending Omnibus Objection by stipulating to an Allowed Unsecured Claim against Arcapita Bank and in favor of Mr. Ogburn in the amount of $510,205.75.

Sincerely,



Josh Weisser

JW/mf

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served this 2nd day of October, 2013, by Notices of Filing issued by CM/ECF to those parties registered as of filing, which includes (1) **counsel for the Debtors**, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Michael A. Rosenthal, Esq., Craig H. Millet, Esq. and Matthew K. Kelsey, Esq.); (2) **the Office of the United States Trustee for the Southern District of New York**, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); and (3) **the Official Committee of Unsecured Creditors**, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.).

Dated: October 2, 2013

By: *Eric W. Anderson*
Eric W. Anderson
(admitted *pro hac vice*)

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