

Response Deadline: TBD
Hearing Date and Time: TBD

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

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In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors. ¹	:	Confirmed
	:	
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EIGHTH OMNIBUS OBJECTION TO CLAIMS
(No Liability Claims)

THIS OBJECTION SEEKS TO DISALLOW CERTAIN FILED CLAIMS. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES (OR DESIGNATED IDENTIFICATION NUMBERS) AND/OR CLAIMS ON EXHIBIT A ATTACHED TO THIS OBJECTION. □

The above-captioned Reorganized Debtors hereby submit, pursuant to section 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and this Court’s *Order Granting Debtors’ Motion for Entry of an Order Pursuant to 11*

¹ The chapter 11 case captioned In re Falcon Gas Storage Company, Inc., No. 12-11790 (Bankr. S.D.N.Y.) is being administered jointly with the other above-captioned cases, but no plan has been confirmed in that case.

U.S.C. § 105(a) and Fed. R Bankr. P. 3007 Approving Claim Objection Procedures [Docket No. 785] (the “Claim Objection Procedures Order”), this omnibus objection (the “Eighth Omnibus Objection”) to certain claims asserted against their predecessors in interest (the “Debtors”). The Eighth Omnibus Objection is supported by the *Declaration of Scott A. Rinaldi in Support of Eighth Omnibus Objection to Claims* attached hereto as Exhibit B (the “Rinaldi Declaration”). In support of the Eighth Omnibus Objection, the Reorganized Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Eighth Omnibus Objection pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On November 1, 2013, the Reorganized Debtors filed a *Motion to Estimate Unliquidated Claims for Purposes of Establishing Reserve in Connection with Distributions Under Chapter 11 Plan* (the “Motion to Estimate”) [Docket No. 1664], requesting, among other relief, that the Court, pursuant to section 502(c) of the Bankruptcy Code, estimate at \$0, for the purpose of establishing a reserve in connection with plan distribution, seven claims filed in wholly unliquidated amounts. No holder of any claim subject to the Motion to Estimate filed an objection or another responsive pleading to the Motion to Estimate. However, at the hearing on the Motion to Estimate, the Court indicated that it would be more appropriate for the Reorganized Debtors to object to these wholly unliquidated claims at this time. Accordingly, the

Reorganized Debtors hereby seek to disallow certain of the wholly unliquidated claims that were subject to the Motion to Estimate.²

RELIEF REQUESTED

3. The Reorganized Debtors and their advisors have reviewed each of the claims (including any supporting documentation) identified on Exhibit A hereto (the “No Liability Claims”) and have determined that each of them should be disallowed in their entirety and expunged because the estates have no liability with respect thereto.

4. The Reorganized Debtors seek entry of an order in the form attached hereto as Exhibit C, pursuant to section 502(b) of the Bankruptcy Code, Rule 3007(d) of the Bankruptcy Rules, and the Claim Objection Procedures Order, disallowing and expunging each of the No Liability Claims.

OBJECTION

5. A filed proof of claim is “deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim by a preponderance of the evidence. See In re Oneida Ltd., 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009); In re Adelphia Commc’ns Corp., Case No. 02- 41729 (REG), 2007 Bankr. LEXIS 660, *15 (Bankr. S.D.N.Y. Feb. 20, 2007); In re Rockefeller Ctr. Props., 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000).

6. Prior to the petition date and in the ordinary course of business, the Debtors maintained books and records (the “Books and Records”) that reflect, among other things, the

² The Reorganized Debtors are not seeking to disallow claim nos. 65 or 66 filed by NHH Nordbank AG New York Branch and HSH Nordbank AG Cayman Islands Branch, respectively. By the parties’ agreement, these claims will either be withdrawn, or will be voluntarily capped at a liquidated amount, in time to allow the Reorganized Debtors to proceed with plan distributions.

Debtors' liabilities and amounts owed to creditors as of the petition date. The Reorganized Debtors compared the No Liability Claims with the Books and Records to determine their validity. As a result of this review, and as set forth in the Rinaldi Declaration, the Reorganized Debtors have determined that the estates have no liability with respect to the No Liability Claims. Accordingly, each of the No Liability Claims should be disallowed in its entirety and expunged.

7. Claim no. 58 asserts a claim on account of a guarantee of contingent obligations under a purchase agreement entered into in April 2010 relating to, among other things, purchase price, tax liabilities, and indemnification obligations. Since more than three and a half years have passed since this purchase agreement was executed, and the claimant has not yet discovered any basis on which to assert a claim, the Reorganized Debtors request that the Court disallow in its entirety and expunge claim no. 58.

8. Claim nos. 79 and 80 appear to have been filed by a former employee of Arcapita Inc. with no indication as to any grounds on which any of the Debtors may be liable to the claimant, and no indication even of the magnitude of the asserted claim. The Reorganized Debtors are not aware of any liabilities to this employee other than those on account of which he already has allowed claims (claim nos. 77 and 78). See Rinaldi Declaration ¶ 8. Accordingly, the Reorganized Debtors request that the Court disallow in their entirety and expunge claim nos. 79 and 80.

9. Claim nos. 348 and 349 appear to have been filed solely, as they state, to “preserve any and all rights” that the claimant “may have” in connection with a transaction that closed more than two years ago and with respect to which the Reorganized Debtors are not aware

of any continuing liability. See Rinaldi Declaration ¶ 9. Accordingly, the Reorganized Debtors request that the Court disallow in their entirety and expunge claim nos. 348 and 349.

NOTICE

10. The Reorganized Debtors have provided notice of the filing of the Eighth Omnibus Objection by electronic mail, facsimile and/or overnight mail to: (a) 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 (b) the holder of each No Liability Claim. The Reorganized Debtors submit that such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

11. No prior request for the relief requested herein has been made to this or any other court.³

CONCLUSION

WHEREFORE, the Reorganized Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

³

In their third omnibus objection to claims (the “Third Omnibus Objection”), the Debtors sought, among other forms of relief, to have claim nos. 348 and 349 filed by Jill Superco LLC disallowed and expunged on essentially the same grounds as asserted herein. Third Omnibus Objection ¶ 22 [Docket No. 1051]. However, the hearing on these claims is currently scheduled for January 21, 2014. For the reasons discussed above, the Reorganized Debtors request that the hearing on claim nos. 348 and 349 be held on December 17, 2013, and will withdraw the Third Omnibus Objection with respect to these claims.

Dated: November 22, 2013
New York, New York

MILBANK, TWEED, HADLEY & M^cCLOY LLP

/s/ Evan R. Fleck _____

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*Counsel for the Reorganized Debtors and
the New Holding Companies*

Exhibit A

No Liability Claims

**ARCAPITA BANK B.S.C. (C), ET. AL.
EIGHTH OMNIBUS CLAIMS OBJECTION
NO LIABILITY CLAIMS
CLAIMS TO BE DISALLOWED AND EXPUNGED**

	NAME OF CLAIMANT	CLAIM NO.	DEBTOR & CASE NO.	ASSERTED AMOUNT
1	Esselte Corporation	58	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined
2	Employee 1004 [Address on File]	79	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined
3	Employee 1004 [Address on File]	80	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined
4	Jill Superco LLC	348	Arcapita Investment Holdings Limited 12-11077 (SHL)	Undetermined
5	Jill Superco LLC	349	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined

Exhibit B

Scott A. Rinaldi Declaration

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

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In re: : Chapter 11
: :
ARCAPITA BANK B.S.C.(c), et al., : Case No. 12-11076 (SHL)
: :
Reorganized Debtors.¹ : Confirmed
: :
----- X

**DECLARATION OF SCOTT A. RINALDI
IN SUPPORT OF EIGHTH OMNIBUS OBJECTION TO CLAIMS**

Pursuant to 28 U.S.C. § 1746, I, Scott A. Rinaldi, hereby declare:

1. I am a Managing Director at FTI Consulting, Inc. (“FTI”), the financial advisor for the above-captioned Reorganized Debtors.

2. In my capacity as Managing Director of FTI, I am authorized to submit this Declaration in support of the *Eighth Omnibus Objection to Claims* (the “Eighth Omnibus Objection”).²

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon: (a) my personal knowledge; (b) my review, or the review of employees of FTI under my supervision and direction, of the relevant documents, including the Schedules, the Eighth Omnibus Objection, and all claims listed on Exhibit A thereto; and (c) information supplied to me by others at the request of the Reorganized Debtors or their professionals. If called upon to testify, I could and would competently testify to the facts set forth herein on that basis, including that I, or employees of FTI under my supervision and direction, personally reviewed the claims

¹ The chapter 11 case captioned In re Falcon Gas Storage Company, Inc., No. 12-11790 (Bankr. S.D.N.Y.) is being administered jointly with the other above-captioned cases, but no plan has been confirmed in that case.

² Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Eighth Omnibus Objection.

listed on Exhibit A to the Eighth Omnibus Objection as part of the claims reconciliation process in these chapter 11 cases.

QUALIFICATIONS AND BACKGROUND

4. I have extensive experience with chapter 11 cases and other distressed restructurings, having advised debtors and various other stakeholders in the chapter 11 process for approximately 16 years. Since joining FTI in 1997,³ I have specialized in all aspects of bankruptcy case administration, including, among other things, claims review and reconciliation, preparation of statements and schedules, noticing and the development of custom solutions to complex case administration and claim reconciliation issues.

5. I received my Bachelor of Arts degree in Finance from Florida State University and an MBA from Indiana University. My business address is 3 Times Square 10th Floor, New York, NY 10036.

THE NO LIABILITY CLAIMS

6. Based upon my review (or that of employees of FTI under my supervision) of the No Liability Claims listed on Exhibit A to the Eighth Omnibus Objection, I have concluded that the estates have no liability with respect to such claims, for the reasons set forth in the Eighth Omnibus Objection.

7. Claim no. 58 asserts a claim on account of a guarantee of contingent obligations under a purchase agreement entered into in April 2010 relating to purchase price, tax liabilities, and indemnification obligations.

8. Claim nos. 79 and 80 were filed by a former employee of Arcapita Inc. without any supporting documentation whatsoever. Upon review of the Debtors' books and records, I

³ I joined Coopers & Lybrand in 1997, which merged in 1998 with Price Waterhouse to become PricewaterhouseCoopers ("PWC"). In 2002, FTI acquired PWC's U.S. Business Recovery Services Division, of which I was a part.

conclude that the Debtors' only liability to this claimant is that on account of which he already has allowed claims (claim nos. 77 and 78).

9. With respect to claim nos. 348 and 349, the claimant fails to allege any basis for recovery or that the claimant has suffered any loss. Instead, as stated in the proofs of claim themselves, claim nos. 348 and 349 were filed solely to preserve any rights that the claimant "may" have against the Debtors arising out of agreements to which no Debtor is a party. FTI has not been able to identify any basis for liability.

10. Accordingly, the No Liability Claims should be disallowed in their entirety and expunged.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: November 22, 2013
New York, New York

/s/ Scott A. Rinaldi
Scott A. Rinaldi

Exhibit C

Proposed Order

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

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In re:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), <u>et al.</u> ,	:	Case No. 12-11076 (SHL)
	:	
Reorganized Debtors. ¹	:	Confirmed
	:	
-----	X	

ORDER GRANTING EIGHTH OMNIBUS OBJECTION TO CLAIMS
(No Liability Claims)

Upon consideration of (i) the above-captioned Reorganized Debtors’ eighth omnibus objections to claims (the “Eighth Omnibus Objection”)² seeking entry of an order, pursuant to section 502(b) of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure, and this Court’s *Order Granting Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. § 105(a) and Fed. R Bankr. P. 3007 Approving Claim Objection Procedures*, disallowing and expunging each of the No Liability Claims, (ii) the Rinaldi Declaration in support thereof, (iii) the objections, if any, to the relief requested in the Eighth Omnibus Objection, and (iv) statements of counsel at the hearing held on December 17, 2013; and the Court having found that it has jurisdiction to consider the Eighth Omnibus Objection pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the shortened notice of the relief sought by the Eighth Omnibus Objection and the hearing thereon was appropriate under the circumstances; and the Court

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Eighth Omnibus Objection.

having determined that the legal and factual bases set forth in the Eighth Omnibus Objection establish just cause for the relief granted herein; and the Court having found that such relief is in the best interests of the Reorganized Debtors and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby:

1. **ORDERED** that the relief requested in the Eighth Omnibus Objection is granted.
2. **ORDERED** that pursuant to section 502(b) of the Bankruptcy Code, each claim listed on Exhibit 1 attached hereto is disallowed in its entirety and expunged.
3. **ORDERED** that GCG, Inc. is hereby directed to adjust the claims register to reflect the provisions of this Order.
4. **ORDERED** that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2013

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Claims to Be Disallowed and Expunged

	NAME OF CLAIMANT	CLAIM NO.	DEBTOR & CASE NO.	ASSERTED AMOUNT
1	Esselte Corporation	58	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined
2	Employee 1004 [Address on File]	79	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined
3	Employee 1004 [Address on File]	80	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined
4	Jill Superco LLC	348	Arcapita Investment Holdings Limited 12-11077 (SHL)	Undetermined
5	Jill Superco LLC	349	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	Undetermined