

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

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: **Chapter 11**
: **Case No. 12-11076 (SHL)**
: **Jointly Administered**
: **Debtors.**
: **Jointly Administered**
: **Jointly Administered**
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**ORDER GRANTING DEBTORS' MOTION FOR ORDER ESTABLISHING
PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT
OF EXPENSES FOR PROFESSIONALS AND COMMITTEE MEMBERS**

Upon consideration of the motion (the "**Motion**")¹ of Arcapita Bank B.S.C.(c) ("**Arcapita**") and certain of its subsidiaries, a s debtors and debtors in possession (collectively, the "**Debtors**" and each, a "**Debtor**"), for entry of an order establishing procedures for interim compensation and reimbursement of expenses for professionals and committee members; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion having been appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein.

2. Except as may otherwise be provided in orders of the Court, all professionals in these cases may seek monthly compensation in accordance with the following procedures (the “*Compensation Procedures*”):

(a) On or before the 20th day of each month following the month for which compensation is sought, or as soon as reasonably practicable thereafter, each professional seeking compensation shall serve a monthly statement (the “*Monthly Statement*”), by email or overnight delivery, on (i) Arcapita Bank B.S.C.(c), Arcapita Building, Bahrain Bay, P.O. Box 1406, Manama, Kingdom of Bahrain (Attn: Henry Thompson); (ii) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq., and Matthew K. Kelsey, Esq.); (iii) 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.); (iv) the Official Committee of Unsecured Creditors (the “*Committee*”), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.) and any other official committee appointed in these chapter 11 cases; and (v) any other party the Court may designate (each a “*Notice Party*” and collectively, the “*Notice Parties*”);

(b) On or before the 20th day of each month following the month for which compensation is sought (the “*Monthly Statement Filing Deadline*”), or as soon as reasonably practicable thereafter, each professional seeking compensation shall file the Monthly Statement with the Court; however, a courtesy copy need not be delivered to chambers. This Order does not alter the fee application requirements set forth in sections 330 and 331 of the Bankruptcy Code. Professionals are required to serve and file interim and final applications for approval of fees and expenses in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules for the United States Bankruptcy Court of the Southern District of New York (the “*Local Rules*”);

(c) Each Monthly Statement must contain a list of the individuals and their respective titles (*e.g.*, attorney or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred,² and contemporaneously

² No professional shall seek reimbursement of an expense which would otherwise not be allowed pursuant to the Court’s Administrative Order dated November 25, 2009 (M-388) or the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 dated January 30, 1996.

maintained time entries for each individual in increments of time set forth in each professional's engagement letter and the order approving such engagement;

(d) Each Notice Party shall have 14 days after the receipt of a Monthly Statement to review such Monthly Statement and, in the event that such Notice Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, such Notice Party shall, by no later than the 35th day following the month for which compensation is sought or the 14th day after receipt of a Monthly Statement, whichever is later (the "***Objection Period***"), file with the Court and serve upon the professional whose Monthly Statement is objected to, and the other Notice Parties, a written notice (the "***Notice of Objection to Fee Statement***") setting forth the nature of the objection and the amount of fees or expenses to which the recipient objects; provided, however, the Objection Period with respect to any Monthly Statement that is filed and served after the Monthly Statement Filing Deadline shall be extended by the number of days that have elapsed between the Monthly Statement Filing Deadline and the filing of such Monthly Statement;

(e) At the expiration of the Objection Period (including any extensions thereof in accordance with paragraph (d)), the Debtors shall promptly pay 80% of the fees and 100% of the expenses identified in each Monthly Statement to which no Notice of Objection to Fee Statement has been filed and served in accordance with paragraph (d);

(f) If a Notice of Objection to Fee Statement is filed with respect to a particular Monthly Statement, the Debtors shall withhold payment of that portion of the Monthly Statement to which such Notice of Objection to Fee Statement is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e) unless the professional whose statement is objected to seeks an order from the Court, upon notice and a hearing, directing payment to be made;

(g) If the parties to an objection are able to resolve their dispute following the filing of a Notice of Objection to Fee Statement, and if the party whose Monthly Statement was the subject of the objection files a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtors shall promptly pay, in accordance with paragraph (e), that portion of the Monthly Statement that is no longer subject to an objection but in no event greater than 80% of the total fees requested;

(h) All objections that are not resolved by the parties or Court order shall be preserved and presented to the Court at the next interim or final fee application hearing to be determined by the Court (*see* paragraph (j), below);

(i) The service of a Notice of Objection to Fee Statement in accordance with paragraph (d) above shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code;

(j) Approximately every 120 days, but no more than every 150 days, each of the professionals shall serve and file with the Court, in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested;

(k) Any professional who fails to file an application pursuant to paragraph 2(j) of this Order (1) shall be ineligible to receive further monthly payments of fees or expenses as provided herein until such application for interim or final Court approval and allowance has been filed with the Court, and (2) may be required to disgorge any fees paid since retention or the last fee application, provided, however, that the penalties provided in this paragraph shall be the only penalties for failure to comply with paragraph 2(j) of this order;

(l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Statement shall not disqualify a professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court;

(m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any professionals; and

(n) Counsel for a Committee may, in accordance with the foregoing procedures for monthly compensation and reimbursement of professionals, collect and submit statements of expenses, with supporting vouchers, from its Committee Members; provided, however, that such Committee's counsel ensures that these reimbursement requests comply with the Court's Administrative Order dated December 21, 2010 (M-412).

3. In any Monthly Statement or Application, the amount of fees and disbursements sought shall be stated in the currency in which such fees and disbursements are to be paid. If any Monthly Statement or Application states the amount of fees and disbursements sought in currency other than U.S. dollars, such Monthly Statement or Application shall also state, for the sole purpose of approximating the amount of such fees and disbursements in U.S. dollars, the equivalent U.S. dollar amount of fees and disbursements sought using the conversion rate in effect at the time of the applicable Monthly Statement or Application.

4. The Debtors are authorized to pay retained professionals in currencies other than U.S. dollars, in accordance with their agreements with such professionals. For the avoidance of doubt, the Debtors are also authorized to pay retained professionals in U.S. dollars, in accordance with their agreements with such professionals.

5. The first fee application period shall be the period beginning on the Petition Date, and ending on April 30, 2012. All fee application periods thereafter shall begin on the first day of each calendar month and end on the last day of such month. All professionals not retained as of the Petition Date shall submit their first Monthly Statement for the period from the effective date of their retention through the end of the first full calendar month following the effective date of their retention, and otherwise in accordance with the procedures set forth in this Order.

6. The Debtors shall include all payments to professionals or Committee Members on their monthly operating reports, detailed so as to state the amount paid to each.

7. All time periods set forth in this Order shall be calculated in accordance with Rule 9006(a) of the Bankruptcy Rules.

8. Service of Applications shall be limited to the Notice Parties. The Debtors shall serve the Hearing Notices on the Master Service List.

9. All fees and expenses paid to professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

10. Notice of any Application shall be sufficient if served on the Notice Parties.

11. All other parties that have filed a notice of appearance with the Clerk of this Court and requested notice of pleadings in the Chapter 11 Cases shall be entitled to receive only notice of hearings on the Applications.

12. This Court shall retain jurisdiction with respect to any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: New York, New York
May 18, 2012

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE