

Tally M. Wiener  
**LAW OFFICES OF TALLY M. WIENER, ESQ.**  
119 West 72nd Street, PMB 350  
New York, NY 10023  
(212) 574-7975 (International)  
(855) COMILAW (US/Canada, Toll-Free)  
(212) 496-4170, Attn: PMB 350 (Facsimile)  
[tally.wiener@thecom.com](mailto:tally.wiener@thecom.com)

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

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

**OBJECTION OF CAPTAIN HANI ALSOHAIBI  
TO APPROVAL OF PROFESSIONAL COMPENSATION**

**AND**

**REQUEST THAT THE HEARING SCHEDULED FOR OCTOBER 24, 2013  
CONCERNING APPROVAL OF PROPOSED COMPENSATION  
BE ADJOURNED**

Comes now before the Honorable United States Bankruptcy Court for the Southern District of New York Captain Hani Alsohaibi, a party in interest in the above-captioned cases, by the Law Offices of Tally M. Wiener, Esq., and respectfully submits this Objection to the relief requested in the fee statements/applications for professional compensation filed on or after October 3, 2013 and set for hearing on October 24, 2013. In support of the Objection and the accompanying request that the hearing and the associated objection deadline be adjourned, Captain Alsohaibi respectfully states as

follows:

### **STATEMENT OF FACTS**

1. On June 10, 2013, the debtors represented to the Court and to their stakeholders that their \$175,000,000.00 replacement debtor in possession financing would last until past plan consummation:

The good news about the Goldman facility that will be provided pursuant to this motion is it's providing a hundred seventy five million dollars (\$175m) which will bridge us not only past June but past consummation of the plan.<sup>1</sup>

The next day the debtors achieved confirmation of their liquidating plan from the bench, and a few days later a confirmation order. Although the debtors could have taken their liquidating plan effective sooner,<sup>2</sup> they spent most of the summer in bankruptcy. They finally filed a notice their liquidating plan had gone effective on September 17, 2013.

---

<sup>1</sup> Transcript of June 10, 2013 hearing before the Bankruptcy Court, page 9 (included as Exhibit A to Reply in Support of Debtors' Motion Authorizing Replacement Postpetition Financing) [Docket No. 1275]).

<sup>2</sup> As the Official Committee of Unsecured Creditors remarked in its opposition to the debtors' recent proposed budget [Docket No. 1458]:

1. As the Court is aware, the *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code (with First Technical Modifications* [Docket No. 1265] (the "Plan") was confirmed on June 17, 2013. More than two months have passed and approximately \$28 million in expenses have been incurred since that time. After much delay, all conditions precedent to the occurrence of the Effective Date (as set forth in section 10.1 of the Plan) can be satisfied by the end of this week (August 30, 2013). There are no legal obstacles remaining to the consummation of the Plan.

2. Despite the foregoing, the Proposed Budget contemplates that the Debtors' creditors will continue to bear the heavy costs of these chapter 11 cases – and the startup costs of AIM Group Limited ("AIM") – for at least three more weeks, to the tune of approximately \$15 million. As the Court is aware, the projected Effective Date has been repeatedly postponed, from July 31, to August 15, August 30 and now potentially to mid-September. The creditors have become increasingly frustrated by these delays and the associated costs, but their options to accelerate the consummation process are very limited. Absent intervention from the Court, it is the Debtors who have the

2. As of the next day, the debtors had spent or earmarked not only all of the \$175,000,000.00 in replacement debtor in possession financing but also all of the \$350,000,000.00 exit financing except for approximately \$10.7M.

3. On the back end of a failed restructuring, the Arcapita estate is on the brink of administrative insolvency.

4. On October 3, 2013, professionals who had been retained to provide services to the debtors started filing final fee applications. Some professionals also sought interim compensation including those who had not filed monthly fee applications on a timely basis or as otherwise prescribed by the terms of the Order Granting Debtors' Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Committee Members [Docket No. 159].

5. In the aggregate, tens of millions of dollars are sought. And, as part of the relief requested, the professionals seek release of sums previously subject to a 20% holdback.

6. Meanwhile, the United States government is shut down to a great extent. The federal government shutdown unfortunately includes the Office of the United States Trustee for Region 2. The Office was closed when the fee applications were filed and remains so as of the time of this writing, a day before the objection deadline. See <http://www.justice.gov/ust/r02/> ("Effective Tuesday, October 1, all offices within the United States Trustee Program will be temporarily closed due to a lapse in federal

---

control over when the confirmed Plan goes effective.

3. The Debtors' senior management team, however, which is comprised of the same people who soon will be running AIM, does not appear to be in a hurry to consummate the Plan. . . .

funding. Office operations will resume once Congress enacts a 2014 appropriations bill or a continuing resolution. We apologize for the inconvenience.”); Joseph Checkler & Stephanie Gleason, Government Shutdown Hits Bankruptcy Watchdogs, Wall Street Journal Bankruptcy Beat, October 1, 2013, available at <http://blogs.wsj.com/bankruptcy/2013/10/01/government-shutdown-hits-bankruptcy-watchdogs/>.

7. Reacting to the impact of the shutdown on the ability of the government to participate in bankruptcy cases, the Chief Bankruptcy Judge for the Southern District of New York “signed an order saying that any bankruptcy lawsuit or contested matter in which a federal agency or employee is involved will be delayed ‘until the business day after the President signs into law a budget appropriation that restores Department of Justice funding.’” Government Shutdown Hits Bankruptcy Watchdogs, paragraph 6 (citing General Order M-460 (tolling certain deadlines, including those affecting the United States Attorneys’ Office)).

#### **RELIEF REQUESTED**

8. The Office of the United States Trustee is not in a position to provide meaningful review of fee applications as it typically does, a process that in these cases has led to greater compliance with fee guidelines and savings to the estate due to professionals reducing their fees on a voluntary basis. See, e.g., Docket No. 1610, ¶ 9 (noting a voluntary reduction made following discussions with the United States Trustee). Accordingly, the claimant respectfully requests adjournment of the October 17, 2013 objection deadline, and that the hearing scheduled for October 24, 2013 be adjourned to the extent it concerns approval of fee applications.

9. The requested adjournment is in keeping with the Order entered by Chief Judge Morris insofar as it gives the government the benefit of a toll. It is beneficial to the claimant and other stakeholders because, absent an adjournment, holdbacks could be released and tens of millions of dollars can leave the estate at a time when the estate is especially vulnerable.

10. A brief delay in payment would not unfairly prejudice professionals considering the circumstances of these cases. One of the drawbacks of seeking bankruptcy protection in a venue in which a company is not headquartered, as did the debtors, is inability to access funds held by banks outside of the jurisdiction. The debtors struggled through this issue at the outset of the cases and resolved it to a limited extent by obtaining debtor in possession financing. Their professionals are sophisticated firms accustomed to operating in a distressed environment who were (or should have been made) aware of the liquidity issue at the time they were retained to provide services to the Arcapita bankruptcy estate. Also, the professionals could see, as the cases progressed, that the debtor in possession financing had to be replaced and more funds secured in order for the estate to keep being administered.

11. The equities favor the claimant and other stakeholders who were brought into the case on an involuntary and surprise basis due to the debtors' first of their kind bankruptcy filings. If the requested fees are approved on October 24, 2013, the professionals will be able to walk away from the case whole whereas the stakeholders will be left with insufficient funds for case administration after having been promised that half of the exit financing would still be available at this point in time.

**WHEREFORE** claimant respectfully seeks (i) an adjournment of the October 24, 2013 hearing concerning approval of proposed professional compensation, and (ii) an adjournment of the October 17, 2013 objection deadline due to the volume of the papers filed in connection with the fee applications, so that interested parties will have as meaningful an opportunity to review proposed expenditures as possible in the absence of oversight by the Office of the United States Trustee.

Dated: New York, New York  
October 16, 2013

Respectfully submitted on behalf of  
Captain Hani Alsohaibi by:

/s/ Tally M. Wiener  
Tally M. Wiener  
**LAW OFFICES OF TALLY M. WIENER, ESQ.**  
119 West 72nd Street, PMB 350  
New York, NY 10023  
(212) 574-7975 (International)  
(855) COMILAW (US/Canada, Toll-Free)  
(212) 496-4170, Attn: PMB 350 (Facsimile)  
[tally.wiener@thecom.com](mailto:tally.wiener@thecom.com)