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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 12-11076-shl, 12-11077-shl, 12-11078-shl,
12-11079-shl, 1211080-shl, 12-11081-shl

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In the Matter of:

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

Debtors.

- - - - - x

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

March 21, 2012
2:11 PM

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

1 Hearing re: Motion for Joint Administration Debtors Motion
2 for Order Directing Joint Administration of Related Chapter
3 11 Cases

4

5 Hearing re: Motion to Extend Deadline to File Schedules or
6 Provide Required Information Debtors Motion for Order
7 Extending the Time to File Schedules and Statements of
8 Financial Affairs

9

10 Hearing re: Motion for Entry of an Order Confirming the
11 Protections of Sections 362 and 365 of the Bankruptcy Code
12 and Restraining Any Action in Contravention Thereof

13

14 Hearing re: Motion to Extend Time for Order Granting the
15 Debtors Additional Time to File Reports of Financial
16 Information Pursuant to Federal Rule of Bankruptcy Procedure
17 2015.3(a)

18

19 Hearing re: Motion for an Order (A) Waiving the Requirement
20 that Each Debtor File a List of Creditors and Equity
21 Security Holders and Authorizing Maintenance of Consolidated
22 List of Creditors in Lieu of Matrix; (B) Authorizing Filing
23 of a Consolidated List of Top 50 Unsecured Creditors; and
24 (C) Approving Case Management Procedures

25

1 Hearing re: Motion to Extend time CORRECTED - Debtors
2 Motion for Order Granting the Debtors Additional Time to
3 File Reports of Financial Information Pursuant to Federal
4 Rule of Bankruptcy Procedure 2015.e(a) (related
5 document(s) 5)

6
7 Hearing re: Motion for Interim and Final Orders (A)
8 Authorizing Debtors to (I) Continue Existing Cash Management
9 System, Bank Accounts, and Business Forms and (II) Continue
10 Ordinary Course Intercompany Transactions; and (B) Granting
11 an Extension of Time to Comply with the Requirements of
12 Section 345(b) of the Bankruptcy Code

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25 Transcribed by: Dawn South

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P R O C E E D I N G S

THE COURT: Good afternoon. Please be seated.
Good afternoon to you all. We're here for Arcapita -- if
I'm saying that correctly. Am I saying that correctly?

MR. ROSENTHAL: Arcapita.

THE COURT: Arcapita Bank B.S.C.(c), Chapter 11
here for first day, so let me get appearances.

MR. ROSENTHAL: Good afternoon, Your Honor, thanks
for accommodating us this afternoon.

Michael Rosenthal, I'm a partner with Gibson Dunn
& Crutcher, and I represent the Arcapita debtors. Would you
like to get the remaining --

THE COURT: I would say if people anticipate
speaking. I know there's a lot of folks here, so certainly
I don't want to get everyone's appearance because that would
take quite a while.

MR. FRIEDMAN: Your Honor, good afternoon, David
Friedman, Kasowitz, Benson, Torres & Friedman on behalf of
Euroville SARL. It's a holder of bank debt at the parent
and subsidiary levels.

MS. WEISS: Your Honor, I'm Janet Weiss with
Gibson Dunn and I have with me Matt Kelsey as well as
Mr. Rosenthal.

MR. KARLIN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

1 MR. KARLAN: Mitch Karlan from Gibson, Dunn &
2 Crutcher, Your Honor.

3 MR. MORRISSEY: Good afternoon, Your Honor,
4 Richard Morrissey for the U.S. Trustee.

5 MR. KAROTKIN: Good afternoon, Your Honor, Stephen
6 Karotkin, Weil, Gotshal & Manges for Midtown Acquisitions, a
7 holder of 50 million -- just in excess of \$50 million in
8 debt.

9 THE COURT: All right, proceed.

10 MR. ROSENTHAL: Thank you, Your Honor.

11 I was going to introduce the Gibson Dunn team, but
12 we already introduced them. Also with us is my partner,
13 Mitch Karlan.

14 Your Honor, we're appearing here today on behalf
15 of six holding companies that filed Chapter 11 cases on
16 Monday morning early. They are a group of holding companies
17 that own interest in numerous portfolio operating companies
18 located in the United States and elsewhere around the world.

19 Here today let me just introduce the
20 representatives of the company that are here.

21 THE COURT: All right.

22 MR. ROSENTHAL: Henry Thompson, who is the
23 executive director and the head of legal, and Mr. Art
24 Rogers, who's a director of Arcapita as well.

25 And Your Honor, just to round this out, the

1 debtors are also represented by Linklaters for certain
2 corporate matters and by Rothchild's on the financial
3 advisory side.

4 Your Honor, the past ten days have been extremely
5 stressful and frenetic for the company and for those of us
6 representing the company.

7 Despite some speculation, Mr. Friedman did not hit
8 me in the eye when I came in, but you know, the redness in
9 my eye does indicate how hard we've been working under very
10 tight time frames.

11 The company was facing a looming maturity at the
12 end of March of this year of a \$1.1 billion syndicated
13 Murabaha facility -- and we'll talk about that in a second
14 -- and in connection with that it was engaged in
15 restructuring negotiations out of court with a steering
16 committee for that \$1.1 billion facility. Unfortunately,
17 Your Honor, these -- those negotiations were derailed when
18 several hedge funds -- Mr. Friedman's client is one of them
19 -- which had purchased debt on the secondary market at a
20 discount, threatened to commence an involuntary liquidation
21 of the company unless they received a par recovery
22 notwithstanding what other creditors might receive.

23 The company's view is that an involuntary
24 liquidation was not in the best interest of all creditors
25 and would severely impact the value of the underlying assets

1 of this company, which are the assets of the portfolio
2 companies, and to preserve that value they commenced these
3 Chapter 11 cases so they could first effectuate a
4 comprehensive global restructuring of their obligations,
5 second, preclude -- preclude preemptive action which would
6 destroy value in other jurisdictions, and effectively give
7 them a breathing room -- some breathing space to continue
8 their negotiations.

9 Notably, Your Honor, none of the portfolio
10 companies -- the operators companies -- are part of this
11 case, it's in everybody's interest we believe that the
12 operations continue at that portfolio company level on an
13 uninterrupted basis.

14 These are companies -- maybe -- perhaps outside of
15 the United States you haven't heard of some of these
16 companies, but within the United States I'm sure you have,
17 this entity formally owned Church's Chicken, Caribou Coffee,
18 it now owns a fashion designer called Bijoux Terner Pods,
19 which is a storage facility, and any number of other
20 companies. So these are -- these portfolio companies are
21 truly operating companies throughout the world.

22 Your Honor, the members of the debtors various
23 debt facilities are institutions that are located around the
24 world. They own their properties around the world. We
25 believe that most of these -- of the creditors have strong

1 U.S. connections, and even without such connections would
2 not take action in direct violation of the automatic stay;
3 however, we wanted to take no chances, and we wanted to
4 obtain additional comfort that the stay would be respected
5 in other jurisdictions, particularly the Cayman Islands, and
6 that a dissonant creditor could not attempt to derail the
7 Chapter 11 cases.

8 As a result of that, Your Honor, after we filed
9 the Chapter 11 cases there was a proceeding filed in the
10 Cayman Islands for an ancillary -- an ancillary order.
11 Pursuant to that order, which the Grand Court of the Cayman
12 Islands entered yesterday, a moratorium similar to the
13 automatic stay was imposed in the Cayman Islands, a formal
14 liquidation of the debtors in the Cayman Islands was stayed
15 so that these cases can proceed, and a provisional
16 liquidator, which was -- which is Zolfo Cooper, was
17 appointed.

18 Now it's important -- it's important to know, Your
19 Honor, what the role of Zolfo is. They were important as a
20 provisional liquidator to provide periodic reporting to the
21 Court about the progress of the Chapter 11 cases and to
22 monitor, oversee, provide sort of eyes and ears for the
23 Cayman court about what's going on here. They were not
24 appointed --

25 THE COURT: That's the exhibit that was attached

1 to one of the --

2 MR. ROSENTHAL: It is.

3 THE COURT: Okay.

4 MR. ROSENTHAL: It is. They were not appointed to
5 displace the debtor's directors and management, they were
6 not appointed to act as the debtor-in-possession.

7 One of the provisions of the order that we
8 negotiated with Zolfo was that we would come up with a
9 protocol, because important for Zolfo is that they have --
10 you know, that they are able to have an insight into what
11 the debtor is thinking, the debtor's intentions, and that's
12 the purpose of the protocol, and we will be working with
13 Zolfo on that protocol in the next ten days or so. I think
14 the order says we have two weeks to come up with that.

15 Your Honor, let me give you a little history of
16 the company. It was founded in 1996 and Arcapita is through
17 the debtors that are debtors here and its non-debtor
18 subsidiaries a leading global manager of Shariah-complaint
19 alternative investments. It operates as an investment bank,
20 a private -- similar to private equity fund, not as a
21 domestic bank or a traditional bank that takes deposits.
22 It's headquartered in Bahrain, but it has offices in
23 Singapore, London, and Hong Kong I think.

24 The -- if I could sort of describe the structure.
25 Arcapita Bank is at the top and it acts pretty much as the

1 brain of the enterprise. Employs people who talk to
2 investors, organizes the debt, orchestrates the debt.

3 There are holding companies, several layers --
4 tiers of holding companies, and below the holding companies
5 are very, very -- and these are all non-debtors below the
6 holder companies -- very, very complicated structure of
7 portfolio companies that include partial ownership by
8 Arcapita, generally around 20 percent, and 80 percent
9 ownership by third party investors.

10 The Arcapita Group currently has approximately \$7
11 billion in assets under management, and on a consolidated
12 basis we believe that their assets have a value of
13 approximately \$3 billion, and the liabilities of
14 approximately two and a half billion dollars.

15 They provide investors the opportunity to invest
16 across a board range of essex categories, infrastructure,
17 real estate, venture capital.

18 The -- it's important to understand the
19 investments that they make in these companies are not --
20 they're certainly not short-term investments, they depend on
21 the companies doing well, and if they do well and when they
22 do well at the appropriate time in the investment cycle
23 they're sold and the proceeds are generated.

24 These companies are each independently managed by
25 their own boards.

1 I mentioned that Arcapita has 20 percent interest
2 in many of them so it doesn't really control the companies.
3 The board is selected by the -- by all of the investors.

4 Your Honor, we intend to do whatever we have to do
5 during these cases to file appropriate motions to insure
6 that the portfolio companies continue to operate in the
7 ordinary course. That's the value for every constituent in
8 this room in terms of being repaid.

9 The -- in terms of jurisdiction, Your Honor,
10 Arcapita's principal assets in the United States are here in
11 New York. It has \$30 million in a bank account at J.P.
12 Morgan, and the other entities have space -- office space in
13 Atlanta, they own direct entities in a U.S. -- in U.S.
14 companies. We think that there's no question that there's
15 jurisdiction.

16 The capital structure is interesting as well.
17 There's only one secured debt, and that's a \$100 million
18 facility owed to Standard Chartered Bank. That facility is
19 secured by the stock in AIHL, which is the Arcapita
20 Investment -- one of the holding companies, it's secured by
21 the stock in Wind Turbin, another of the holding companies
22 that we filed, it's secured by the stock in AEID, another of
23 the holding companies, and it's secured by the stock in rail
24 invest. There is no cash collateral so we've not applied
25 for the use of cash collateral. The assets are stock right

1 now.

2 On the other hand there is a significant amount of
3 unsecured debt. The most important one, Your Honor, is the
4 \$1.1 billion Murabaha facility that I talked about before.
5 This is -- the borrower on that facility is Arcapita Bank,
6 and the guarantor is the second tier holding company, which
7 is AI -- we call it AIHL.

8 And Your Honor, I'm not sure if you've had much
9 exposure to Islamic financing.

10 THE COURT: I confess that I haven't. I've had
11 some exposure to -- indirectly to some of the issues.

12 MR. ROSENTHAL: Okay. So let me just briefly tell
13 you -- I actually asked one of my partners, give me a short
14 summary that I can provide to the Court.

15 Murabaha financing is a widely used mechanism by
16 investors that seek to finance in compliance with Islamic
17 law. Islamic law prohibits the payment of or receipt of
18 interest. So rather than --

19 THE COURT: That much I knew.

20 MR. ROSENTHAL: Rather than denominate the
21 financing as interest bearing the financing is provided in
22 the form of effectively a purchase and sale contract for a
23 commodity. So the lender under these facilities uses cash
24 to buy a commodity, then they sell the commodity to the
25 borrower. The borrower agrees to pay for that purchase at a

1 future time in cash, and the payment -- the purchase -- the
2 repayment price includes -- you know, includes a profit -- a
3 profit element, if you will. The borrower then just
4 simplistically sitting there with a commodity that's not
5 cash, the borrower then sells the commodity to someone else
6 who buys it, that generates the cash, and that's how -- that
7 is how the cash gets into the -- gets into the entity.

8 In addition to the \$1.1 billion facility, Your
9 Honor, there is a Central Bank of Bahrain facility for \$256
10 million, and various investment agreements with investors
11 for approximately \$323 million, and these facilities call
12 for Arcapita to bring the money in, there's no segregation
13 requirement, and the money is then used to make investments
14 pursuant to the investment agreements.

15 There are a number of other facilities including
16 some -- what they call strategic investor facilities for
17 \$150 million, and a facility for another \$100 million that
18 we call the (indiscernible - 00:14:16) facility, a very
19 complicated facility, but the bottom line is that all of
20 these -- all of these obligations with the exception of the
21 Standard Charter obligation are unsecured.

22 THE COURT: Okay.

23 MR. ROSENTHAL: What lead the companies to
24 financial trouble? They're not unlike many others. They
25 have been adversely impacted by the global economic downturn

1 not only in the U.S. but primarily in the Euro zone. This
2 has hampered their ability to obtain financing, it's
3 hampered their ability to liquidate their assets at
4 reasonable prices, and it -- and as a result of that they
5 approach the maturity of the 1.2 Murabaha facility without
6 the liquidity to repay that facility.

7 THE COURT: When your first day materials
8 mentioned that the investments were not short-term but were
9 characterized I think as medium or long-term --

10 MR. ROSENTHAL: Correct.

11 THE COURT: -- can you give me a sense of what the
12 time frames are when you use those terms? I'm sure it
13 depends on the investment, but --

14 MR. ROSENTHAL: I'm not sure, Your Honor. I'm
15 sure it depends on the nature of to investment, but I think
16 we're talking a number of years actually, because you know,
17 I think it depends on when in the investment cycle is the
18 right -- is the right time to sell these, but these are
19 operating businesses. Some are real estate development
20 projects. The project has to be built, you know, they have
21 to find a buyer for it, and there is an appropriate time for
22 all of these investments to sell them.

23 The company prior to the filing had been in
24 negotiations with the steering committee for the syndicated
25 facility and had presented to that facility -- to that

1 steering committee a presentation of its plan for disposing
2 of these properties in a reasonable time frame -- I think it
3 was a three or four year time frame -- making some new
4 investments because it's not going out of business, making
5 some new investments but shifting a company things on its
6 investments. The extent to which it would participate was
7 intended to potentially be diminished in terms of perhaps
8 less than 20 percent, and the -- and there was also a slight
9 change in focus from taking an interest perhaps to doing
10 more on the investment -- on the asset management side.

11 In any event, Your Honor, the -- the debtors did
12 consider reorganization options under different
13 reorganization regimes and decided that because of the scope
14 of the -- of the provisions -- the relief provided by the
15 Bankruptcy Code and the global nature of the Bankruptcy Code
16 and our ability frankly to deal with -- to deal with things
17 that other restructuring regimes cannot deal with, that the
18 Bankruptcy Code was the best way to go.

19 The Central Bank of Bahrain was informed of this
20 decision, is supportive of this decision.

21 Your Honor, as you know the principal end game of
22 Chapter 11 case is to exit, and I have to confess that in an
23 ideal world I'd like to be standing here telling the Court
24 that we have a suite of first day motions to provide, and
25 those in this courtroom who know me know that I am, if

1 nothing else, I like to have organized cases. These actions
2 however with respect to this particular debtor arose very
3 rapidly last week, the threats were immediate, and we
4 basically worked night and day to try to make sure that we
5 could get the case filed, we could get the minimum
6 administrative procedural motions in, and we intend as
7 quickly as possible to supplement those motions.

8 Your Honor, we have submitted the affidavit
9 declaration of Henry Thompson in support of the first day --
10 first day motions, and I would like to offer that into
11 evidence.

12 THE COURT: All right. Anyone want to be heard in
13 connection with the submission of that affidavit?

14 All right, I'll receive it in evidence in support
15 of all the motions.

16 (Debtor's Exhibit No. was admitted)

17 MR. ROSENTHAL: Thank you, Your Honor. May I turn
18 the podium over to Mr. Kelsey who will present some of the
19 motions?

20 THE COURT: Thank you.

21 MR. KELSEY: Good afternoon, Your Honor, Matt
22 Kelsey, Gibson, Dunn & Crutcher appearing on behalf of the
23 Arcapita debtors.

24 Your Honor, I think the most -- the first motion,
25 the most logical one to start with is the joint

1 administration motion. This motion simply seeks to
2 consolidate the Chapter 11 cases on a procedural -- for
3 procedural purposes only, so we would ask for a joint
4 docket, a joint caption, and approving combined notices to
5 creditors.

6 In addition we're seeking authority to file
7 monthly operating reports on a consolidated basis. We've
8 been in contact with the U.S. Trustee's Office who has no
9 objection with that request; however, it is U.S. Trustee has
10 indicated that they'd like to see disbursements on a debtor
11 by debtor basis and we've agreed to do that and it's
12 reflected in the form of order we've submitted.

13 THE COURT: All right. Thank you for having those
14 discussions, particularly in light of the other hectic build
15 up to today, I appreciate that.

16 Anyone want to be heard in connection with the
17 motion for joint administration?

18 MR. FRIEDMAN: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. FRIEDMAN: Your Honor, again, thank you.

21 Thank you for letting us appear and be heard today. Again,
22 my name is David Friedman, I'm with Kasowitz, Benson, Torres
23 & Friedman on behalf of an entity known as Euroville SARL.

24 Your Honor, I have a number of comments that
25 relate to all the motions, and I'm sure you don't want to

1 have me come up and repeat myself one time after another.

2 THE COURT: Well, that's fine. I mean, I do have
3 a joke in the courthouse that I'm the only judge who seems
4 to get objections to joint administration.

5 (Laughter)

6 THE COURT: So that is normally -- so the low
7 hanging fruit, so --

8 MR. FRIEDMAN: Your Honor --

9 (Laughter)

10 THE COURT: But -- but I've been proven wrong
11 several times.

12 MR. FRIEDMAN: Your Honor, this is my first time
13 objecting to joint administration, so I share your views,
14 and if you'll let me I just would like to provide the Court
15 with some context for our overall view of the case, and then
16 as the debtors go one by one through their motions I won't
17 repeat myself, but just provide whatever incremental points
18 I think I need to make.

19 So again, Your Honor, Euroville SARL is a -- it's
20 a London-based investment fund, it holds approximately \$89
21 million of the -- I guess it was referred to as the Murabaha
22 debt, it's the \$1.1 billion syndicated facility. As
23 Mr. Rosenthal pointed out it is guaranteed by the entity
24 called AIHL, Arcapita Investment Holding Limited.

25 We are listed on the petition as the seventh

1 largest creditor, although if you remove two entities that
2 are affiliated with the debtors that come before us we're
3 actually the fifth largest non-insider or creditor.

4 And although we had been -- not me personally -- I
5 had not heard of Arcapita till a couple of days ago, but
6 although our clients had in fact been in communication with
7 the debtors over the last few weeks the filing of the
8 Chapter 11 petition was never eluded to, it came as a
9 complete surprise to us.

10 Your Honor, as reflected in the Chapter 11
11 petitions Arcapita Bank is a holding company of a holding
12 company, it has very little in the way of assets. Almost
13 all of its value, as Mr. Rosenthal eluded to, are in these
14 portfolio companies. They are held by AIHL indirectly,
15 which is our guarantor.

16 So Your Honor, if you think about it this way, as
17 an entity that holds a guarantee against AIHL we and the
18 other members of this syndicate are structurally senior to a
19 creditor that would only be a creditor of Arcapita Bank.
20 And in that context -- and I'll return to this -- the
21 entities matter here. They're not all the same. They have
22 different balance sheets. There are creditors with
23 different rights in these different entities.

24 THE COURT: But you know what I'm going to say,
25 which is we're not talking about substantive consolidation,

1 we're talking about having one hearing with all these nice
2 people rather than having six of them.

3 MR. FRIEDMAN: Your Honor, I'm -- just so you
4 understand, I'm totally fine about the caption. I mean this
5 is not about the caption.

6 THE COURT: No, this is -- this is -- you
7 essentially need to convey your view of the case at the
8 earliest opportunity. So all right --

9 MR. FRIEDMAN: No --

10 THE COURT: No, I understand that's -- that's how
11 the other motions for joint administration were teed up as
12 well, so I understand that.

13 MR. FRIEDMAN: I'm focusing more on the part about
14 the consolidated reports. I mean that's part of their
15 motion as well.

16 I mean just so it's clear, there's only one issue
17 I have with the caption, I just want to make this clear up
18 front.

19 Your Honor, you know what joint administration
20 means and I know what joint administration means, this case
21 has contacts all over the world. We don't know which court
22 will ultimately reach determinations or be asked to reach
23 determinations on various issues. My concern about the
24 caption and the order of joint administration is simply that
25 no party, neither the debtors nor anybody else, uses the

1 fact of joint administration as a basis to either support or
2 oppose any substantive relief. So if we're in a court
3 somewhere else -- I can only imagine where we might be one
4 day -- and someone is seeking relief and another party is
5 opposing that relief, and the party opposing that relief
6 says, well, Your Honor, there's a jointly administered case
7 back in New York. Well, that judge doesn't know what joint
8 administration means. So --

9 THE COURT: Well, I think that's a language issue,
10 and one of the things I was going to ask to be added to the
11 order -- it's fairly standard language -- it says, "Nothing
12 in this order shall be deemed or construed as directing or
13 effects the substantive consolidation of the above-captioned
14 cases."

15 So if there's additional language that you think
16 would be helpful I'm sure that you can have a meaningful
17 discussion with the debtors about that, but I don't know
18 that it's a basis to not grant a request for joint
19 administration. It may be a basis to proceed a little more
20 cautiously in terms of how it's discussed in an order and
21 whether additional language might be necessary, but as you
22 know there are a lot of cases in this courthouse that have
23 worldwide impact, and those cases are usually jointly
24 administered.

25 MR. FRIEDMAN: Your Honor, there's absolutely no

1 issue with that. I would like the opportunity to suggest
2 some additional language, because again, substantive
3 consolidation is a term that Your Honor is familiar with as
4 am I, but I'd like something a little more plain English for
5 the benefit of another court that might have the opportunity
6 to look at this order in the future.

7 THE COURT: That's fine, I'm all in favor of plain
8 English.

9 MR. FRIEDMAN: Okay. So Your Honor, if I can get
10 at something a little bit more substantive.

11 Obviously, Your Honor, the jurisdictional issues
12 here abound. We're not here to talk about jurisdiction,
13 we're not seeking any relief today with regard to
14 jurisdiction, but we have debtors that are almost entirely
15 located either in Bahrain or in the Cayman Islands. We have
16 creditors that are almost entirely located outside of the
17 United States. We have -- of the nine members of senior
18 management that were identified in the first day affidavit,
19 eight are located in Bahrain and one is located in England,
20 and that's the general counsel who signed the affidavit.

21 So we'll deal with this one day and we understand
22 that there is an argument that can be made that the debtors
23 can open up a bank account in the United States and get
24 jurisdiction. We're not here to argue that today, but
25 there's something that relates to the broad tentacles of the

1 debtor that really is ripe for today, and that really goes
2 to the entire integrity of this case and some of the issues
3 that while they might -- you might look at these first day
4 orders and say, oh, this is innocuous, we do this all the
5 time. I mean this is not, you know, by most standards an
6 ambitious set of first day motions. But we'd like you to --
7 we'd like to give you some context and explain why in some
8 respects it is.

9 THE COURT: Well, I'm fine in you give me context,
10 but I need it to be tethered to what's been asked for today.

11 MR. FRIEDMAN: Absolutely.

12 THE COURT: Because far thus far it's not.

13 MR. FRIEDMAN: Okay.

14 THE COURT: So I need it to get there, and
15 certainly I share your point about the debtor's
16 circumstances, vis-à-vis the forum, but because of that I
17 just did a little checking around just because I thought it
18 might come up, and certainly there's ample authority in this
19 jurisdiction. The Nakash (ph) case, which is a Southern
20 District case from 1996, Judge Peck's recent decision in
21 JSCBTA Bank, which very carefully delineates a difference
22 between the jurisdictional reach of a Chapter 11 case and a
23 Chapter 15 case, as well as Judge Morarrow's (ph) decision
24 in 2004 in the District Court in Globo, which is --
25 addresses a dismissal of an involuntary -- of a case -- of a

1 company that was a holding company in Brazil. So I don't
2 want to deal with generalities, so if you have an argument
3 to make I'll want some specificity.

4 So -- and I'll ask for that as well as in
5 connection with today's motions, which are as you say fairly
6 modest.

7 So certainly I understand parties are preserving
8 their rights to argue whatever they need to argue in the
9 future, but I don't want to have the general begin to bog
10 down specifics of what we need to do today.

11 MR. FRIEDMAN: Your Honor, just so it's clear, and
12 I'm going to get into the specifics right now, this is not a
13 case where we feel the need to make an argument because our
14 client wants to make an argument. We're here today and
15 we're asserting our issues, because we're afraid that
16 tomorrow the assets of this estate will have been diminished
17 and the day after and the day after and the day after, and
18 they'll be diminished --

19 THE COURT: All right.

20 MR. FRIEDMAN: -- in a way in which the assets are
21 sent to places that none of us will ever be able to
22 repatriate them, and with that lead in I have a few things
23 I'd like to point out.

24 THE COURT: All right, well, let's deal with joint
25 administration first. You had mentioned one thing about --

1 MR. FISCHER: Consolidated reports?

2 THE COURT: -- what consolidation means and
3 doesn't mean and I think that that's a language fix.

4 So what other issues do you have in connection
5 with an order on joint administration?

6 MR. FRIEDMAN: Your Honor, the other -- these are
7 non-operating debtors, pure holding companies, they should
8 report their transactions, they should report their profits,
9 their losses, their inflows and their out flows separately.
10 The entities here matter. Okay, if anybody is to have any
11 meaningful understanding of where they fit within the
12 capital structure the debtors need to report these matters
13 independently, and they've identified absolutely no reason
14 why they can't do that.

15 Again, there's no operations here, they're just
16 holding companies. They don't intend, as I understand it,
17 to engage in massive transactions in and out of these
18 holdings companies. Let them just indicate on an entity by
19 entity basis with -- because creditors have different rights
20 against different entities -- where the money is going and
21 what the financial condition is. That's my objection.

22 THE COURT: All right. Anything else?

23 MR. FRIEDMAN: Not on joint administration.

24 THE COURT: All right. Let me hear any response
25 as to the issue of --

1 MR. ROSENTHAL: Give us one second, Your Honor.

2 THE COURT: Certainly. I see someone from the
3 U.S. Trustee's Office. So while you all are chatting
4 perhaps we can hear from them.

5 MR. MORRISSEY: Thank you, Your Honor. Once again
6 for the record Richard Morrissey for the U.S. Trustee.

7 It may be not Your Honor's fault because I seem to
8 have been in Your Honor's courtroom for the last objection
9 to joint administration.

10 THE COURT: I won't hold that against you.

11 MR. MORRISSEY: Thank you, Your Honor.

12 The U.S. Trustee doesn't have an objection to
13 this, to the order -- or proposed order as modified, and
14 Mr. Rosenthal has -- or Mr. Kelsey, I'm sorry -- has
15 outlined what our resolution was.

16 But what my recollection was in previous case the
17 problem was someone objecting to a debtor being included
18 among the debtors in the Chapter 11.

19 In this case we have entities that are not
20 included -- and again, I'm not raising an objection to that
21 -- but there are entities out there who obviously have a
22 connection to these debtors that are not going to be debtors
23 themselves, and it's far too early in the game to question
24 the judgment of these debtors in excluding those entities.

25 For example, there's an Atlanta entity that's not

1 a debtor; however, my understanding is that the holder of
2 the lease where the Atlanta debtor's office -- non-debtor's
3 offices are, that entity is included here among the debtors.
4 So it may take a while to unsort some of this.

5 What I wanted to raise though, Your Honor, in
6 light of the discussion and comments that Mr. Friedman was
7 making has to do with the operating reports. That is not
8 before Your Honor at this moment, but in terms of reporting
9 where the money is going and where the money has been, and
10 that is one place where we believe that the debtors are
11 going to have to be able to state whether it's consolidated
12 or not, they're going to have to be able to describe and
13 explain to the general population exactly where the money is
14 coming from and where the money is going, and if the debtor
15 is unable to do that on a consolidated basis, then you know,
16 we may have to revisit that, but as of right now -- and
17 obviously Mr. Rosenthal and Mr. Kelsey can comment on this
18 -- I think that the debtor should be able to assure the
19 Court, Mr. Friedman, and others that by consolidating the
20 operating reports they're not depriving people of the
21 sunshine --

22 THE COURT: Of the information that's --

23 MR. MORRISSEY: -- that is required in these
24 matters.

25 THE COURT: All right.

1 MR. KELSEY: Thank you, Your Honor. Again, for
2 the record, Matt Kelsey, Gibson, Dunn & Crutcher.

3 We appreciate the remarks from Mr. Morrissey, but
4 it wouldn't be an issue for us to report on a non-
5 consolidated basis.

6 THE COURT: All right.

7 MR. KELSEY: And so I think that addresses the
8 objection.

9 I do want to make one point. I'm all in favor of
10 plain English too, but I haven't heard any language
11 proposed, and --

12 THE COURT: Well, you need language.

13 MR. KELSEY: We need language, we need to see it.
14 The language I heard from the Court obviously we have no
15 objection with. Mr. Friedman thinks it's confusing, I don't
16 think it is, but to the extent it is and he has language --

17 THE COURT: Well --

18 MR. KELSEY: -- that's better or clearer and we
19 consent to it we're not going to have an issue with it, but
20 I just have no idea what he's going to put in. Like I had
21 no idea he was going to object to a joint admin motion.

22 THE COURT: Well again, it's nice to be noteworthy
23 in this court for something --

24 (Laughter)

25 THE COURT: -- so I'll take it when it happens.

1 I do think that from everything I've seen of the
2 case and the first day affidavit as well as the evidentiary
3 report that was filed and then the supplement we're dealing
4 with sophisticated parties here, and so I have no problem
5 with plain language that parties can work out, it doesn't
6 seem to be a particularly challenging intellectual issue,
7 but -- and lawyers do have a tendency tend to default to
8 some language that they find comfort with, which is
9 perfectly fine, but I trust you can work that out, and I
10 appreciate your willingness to at least kick the can down
11 the road for the moment on the consolidation of operating
12 reports, and I would imagine since there'll be a committee
13 in this case and then that's an issue that can be the
14 subject of discussion at the appropriate time.

15 MR. FRIEDMAN: Thank you very much.

16 THE COURT: All right. Anyone else?

17 Well, I hazard to ask, anyone else on the issue of
18 joint administration?

19 All right, I will grant the motion. I will ask
20 that there be language inserted that makes it clear that
21 this is not a substantive consolidation of any of the cases,
22 and look forward to the plain language version of that,
23 which perhaps will be so compelling that I'll use it in all
24 other orders in future cases.

25 All right. So moving right along to the next

1 motion.

2 MR. KELSEY: Yes, Your Honor, I think the next
3 motion is motion to extend time for schedules and
4 statements. Typically uncontroversial. We're seeking for a
5 45-day extension through May 3rd.

6 As Mr. Rosenthal indicated, the decision to file
7 and getting us from last week to Monday was pretty arduous,
8 and I think that debtor's management, particularly legal and
9 personnel, really should be focused on stabilizing the
10 business in the first month of the case here, and putting
11 together schedules and statements just by its nature is --
12 it's an arduous task that involves an enormous amount of
13 resources. We think that those resources are better spent
14 focused on stabilizing the case rather than on compiling
15 schedules and statements.

16 The relief is pretty typical. We had initially
17 drafted it before we sent it to the U.S. Trustee, we'd ask
18 for a 60-day extension, the U.S. Trustee requested that we
19 dial it back to 45 days, we've agreed, but we've reserved
20 the right -- and Mr. Morrissey is fine with it -- we've
21 reserved the right to seek a further extension if needed.

22 THE COURT: All right. Anyone want to be heard in
23 connection with this motion?

24 MR. FRIEDMAN: Your Honor, this will just be a
25 second.

1 On the issue of AIHL, the holding company with all
2 the assets, they've already filed -- or identified who all
3 their creditors are in the Cayman Islands proceeding, this
4 is a very important issue to all. So most of the creditors
5 are very interested in who the creditors are at AIHL.
6 They've identified them in their Cayman Islands liquidation
7 proceeding for AIHL. Can they file that within the time
8 frame? It doesn't seem like a burden at all.

9 MR. KELSEY: Your Honor, the schedules are more
10 than just identifying the creditors. As Mr. Friedman knows
11 you have to schedule all of your executory contracts. This
12 is a company that's in the business of making -- soliciting
13 investors. There are literally I think what have I been
14 told almost thousands of NDAs and then others when they get
15 out of investments. There's lingering indemnification
16 obligations. These debtors may be parties to that. And
17 then there's the statements themselves which require
18 information.

19 A 45-day, with all due respect for Mr. Friedman,
20 is a completely market request, it will not discombobulate
21 his client at all to wait 45 days.

22 THE COURT: All right. Anyone else want to be
23 heard on this issue?

24 Mr. Morrissey?

25 MR. MORRISSEY: Your Honor, the U.S. Trustee has

1 no objection; however, I don't totally subscribe to what
2 Mr. Kelsey just said about the -- about at a preparation of
3 the documents. I do understand that it's an arduous task
4 especially perhaps in this case, but it is something -- it's
5 part of the admission fee into this Court and it can't be
6 characterized as something other than a priority because
7 it's got to get done by statute.

8 THE COURT: And I didn't -- to the extent there's
9 any question about that I don't -- I don't understand that
10 to be the argument. I think it's just a matter of immediate
11 priorities versus next to immediate priorities. So I don't
12 read it that way, and obviously it's an important issue, and
13 you asked for it to be dialed back from 60 to 45 days, I
14 think that was entirely appropriate, and you all agreed, and
15 I think it is appropriate to give it a shot to get it done
16 as quickly as possible, and then if more time is necessary
17 then it's appropriate to revisit it at that time.

18 MR. MORRISSEY: Right, Your Honor, as a matter of
19 fact I was about to say that we also gave Mr. Kelsey and his
20 firm the green light to say that they can come in for cause
21 and request a further extension.

22 THE COURT: Right.

23 MR. MORRISSEY: Thank you.

24 MR. KELSEY: And Your Honor, just for the record,
25 I appreciate your comments about my argument. It wasn't to

1 say it's a no priority. If we thought it was a no priority
2 we'd ask for a waiver. We know it's very important;
3 however, in prioritizing near term issues in the next month
4 we need an additional breathing room, that's all I meant.

5 THE COURT: Well again, I think I've understood
6 from the comments made thus far that there is a lot of work
7 to be done to get this filing ready, and in light of that I
8 will grant the request to extend the time to file for 45
9 days. That's not a -- it's typical. Maybe that's an
10 overstatement, but it's not uncommon in this courthouse, and
11 I'd ask that you make every effort to meet that timetable.

12 MR. KELSEY: Thank you, Your Honor.

13 THE COURT: All right.

14 MR. KELSEY: Okay. I think the next motion may be
15 in the notice that we filed, is the automatic stay motion,
16 but I think it makes sense maybe to skip to the motion for
17 an extension of the deadline to file 2015.3 reports.

18 THE COURT: All right.

19 MR. KELSEY: That argument is simply a replay of
20 the argument you just heard on schedules and statements.
21 It's not to say that they're not important, it's not to say
22 that describing, you know, or providing financial
23 information on non-debtor affiliates in which the debtors
24 hold a substantial controlling interest isn't important;
25 however, in the context of these cases we think a 45-day

1 extension is supported by precedent and reasonable.

2 THE COURT: All right.

3 MR. KELSEY: But with the same caveat that we have
4 reserved the right on -- you know, to come in and ask for
5 more time on a showing of cause.

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

8 All right, I will grant the motion for additional
9 time to file reports of financial information under 2015.3.

10 MR. KELSEY: Okay, thank you, Your Honor.

11 The next item I'd like to address is your case
12 management -- a motion for establish case management
13 procedures. It's a fairly typical motion.

14 We were in contact with chambers before we filed
15 and your clerk directed us to the case management procedures
16 in American Airlines.

17 We've attached a schedule for the proposed form of
18 order that virtually word for word incorporates the case
19 management order adopted by the court in American Airlines.

20 Otherwise we're also asking for instead of filing
21 the top 20 debtors for each debtor entity a consolidated top
22 50 list. We've discussed that list with Mr. Morrissey, he
23 said he thought a top 50 on a consolidated basis would give
24 him a diverse enough unsecured creditor body to canvass
25 interest in a committee participation.

1 And also instead of filing a creditor matrix and
2 an equity list we intend -- we've retained and we intend to
3 file formal application to approve the retention of Garden
4 City Group as notice and claims agent. There's just -- in
5 light of that and given that there'll be taking over the
6 role of the clerk of the court in terms of noticing we don't
7 see any independent basis to file a list of schedules -- a
8 creditor matrix -- you know, a list of creditors, a creditor
9 matrix, and the list of equity holders.

10 And with that, Your Honor, we'd ask you to approve
11 the motion.

12 THE COURT: All right. Anyone want to be heard in
13 connection with that motion?

14 All right, seeing no objection I will grant it.

15 MR. KELSEY: Great, thank you, Your Honor.

16 The next motion I'd like to present to you is a
17 motion confirming the protections under 362 and 365 of the
18 Bankruptcy Code.

19 Obviously as Your Honor is aware the company is
20 headquartered in Bahrain and has the debtors -- the other
21 debtors of the holding companies are Cayman Island
22 companies.

23 Some members of the lending syndicate are foreign,
24 and certainly day-to-day vendors at headquarters are almost
25 indubitably foreign and they may not be aware of the

1 protections afforded to a debtor under 362 or 365, namely
2 the automatic stay, and protection against terminating a
3 contract or an ipso facto clause.

4 Experience informs us that they may not want to
5 take the word of an American lawyer to say look, this is
6 what happens when you file for a bankruptcy, so we've
7 submitted an order that simply restates those protections
8 and gives the debtors an opportunity with a creditor who
9 maybe doesn't understand the bankruptcy process, you know,
10 an order signed by the Court that simply restates those
11 protections so they don't have to take our word for it or
12 the company's word for it, we'd have an order from the
13 Court.

14 We'd ask that this motion be approved, Your Honor.

15 THE COURT: All right. Anyone want to be heard in
16 connection with this motion?

17 MR. FRIEDMAN: Your Honor, thank you. Again,
18 David Friedman.

19 No issue about creditors being bound to the
20 automatic stay. We certainly would have viewed ourselves to
21 be bound with or without this order, but it's unclear to me,
22 the motion does not address how this motion -- the automatic
23 stay generally -- interrelates to the proceeding that they
24 filed in the Cayman Islands.

25 Now they have filed a winding up proceeding in the

1 Cayman Islands, and the order that they presented to the
2 court and that the court entered provides -- and I'm quoting
3 -- "The winding up petition shall be adjourned to a date to
4 be fixed upon the application of the company or upon the
5 application of any creditor or contributory."

6 THE COURT: Now where exactly are you?

7 MR. FRIEDMAN: I'm on paragraph 10 of the --

8 THE COURT: The motion?

9 MR. FRIEDMAN: No, I'm reading from paragraph 10
10 of the order entered by the Grand Court of the Cayman
11 Islands.

12 THE COURT: Oh, all right.

13 MR. FRIEDMAN: That's -- I believe it is attached
14 to their --

15 THE COURT: Yes, it's Exhibit 1.

16 MR. FRIEDMAN: -- it's Exhibit A.

17 THE COURT: Exhibit 1 to Exhibit A.

18 MR. FRIEDMAN: So we have an order in the Cayman
19 Islands that would suggest that creditors have the right to
20 appear and be heard and we have an automatic stay, and
21 whatever -- whether it's the automatic stay or the order
22 itself doesn't address this issue. Our view is simply
23 having --

24 THE COURT: What's the difficulty that arises out
25 of this? I'm not sure I follow. I mean --

1 MR. FRIEDMAN: Just that creditors -- just that
2 creditors are free to seek relief in the liquidation
3 proceeding in the Cayman Islands and appear in that case
4 without violating the automatic stay.

5 THE COURT: Well, if the automatic stay covers the
6 debtor's property wherever it is I believe that the debtors
7 are going to tell me that they believe that such a motion
8 would have to be brought here, but they can correct me if
9 I'm wrong about that.

10 MR. KELSEY: That's correct, Your Honor.

11 MR. FRIEDMAN: But Your Honor, the Cayman
12 proceeding has a stay as well, which if they --

13 THE COURT: Well, then you have two stays as
14 opposed to one, so --

15 MR. FRIEDMAN: Well, then no one can do anything,
16 Your Honor, because then people have to go to the Cayman
17 Islands to get permission to come here.

18 I mean -- my point is this is not fully baked, and
19 I don't think -- I think they need to address or someone
20 needs to address how this proceeds, because we've got
21 competing court orders.

22 THE COURT: I -- well, let me hear from debtors,
23 but I understood that the Cayman Island proceeding was
24 essentially filed in aid of these proceedings, essentially
25 sort of a version of a Chapter 15 in the Cayman Islands with

1 this being the lead proceeding, and when I read this order
2 that's the way I construed it, particularly as it basically
3 says, "(indiscernible - 00:47:15) liquidators are directed
4 to provide this Court" -- meaning the court in the Cayman
5 Islands -- "with a report of the financial affairs of the
6 company and the process of the U.S. bankruptcy proceedings
7 every two months."

8 MR. ROSENTHAL: That's correct, Your Honor. We
9 believe that the parties would have to come here to seek --
10 to seek relief. We don't want proceedings all over the
11 world, and if they come here and persuade the Court they're
12 subject to the stay here, if they come here and persuade the
13 Court that they should be entitled to take action elsewhere
14 then we'll have our day in court and an opportunity to make
15 an argument.

16 We are -- we are -- I heard Mr. Friedman say that
17 his client was a subject to the stay. If they're subject to
18 the stay they're subject to the stay.

19 Our concern was -- and the reason for this
20 ancillary proceeding -- was that somebody would say, I don't
21 care what the stay says.

22 THE COURT: No, it's the error on the side of
23 caution, I understand that.

24 I mean are you asking for them to add language to
25 this proposed order that says that if you need relief from

1 the stay you have to come to this Court? I mean, I suppose
2 that's --

3 MR. FRIEDMAN: I don't think that -- I don't think
4 that solves the problem because you've got an order entered
5 in the Cayman Islands that says --

6 THE COURT: No, I think that would solve the
7 problem.

8 MR. FRIEDMAN: Well, how do I address a provision
9 by a court that has jurisdiction over AIHL that says no suit
10 action or other proceeding shall be proceeded with or
11 commenced against the company except will leave of the
12 court, which is the Cayman Islands.

13 So if I seek to -- if I seek any relief from this
14 Court I'm arguably violating the order of the Cayman
15 Islands.

16 THE COURT: I don't think seeking relief is
17 violating an order of the Cayman Islands, but to the extent
18 there's confusion is there a way to clarify this in the
19 order?

20 MR. FRIEDMAN: Your Honor, I think the way to
21 clarify it is simply for the debtor -- I mean the debtors
22 want to proceed in this Court, that's their will, the price
23 of doing that is that creditors have to have the opportunity
24 to appear and be heard, and I think they need to simply
25 clarify it whether by order of the Cayman Islands court or

1 how else do you do it, that a party appearing and being
2 heard in this Court is not violating the liquidation order
3 in the Cayman Islands.

4 MR. ROSENTHAL: I have no problem -- Your Honor, I
5 have no problem confirming that a party appearing in this
6 Court --

7 THE COURT: I assume it's safe to say, if so there
8 are a lot of people who are maybe in violation of an order
9 in the Cayman Islands.

10 MR. ROSENTHAL: Yeah. That we would not take the
11 position that that violates -- that that violates the order
12 entered in the Cayman Islands.

13 THE COURT: All right. If you could add language
14 to that effect. I didn't read it that way, but if that's --
15 can solve the problem then so be it.

16 MR. KELSEY: Your Honor, we have no issue adding
17 language to that fact, and I assume that in other respects
18 the order is fine, simply confirming what's already in the
19 Bankruptcy Code, it's really a comfort and convenience order
20 to deal with local creditors who may not understand these
21 two unique aspects of the Bankruptcy Code, which happen
22 automatically on filing.

23 THE COURT: All right. Anyone else want to be
24 heard in connection with this request?

25 I saw that this -- you cited the TBS Shipping

1 Services, Inc. case as a sample for this kind of relief and
2 I see the order there tracks the order here which may be the
3 answer to my next question, which is in looking at the
4 paragraphs (a) through (h) in your proposed order I see for
5 the most part it simply tracks the language of 362(a), but I
6 do see that there are two additions, and I think I can
7 probably anticipate your answer, but I'd like you just to
8 clarify it for me.

9 In (a) -- Section (a), small (ii), that language
10 is something that's not in 362(a), and if you look at
11 paragraph (c) that second half of that sentence after the
12 words "or" on the second sentence -- I'm sorry -- second
13 line is also not in 362(a). So I just was hoping you could
14 just explain that for me as to the need for that particular
15 language.

16 MR. KELSEY: All right. I'm sorry, Your Honor,
17 while you were describing your concerns I was finding my
18 place in the order.

19 THE COURT: No, that's fine. If you look at
20 page 2 of the proposed order.

21 MR. KELSEY: I'm there, I'm with you, Your Honor.

22 THE COURT: (a) double (ii), "Commencing or
23 continuing including the issuance of employment process, any
24 bankruptcy liquidation, suspension payments, any other
25 similar proceedings in a foreign jurisdiction," that

1 language is not in 362(a). I think it's clearly
2 contemplated by it, but I'm always trying to make these
3 orders shorter as opposed to longer, because if we put in
4 everything that's conceivable --

5 MR. KELSEY: Your Honor, we can strike that
6 language and have it -- and streamline it --

7 THE COURT: All right.

8 MR. KELSEY: -- so it's in conformity with 362.

9 THE COURT: And for (c) I think it's just sort of
10 similar prophylactic language. The first part is in there,
11 "Take any action to obtain possession of property," et
12 cetera, et cetera, but the second part is not "or interfere
13 in any way with the conduct of the debtors of their
14 business, including without limitations attempts to
15 interfere with delivers or events or attempts to seize or
16 reclaim any equipment, supplies, or other assets the debtors
17 use in their businesses."

18 MR. KELSEY: We can strike that language as
19 well --

20 THE COURT: All right.

21 MR. KELSEY: -- if you feel it's --

22 THE COURT: And I'm not trying to -- I don't want
23 anyone to read in anything by the fact that I'm taking that
24 other than I think 362(a) was written by Congress to do the
25 job, and I certainly don't want it to look like I'm second

1 guessing Congress' ability to write a very effective
2 statute.

3 MR. KELSEY: I policy for looking like I can write
4 it better than Congress.

5 THE COURT: No, not at all. No slight was
6 intended.

7 All right. With that I will grant the request to
8 issue an order confirming the protections of Section 362 and
9 365 of the Bankruptcy Code in this case.

10 MR. KELSEY: Great, thank you, Your Honor.

11 I think there's one other motion --

12 THE COURT: Cash management.

13 MR. KELSEY: -- Cash management, and my colleague,
14 Janet Weiss will handle that.

15 Just as a housekeeping matter, you know, at the
16 end of maybe the presentations of the motions we should go
17 over scheduling. You know, there's a big blanks on omnibus
18 hearing --

19 THE COURT: Let's do it now, there's no time like
20 the present. So --

21 MR. KELSEY: Oh, okay.

22 THE COURT: I did take a look at the calendar in
23 light of the information that folks had provided to chambers
24 about what was likely to come up, and I had two thoughts.

25 One was it sounds like there was a need for a

1 fairly prompt second day hearing, meaning next week, and I
2 could do it Wednesday or Thursday. And for a final hearing
3 on this, given that we want to have time for a committee to
4 be formed, I thought that April 17th at 11 a.m. would be an
5 appropriate date.

6 So let me know what day works better, Wednesday or
7 Thursday.

8 MR. KELSEY: Mr. Rosenthal and I have a
9 confirmation hearing on Wednesday in another case, so
10 Thursday would be ideal.

11 THE COURT: All right. So let's say Thursday at
12 11:00 for a second day hearing, and then April 17th at 11:00
13 for a final hearing.

14 MR. KELSEY: All right, thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. KELSEY: And then if -- there are some dates
17 for omnibus hearings that are left blank in the form of --

18 THE COURT: That we're all going to have to --

19 MR. KELSEY: -- I don't know if we need to deal
20 with that today or now, maybe after the hearing we can
21 coordinate with chambers and figure out days that make
22 sense.

23 THE COURT: Yeah, I would say chat with chambers,
24 and then if we don't get it nailed down before then we can
25 nail it down at Thursday's hearing.

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

2 THE COURT: Thank you.

3 MR. MORRISSEY: Your Honor, will the hearing on
4 the 17th be at 11:00 also, or --

5 THE COURT: Yes, both at 11:00.

6 MR. MORRISSEY: Thank you.

7 MR. KELSEY: With that I yield to podium to my
8 colleague, Ms. Weiss.

9 THE COURT: All right.

10 MS. WEISS: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MS. WEISS: And I want to start out actually
13 starting with an apology for filing the cash management
14 order so late, and there's a reason for that.

15 Contrary to what you've heard Arcapita Bank is in
16 operating business, it has employees who come in in the
17 morning and leave at night, and this cash management order
18 was critical to the operations of the company and the debtor
19 specifically.

20 THE COURT: No, that's fine.

21 MS. WEISS: Thank you. So with that, Your Honor,
22 we're seeking a number of things for relief. We have
23 discussed with the U.S. Trustee, and I will go through
24 those.

25 The first thing that we're asking is for a

1 continuation of the existing cash management systems in the
2 bank accounts, and I'll describe that a little bit later.

3 We'd like to be relieved of the obligation to
4 stamp debtor on operations outside of the U.S., and we've
5 talked to the U.S. Trustee about that, and we are agreeing
6 that we're asking for that on an interim basis at this
7 point. For the final order we may seek further relief, but
8 for right now it's on an interim order.

9 We're seeking to use the existing stock, if any,
10 for business forms in the U.S.

11 We're seeking to continue intercompany
12 transactions on an ordinary course, and I will talk about
13 that a little bit as well.

14 And we're seeking a 45-day extension to come into
15 compliance with 345 of the Bankruptcy Code. We have talked
16 to the U.S. Trustee about that. When I explain the cash
17 management system I think it will become clear that we
18 probably will need some relief, but at this point we've
19 agreed with the U.S. Trustee on the procedures that we have
20 here, and so we're seeking the Court's order on that.

21 THE COURT: All right.

22 MS. WEISS: But let me talk a minute about what
23 we're not asking for now.

24 We're not asking to fund non-debtors, we're not
25 asking to transfer funds outside of the debtor group to fund

1 investments, we're not seeking new investments. We will
2 later in this case have an order where we're seeking to do
3 some of those things, and that will be on notice in the
4 hearing, but we're not seeking to do that now.

5 The other thing is we're not seeking a waiver of
6 345, we're seeking just an extension to have the opportunity
7 to talk to the U.S. Trustee and see if we can come up with
8 something consensually, and then with -- reserving the right
9 to come back and seek relief from this Court if it's needed.

10 THE COURT: All right.

11 MS. WEISS: As Mr. Rosenthal said, the debtor's
12 business is seeking Shariah-compliant investment
13 opportunities. That's essentially the debtor holding money,
14 investing money, bringing money back up from the
15 investments, and so essentially what this business is, is
16 it's money, and because of that this has somewhat of a
17 unique cash management system, but what happens generally is
18 that the investments are in holding companies, other
19 investors own somewhere between 80 and 90 percent of those
20 investments. The money comes back up through the system
21 through the cash management system and the money then
22 resides in a master account.

23 There are a couple things that are a little
24 different about the master account, and Mr. Rosenthal
25 mentioned that there's \$323 million of investor funds,

1 there's about 250 million of funds that are -- that are
2 designated for the deal companies, and there are other
3 investments and other funds in there as well. Those funds
4 in compliance with the regulatory agency in Bahrain are
5 commingled, they're not separated out, and the bank uses
6 those funds in the ordinary course. These funds are not
7 investor deposits, these funds are investments, and they're
8 pursuant to an agreement between the debtor and the
9 investors, and it's very clear what's happening with these
10 funds, but it is a little bit different than might
11 ordinarily be the case.

12 That is the master fund that is run out of
13 Bahrain, and that is where the money comes in from the
14 operations, and in that money is deposited the entire
15 systems money so that if somebody needs to pay the lights
16 some place else that money is going to come out of that
17 account. And so we do propose a system for that.

18 In addition there are local distribution accounts
19 for operations in different areas of the world and
20 additional accounts where specifically there are operations
21 in Singapore, Hong Kong, U.S., and England.

22 The ability to use this cash management system and
23 for the debtors and other operations to have access to the
24 funds in the ordinary course is critical to the operations.
25 Without this the debtors will close down. This is the money

1 literally to pay the lights, to have employees continue to
2 work, and so not just make this case a liquidation at this
3 moment. So this really is critical in this operation.

4 We have some protections that we've put into
5 place. Any deposits --

6 THE COURT: I don't take that to be a bad omen,
7 so.

8 MS. WEISS: But Your Honor, I was taking it as a
9 sign as a good one.

10 Your Honor, for any post petition deposit into
11 this master account we would grant administrative priority
12 so that the funds that are deposited do not become subject
13 to the general claims at the Arcapita Bank level.

14 What we're further -- actually is in the ordinary
15 course, Arcapita Bank has very specific ways to track the
16 money. Money comes into the system, it's credited to an
17 account, there's an electronic tracking system, and when the
18 money is funded to operations a debit is made into that
19 account, and there's -- while the funds can be commingled in
20 the sense that there aren't separate, you know, lock boxes
21 with this amount, they're not commingled in the sense that
22 you couldn't find whose they are. They're very carefully
23 kept track of.

24 So as part of the relief we're asking for in the
25 cash management system is we would like not to have to

1 change bank accounts, and we seek to have the current bank
2 accounts designated as debtor-in-possession accounts. We'd
3 like to keep the existing disbursement funds. And I should
4 point out that in these disbursement funds these are minimal
5 funds. This is -- this is not a lot of money, this is
6 really just to keep the operations paying their lights --
7 keeping their lights on, and that importantly that the funds
8 in the master account will not be used to fund new
9 investments or put money into existing investments.

10 And I think one of the key things which the
11 debtors have agreed to do and intended to do in filing this
12 case, is some of the money for Arcapita Bank is invested in
13 long-term or medium-term interbank accounts, those are
14 anywhere from one week to three months, and as those
15 accounts mature the debtors have agreed to put that -- put
16 that money into Chase Manhattan Bank -- J.P. Morgan Chase --
17 I think, Your Honor, I'm showing my age -- and have the
18 money there. It will -- as of I think during the course of
19 this month that will be about \$100 million, and with this
20 money what we're seeking to do is we're seeking to in the
21 ordinary course use that money to fund operations, but we're
22 not seeking to use any of that money for new investments. I
23 mean this is literally money to keep the business going, to
24 pay the employees.

25 In connection with that as I said, Your Honor, for

1 investments we're seeking a 45-day extension to comply, and
2 we are fully willing and we have spoken to Mr. Morrissey,
3 and we will do the best we can to come into compliance.

4 And it is the expectation that funds will not be
5 in Bahrain, that funds will not be distributed throughout
6 the world, but this account will act as the master account
7 and it will be in the Southern District and subject to this
8 Court's jurisdiction.

9 THE COURT: All right.

10 MS. WEISS: Your Honor, I think the only other
11 thing we're asking for in this is specifically the business
12 forms. We -- I think I just vaguely refer to this, but the
13 debtors do business in -- all over the world, to print
14 debtor-in-possession on a business form and have that
15 translated into Arabic we think would be a great disservice
16 to the operation of this business. It's not even clear what
17 the word would be, and I'm pretty sure that the word debtor
18 in Bahrain and other middle eastern companies means
19 something very different than what it means here.

20 THE COURT: Well, but isn't that the same
21 translation problem that was mentioned earlier? It's not --
22 you don't quarrel with the concept, you quarrel with the
23 language. I'm open to whatever language you want to
24 include. There may be -- and certainly I would imagine that
25 they -- what was I guess referred to as the comfort order

1 about the extent of the stay is going to be translated into
2 several different languages, including Arabic, so I imagine
3 you have similar translation problems.

4 So I would imagine you could probably conquer
5 those for the much more modest-sized language that would go
6 on the new stamp or addition to business forms, but I'll
7 leave the actual translation to more qualified individuals.

8 MS. WEISS: Okay, Your Honor, so what -- we'll
9 work with Mr. Morrissey and we'll come up with the right
10 language, and until that can be done we will ask for the
11 extension, but it's on an interim basis, and then we will
12 come back at the final hearing, tell Your Honor hopefully
13 that we have an agreement, I don't expect we'll not have an
14 agreement --

15 THE COURT: All right.

16 MS. WEISS: -- and then we'll have it approved on
17 the final basis.

18 THE COURT: All right. Anyone want to be heard in
19 connection with cash management?

20 MR. FRIEDMAN: Your Honor, thank you. David
21 Friedman again for Euroville.

22 Your Honor, the intercompany accounting and
23 transactions of this company are a complete mess and they
24 have caused already significant damages to the estate.

25 This is a company -- and I'm just going to provide

1 you with some facts that are self-evident from the petition.
2 First of all, Your Honor, this is a company that pays \$1.8
3 million a week, \$93.6 million a year in payroll, most of
4 which is going to unnamed consultants that are not
5 identified anywhere in the petition and are not subject to
6 any retention application.

7 So we have -- we start off with \$93.6 million
8 going out the door every year for a company that holds by
9 its own admission minority interests in private equity
10 companies, 10, 20 percent in a whole host of private equity
11 companies.

12 Your Honor, 14 days before Arcapita went into
13 bankruptcy -- you can see this from the board minutes that
14 they filed -- they sold an asset known as Lusail,
15 L-U-S-A-I-L. They held it on their books for \$322 million,
16 they sold it for \$200 million. They sold it to Qatar
17 Islamic Bank. Qatar Islamic Bank is controlled by a family,
18 two of whose members sit on the board of Arcapita.

19 This company pays rent to its landlord in Bahrain,
20 \$29 million a year of rent for a company with somewhere my
21 guess 100 or so employees, maybe 200 employees in Bahrain,
22 we have about 1000 employees in New York we don't pay \$29
23 million a year in rent. \$29 million a year in rent to a
24 landlord --

25 THE COURT: I think we're beginning to get

1 untethered to what the issue is --

2 MR. FRIEDMAN: Well --

3 THE COURT: -- and if we're not I'd ask you to get
4 there quickly.

5 What I understand the request is -- I don't want
6 to start having a big long discussion about events that took
7 place in terms of transactions before the filing of a
8 petition, I don't think that's productive.

9 What I understand here, and if you want to address
10 this I'd be happy to hear it, is that what they're saying is
11 that by the nature of their business they need to make
12 certain intercompany transfers. Let me ask, do you agree
13 with that statement or no?

14 MR. FRIEDMAN: Your Honor, there's nothing in the
15 record to suggest that that's true. I mean I don't know if
16 that's true.

17 THE COURT: All right, so you don't agree with
18 that statement.

19 MR. FRIEDMAN: I don't agree with that.

20 THE COURT: So what -- what are you proposing is
21 done today, that there's no intercompany transfers at all?

22 MR. FRIEDMAN: Your Honor, there should be --
23 there should be on this record, and I will tell you there
24 are -- the evidence abounds --

25 THE COURT: Well, but I don't -- I don't know that

1 it works the way that you say it does. You're asking me to
2 -- if the debtors come in in their business judgment and say
3 here's a declaration and here's our evidence of what we
4 think needs to be done to be able to eventually reorganize
5 this business and prevent it from being harmed and you don't
6 have any evidence to the contrary I'm not sure how I get
7 where you want me to go.

8 MR. FRIEDMAN: Okay. Well, first of all, I do
9 think respectfully, Your Honor, that you are conflating the
10 burden of proof. I mean they have the burden of proof to
11 justify intercompany transactions, meaning money going from
12 one debtor to another in exchange for nothing more than a
13 naked administrative claim. That's what they're asking for.

14 They've provided you no protocol to give you any
15 assurances number one that they need to do this, meaning
16 that each one of these debtors does not have the resources
17 to pay its obligations. They said they came into court in a
18 hurry. Your Honor, they have \$1.1 billion of bank debt, it
19 matured March -- it matures March 28th of this year. It
20 wasn't a surprise maturity, they've known for years that
21 they've got a maturity coming on \$1.1 billion of debt. So
22 the idea that they were just hoisted into court because they
23 couldn't get the 100 percent consensus --

24 THE COURT: Well, I don't know if this motion is
25 any different if they're hoisted into court or if --

1 MR. FRIEDMAN: Well --

2 THE COURT: -- they've planned this for some time.
3 This is a standard -- again, I understand your point about
4 intercompany transfers, so the question I think is what
5 protections are appropriate and what reporting protections,
6 what procedural protections consistent with other cases in
7 this district?

8 MR. FRIEDMAN: Your Honor, I lived through
9 intercompany transactions in Adelpia, I was committee
10 counsel, it was one of the most complicated intercompany
11 structures, but the first thing that the debtors recognized
12 on day one is that different creditors have different rights
13 against different debtors, and you cannot take money from
14 one debtor to another debtor in exchange for a naked
15 intercompany claim -- even if it's an administrative claim
16 -- because we don't know that any of these debtors are
17 administratively solvent.

18 THE COURT: But I think your view shuts the
19 operations of the debtors down is what I think I'm being
20 told.

21 MR. FRIEDMAN: I think that's what they said, Your
22 Honor, and I -- with all fairness if they want to make the
23 case that they're going to be shut down they should tell you
24 Arcapita Bank has X dollars of cash in the bank and has Y
25 expenses over the next 30 days. AIHL the same. I mean make

1 a case. There's nothing in this record which justifies it.

2 Now normally if there were, you know, General
3 Motors or if this were, you know, American Airlines I don't
4 think I'd have a problem with it, but the problem is we're
5 dealing with assets that are very far from here, we're
6 dealing with transactions -- just one more thing.

7 If you look at the creditor list, Your Honor,
8 okay, creditors number 3 and 4 -- I'm sorry -- creditors
9 number 4 and 5 and 44 and 46, they're four creditors on the
10 list. This is supposed to be the list of non-insider
11 creditors, okay? This is a list of -- these are four
12 insiders. They're identified as being creditors for bank
13 loans. They're not banks, they didn't make any bank loans.
14 But most importantly these are portfolio companies, these
15 are the assets that we rely upon to be repaid.

16 Now how do these portfolio companies end up being
17 owed \$250 million in the aggregate by Arcapita Bank? I mean
18 how the that possible? The answer is, Your Honor, that
19 these entities they're all, you know, regular operating
20 companies and they had excess cash flow, they had money that
21 they needed to invest. They could have put it in J.P.
22 Morgan, they could have put it in Wells Fargo, they could --
23 you know, most of these are U.S. companies -- they could
24 have put it in J.P. Morgan or Wells Fargo and forgotten
25 about it, instead they deposited the money in Arcapita Bank

1 in Bahrain.

2 Now, Mr. Rosenthal says, we don't control these
3 companies. Why would any of these companies deposit their
4 funds in Arcapita Bank in Bahrain? And now the money is
5 gone. Nobody knows where this money is.

6 THE COURT: Let's get back to the motion. I think
7 you're -- the level of inquiry that you're talking about is
8 impossible to do on a first day basis, and what you're doing
9 is raising questions. I understand that. And again, I
10 think it -- get back to the appropriate level of protections
11 dealing with intercompany transfers.

12 Do you have any evidence to support your view that
13 intercompany transfers are not necessary for this entity --
14 these debtors as an ongoing business? Because I think I've
15 been told in the evidence that's in front of me that it is,
16 and I think I was just told that in somebody who just stood
17 up two minutes ago and said that. So -- and I don't think
18 it was just merely a proffer of counsel. Looking at the
19 declarations that's what I understood the argument to be.

20 MR. FRIEDMAN: So -- all right, I don't accept
21 that to be true, but let's assume for the sake of argument
22 it's true.

23 THE COURT: Well what -- but that doesn't -- that
24 doesn't get me anywhere. So lots of lawyers will get up and
25 say we have a view, I need evidence.

1 MR. FRIEDMAN: So --

2 THE COURT: I have declarations. So if you don't
3 want me to find that to be true give me some evidence. Give
4 me a proffer, give me a declaration, give me something.

5 MR. FRIEDMAN: Okay. Here's what I -- with all
6 respect -- you do need for find in order to approve this
7 motion, which you can't find on this record, and it's not
8 our burden and we learned about this two days ago for the
9 first time. So I don't think it's fair for us to accept the
10 responsibility of providing contrary evidence when their
11 evidence doesn't support some fundamental things.

12 The most important of which is let's just take a
13 hypothetical situation. AIHL, the entity that guaranteed
14 our debt that has all the assets, let's just say for
15 argument sake it wants to send \$50 million north to Arcapita
16 Bank to pay its employees. What is there on this record to
17 support the notion that AIHL will ever see that money back?
18 That's our money. We're not comfortable with \$50 million
19 going up to Arcapita Bank to pay the employees in Bahrain.
20 It provides absolutely no benefit to AIHL, it provides no
21 benefit to the portfolio companies that are part of AIHL,
22 and I have no idea what Arcapita Bank looks like to make any
23 reasonable assessment whether or not it's administratively
24 solvent or not.

25 THE COURT: I understand your point.

1 Again, I think it gets back to the protections
2 associated with any intercompany transfers. I've seen
3 judges do this a variety of different ways, certainly I know
4 Great Atlantic and Pacific, the A&P case was mentioned, and
5 there was a prohibition on intercompany transactions with
6 any non-debtor affiliate in that order, but let me -- and I
7 will say that in the Terastar (ph) case I saw that there was
8 a different way to attack this. There was language that
9 dealt with it in terms of the obligation to keep records of
10 such transactions and the fact that all intercompany claims
11 being reported administrative expense priority as well as
12 the debtors being authorized but not required to use their
13 cash management system to manage cash, including pay
14 intercompany payables if necessary to continue performing
15 their representative obligations and commitments.

16 So what I'm looking for is something that is not a
17 blank check, but has some controls on it. So let me hear
18 from the debtor's first --

19 MR. FRIEDMAN: Could I just make one suggestion
20 before I sit down?

21 The suggestion I would make, because this is the
22 way we've always dealt with this in other cases, let them
23 adjourn this motion, let them tell us how much money they
24 need for the next week or two weeks, where it's going, what
25 the protections are. If they need money between now and a

1 week from now, if it's a few million dollars I think we can
2 live with that, but let's take this in smaller steps,
3 because we really don't have on this record and we honestly
4 don't know how we could be protected here and they need to
5 tell us, and I think that we should, you know, decide how
6 much money they need for the next few days and take it in
7 smaller steps.

8 THE COURT: All right.

9 MS. WEISS: Your Honor --

10 THE COURT: I see another -- before we get to you
11 I think there's one other party that hasn't been heard yet
12 who wants to be heard.

13 MR. KAROTKIN: Thank you, Your Honor. Again,
14 Stephen Karotkin for Midtown Acquisitions, LP.

15 We realize this isn't an interim order or request
16 for interim relief. I will point out we -- my client does
17 share some of the concerns raised by Mr. Friedman.

18 We too have heard about this sale lease back
19 transaction, it is documented in the papers that they filed
20 with this Court. It's our understanding that insufficient
21 information has been provided as to where those funds are,
22 and we as well are concerned with the ability of the parent
23 company to be able to repay intercompany advances. To the
24 extent that they're making intercompany advances post
25 petition, you know, they've asked for pretty much carte

1 blanche to do that in accordance with the ordinary business
2 practices.

3 I think, and I'm not clear, I think that Ms. Weiss
4 stated on the record that the motion was not asking to fund
5 non-debtors, and maybe I misunderstood that, and perhaps she
6 could clarify that, but my reading of the motion, Your
7 Honor, is that it clearly does -- it does seek to do that.
8 What it doesn't seek to do is to fund what they call
9 investments with a capital I.

10 THE COURT: I think that that's right.

11 MR. KAROTKIN: All right. I don't know what
12 investments are, I don't think they really explain what
13 investments are. Is that funding any money to these
14 portfolio companies? I'm not sure. Is it making new
15 investments? I'm not sure.

16 And I would agree with Mr. Friedman, I think
17 perhaps the best way to do this would be for the debtors to
18 come forward -- and they must have the declarant here, they
19 must have someone here I think who's familiar with the
20 business -- to say what exactly do they need to fund
21 intercompany amounts over the next three days, four days,
22 Tuesday next week, Wednesday next week so that people can
23 get more comfortable with it.

24 Because again, this happened very suddenly,
25 there's a lack of information, there's a lot of concern,

1 there's no control over what happens, with all due respect
2 in Bahrain, unfortunately despite the automatic stay order I
3 doubt Your Honor could do much about what happens in
4 Bahrain, and I think that's a very sound way to proceed and
5 we would recommend that.

6 Thank you.

7 THE COURT: All right. Let me ask you a question.
8 Do you have any understanding about the need for
9 intercompany transfers? I think that's where I sort of got
10 stuck in Mr. Friedman's presentation based on what I had
11 been told is that there in fact are -- to keep the business
12 running that that's part of the way they're organized?

13 MR. KAROTKIN: I don't really know. I don't
14 frankly understand what they need to fund.

15 I think again that either Mr. Rosenthal or
16 Ms. Weiss said, they don't operate the portfolio companies,
17 they have a minority interest, they're managed, and I think
18 the papers also say this, they have no role in the
19 management of those companies.

20 So I really don't know what they have to fund
21 other than perhaps what again Mr. Friedman eluded to was
22 rental expense and some employee expenses. I frankly don't
23 know -- I don't have the information as to what they do, is
24 that reasonable, what the other employees do, and I don't
25 think anyone can tell from the motion papers.

1 THE COURT: All right.

2 MR. KAROTKIN: Thank you, sir.

3 THE COURT: I don't know in the U.S. Trustee's
4 Office wants to weigh in one way or the other before I loop
5 back to the debtors for their views.

6 MR. MORRISSEY: Your Honor, my comments are going
7 to be a little more general about the motion.

8 Number one, obviously I don't have anymore
9 independent knowledge than Mr. Karotkin or Mr. Friedman on
10 this, but as far as the motion the first word I'd like to
11 utter here is interim. This is interim relief, and as far
12 as I understand it that means for all purposes.

13 The second thing is that we will certainly
14 continue to discuss with representatives of the debtor the
15 cash management system and exactly how it works, because we
16 don't yet have a full understanding ourselves as to how it
17 works, especially aboard.

18 As a general rule we like as much of the operation
19 and the funds them to be here in the U.S. under shall we say
20 the Court's dominion and control. Ms. Weiss has stated that
21 they intend to bring \$100 million into this country.

22 I've used the word repatriate, but that's not
23 really the right word, because that money was never here in
24 the first place. This is money that never was in the U.S.
25 being brought into the U.S. so that it could be here under

1 the Court's watchful eye, as well as the committee's and
2 anyone else who cares to look, and I think that is helpful.

3 As far as the statement that there is no 345
4 waiver requested, upon looking at the papers that I received
5 last night and today I'm not sure that that's even possible
6 not to have a waiver at all, because --

7 THE COURT: Well, but I think the idea is that we
8 don't have to cross that bridge today.

9 MR. MORRISSEY: Right, we don't have to do it
10 today, but I think eventually because there are expenses as
11 Ms. Weiss was saying in these far flung offices around the
12 world, I think there's one in Hong Kong, one in Singapore,
13 one in London, and Bahrain itself, that you know, to keep
14 the lights on they're going to have to spend some money, and
15 I'm not sure quite how de minimis those accounts are,
16 because what's de minimis for one person may be a lot of
17 money for somebody else because it could be in the millions.
18 And -- but we need to get a handle on that before we can
19 come to a final resolution on it.

20 Your Honor, as far as the commingling of funds is
21 concerned the laws over there I understand are not
22 necessarily the same as ours here. What we are going to be
23 looking for is clarity as to funds coming in, funds going
24 out, and how they're kept. I don't know that -- you know,
25 whether that system can be modified at all so that there's

1 more of a wall of separation between certain kinds of funds
2 and other kinds of funds.

3 As far as stamping DIP or debtor-in-possession on
4 the checks and the language problem, the debtors chose to
5 come into this Court, and the debtors have to follow the
6 rules in the Southern District, and you know, whether it
7 causes confusion or not that can happen in this country too,
8 if someone puts debtor-in-possession on a check and a check
9 goes out to the deli down the street they might now what
10 that -- not know what that means either. If there is no
11 Arabic word for debtor-in-possession perhaps the word debtor
12 simply would cover it.

13 THE COURT: I think the debtors are willing to
14 figure out an appropriate set of language to convey the
15 concept that's to be conveyed.

16 MR. MORRISSEY: Right. But what we would seek,
17 just so everyone knows up front, is that the debtors will
18 for the business forms and the checks they'll stamp using
19 whatever word the documents for now until they run out of
20 stock at which time the documents will be preprinted
21 identifying themselves as Chapter 11 debtor in one way or
22 another.

23 And for now, Your Honor, that's all I have. Thank
24 you.

25 THE COURT: All right. Let me hear from the

1 debtors. And let me -- let me just make a couple of
2 comments.

3 I understand that certainly -- or I understood the
4 representation to be made that without some intercompany
5 transfers that the debtors would have an inability to
6 continue business. If I'm wrong about that please
7 straighten me now, because that's obviously a very important
8 point.

9 Secondly, regardless of the Bankruptcy Code's
10 jurisdiction over all the assets of the debtor there
11 certainly is a concern by interested parties as to the fact
12 that the money is not in the United States and that's
13 probably only heightened by the fact that this filing may
14 not have been something that folks saw on the immediate
15 horizon and therefore there's less information than there
16 might be otherwise.

17 So the whole point of today's hearing is to
18 maintain the status quo while taking steps such that the
19 debtors can begin to get the benefit of the Bankrupt Code
20 automatic stay and some other relief to begin to take the
21 appropriate first steps.

22 So in light of that I'm looking for some sort of
23 controls here. Certainly I understand that the suggestion
24 has been made that you can do this several ways. One is
25 procedures, the other is dollar amounts so that it gives

1 time for people to start getting information.

2 So what do you have?

3 MS. WEISS: Let me just address some of the
4 issues.

5 Mr. Friedman asked for baby steps and that's what
6 this is. The debtors are bringing all of their cash over,
7 they're bringing over the interbank loans as they become due
8 and they're all going for J.P. Morgan Chase. We can't
9 guarantee that there might not be some banks in Bahrain
10 that want to set off, but to the extent it's in the debtor's
11 control that money is coming to the U.S.

12 What we're asking for now is just money to fund
13 operations, and --

14 THE COURT: Well -- but that's -- I mean if you
15 had a DIP you would basically prepare a budget and you'd
16 have some sense -- people would have some sense information
17 wise to what's going to be spent and therefore have some
18 level of comfort, and obviously there's no DIP here, but
19 some idea -- people fear the unknown, and if you look at the
20 orders that are -- the order that's proposed here, the
21 carve-out -- I think it is directly stated -- is for no
22 disbursement made to fund investments held by non-debtor
23 entities, which doesn't mean that for disbursements will be
24 made to non-debtor entities, and I guess the concern is that
25 even if you have an administrative claim that it may be -- I

1 wouldn't say an empty right -- but certainly a right that's
2 not -- may not result in full satisfaction of what you might
3 get otherwise if the money stayed put.

4 So I'm not ascribing any bad faith, any --
5 anything other than the desire to try to get your clients on
6 the road to reorganization, but that said, I think the
7 confluence of events here means that there needs to be some
8 protections and controls till people can get up to speed
9 information wise.

10 So again, what -- as I once had a judge say to me
11 in -- when I was in the U.S. Attorney's Office, "How do it
12 give you what you want without giving you a blank check?"
13 And that's -- so I think that's the -- that's the question.

14 And again, I think there's several different ways
15 to do it. There may be procedures that can accomplish that,
16 although I think there's been -- various folks will disagree
17 with that -- certainly there may be just some dollar figures
18 that if you're talking about funding operations in
19 essentially more minimal amounts that that may -- may not
20 even have to get to the procedures because people will say,
21 well, I can live with that dollar amount because it seems
22 reasonable, you've explained what it's for.

23 MS. WEISS: Your Honor, if I can have a few
24 minutes to talk to my client?

25 THE COURT: Yeah, absolutely.

1 MS. WEISS: I'm sure that we can come up with some
2 sort of budget.

3 THE COURT: All right. Why don't we do this, why
4 don't we take a short recess, because that may not be a
5 particularly long conversation, but it's probably also not a
6 particularly short one. So why don't you -- I'll plan on
7 coming out in about 15 minutes, but maybe somebody could
8 just pop into chambers and give us an update when you're
9 ready to go, because if it takes longer than that I'm -- I
10 have no problem with that, but if we do expect to go past
11 5:00, which I wouldn't contemplate right now, but I've been
12 surprised before and I'll be surprised again, just please
13 let us know because I have to make arrangements in terms of
14 having somebody to record the proceedings.

15 MS. WEISS: Okay.

16 THE COURT: All right.

17 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

18 MS. WEISS: Thank you, Your Honor.

19 (Recess at 3:41 p.m.)

20 THE COURT: Please be seated.

21 All right. When we last left we were
22 discussing --

23 MS. WEISS: Your Honor --

24 THE COURT: -- cash management.

25 MS. WEISS: Your Honor, thank you for giving us

1 some times. I think we have an agreement.

2 THE COURT: All right, well, thank you for that.

3 MS. WEISS: What we're proposing is that between
4 now and through the next hearing that the debtors use \$10
5 million. When we come into court next time there'll be an
6 accounting of what the money was used for. At that time
7 also we'll have a budget for going forward. And the
8 expenses, the money to be clear about it they're going to
9 the operating companies, some are debtors, some are not,
10 these are the management companies in Arcapita Bank, they're
11 not going to pay expenses of any of the investments.

12 THE COURT: All right. And when you say the next
13 time you're talking about next Thursday?

14 MS. WEISS: Thursday.

15 THE COURT: All right. And so at that point I
16 imagine as part of the discussions you'll continue to have
17 discussions, so hopefully you'll have a proposal as to how
18 to resolve this issue going forward, although obviously I
19 know we'll have a final hearing later on, but we'll still
20 need to -- I guess this will be our second interim order
21 that we'll need for this particular issue. All right.

22 MS. WEISS: Thank you, Your Honor.

23 THE COURT: All right. Is there anything else
24 that we need to discuss in connection with this particular
25 motion?

1 MR. FRIEDMAN: I think I just want to clarify two
2 points. I just -- I believe this to be the case, but I'd
3 like to clarify it.

4 The \$10 million that we're speaking about, all
5 that money originates at Arcapita Bank, the ultimate parent
6 company; is that correct?

7 MS. WEISS: Yes.

8 MR. FRIEDMAN: So there was a yes to that.

9 THE COURT: Yes.

10 MS. WEISS: That's a yes.

11 MR. FRIEDMAN: And the second point was that the
12 money was being used entirely just for payroll and operating
13 expenses of these entities, which I believe is also a yes.

14 THE COURT: I heard expenses for operating
15 companies, but maybe you can translate that. If you would
16 just grab a microphone so that -- any microphone will do.

17 MS. WEISS: As long as we're clear that this
18 covers their daily expenses, their operating expenses, the
19 employees, that kind of thing, then yes.

20 MR. FRIEDMAN: Yes. That's my --

21 THE COURT: All right.

22 MR. FRIEDMAN: And the last thing, Your Honor, is
23 that none of this money was going to be used to pay rent on
24 the Bahrain lease. As Your Honor knows we have an issue
25 with that lease.

1 MS. WEISS: That's also true.

2 THE COURT: All right, that's also true, so I
3 think you've gotten your three clarifications --

4 MR. FRIEDMAN: Thank you.

5 THE COURT: -- and with that I think we've solved
6 that problem.

7 Thank you again for having a productive
8 conversation in a fairly quick amount of time, so I
9 appreciate that, and it allows everybody to do what first
10 day hearings do, which is move the ball forward for the
11 debtors, but allow certain things to remain status quo until
12 everyone gets more information and figure out how to best
13 protect their rights.

14 MR. ROSENTHAL: Your Honor, we thank you for your
15 time.

16 We're assuming the Court has entered the order as
17 we're going to submit the final -- the final versions --

18 THE COURT: All right.

19 MR. ROSENTHAL: -- as agreed to enter the order.

20 THE COURT: Is there anything that needs to get
21 entered today or can they wait till tomorrow morning? I ask
22 because I'd have to rustle up somebody in the clerk's office
23 to stick around.

24 MR. ROSENTHAL: They can wait until tomorrow --

25 THE COURT: All right.

1 MR. ROSENTHAL: -- tomorrow morning.

2 THE COURT: I appreciate that.

3 I did have a couple of minor things I just wanted
4 to go through the order on just for purposes of -- some of
5 them we've discussed and some of them are just conforming
6 changes.

7 So looking at the order on page 2, paragraph 3 it
8 references those accounts identified in Exhibit C, which is
9 attached to the motion. I'd like to have it so that
10 essentially it's an Exhibit A to the order. So I think it
11 just makes it easier for affected parties to know -- to know
12 that, and particularly given all the discussions about
13 information I think that's helpful.

14 It sounds like in paragraphs 3 and 4 that what the
15 agreement is, is that folks are -- that the debtors are
16 going to put some language that they're going to work with
17 the U.S. Trustee's Office and any interested party in terms
18 of their business forms both here in the U.S. and elsewhere
19 to convey the existence of this bankruptcy, but I'll leave
20 it to your judgment in consultation with -- it may be
21 foreign counsel as to what an appropriate -- what the
22 appropriate language would be. And so that addresses when
23 it comes to paragraphs 3 and 4.

24 I see that paragraph 8 talks about the banks being
25 authorized to charge and debtors being authorized to pay on

1 and allow the bank fees. With that I don't know that -- and
2 perhaps I'm missing something and you can explain it to me
3 -- but I don't know that therefore we need paragraph 9 which
4 deals with liens on bank accounts as a result of bank fees.
5 I mean if there's an authorization to pay the bank fees I
6 think that probably does it --

7 MS. WEISS: Okay.

8 THE COURT: -- for what you need.

9 And then for paragraph 10 about new bank accounts.
10 I've normally seen that any new bank accounts where it says
11 debtors shall give prompt notice to the U.S. Trustee's
12 Office, I've usually seen -- and Mr. Morrissey can
13 straighten me out if I've got this wrong -- but that there's
14 usually some language in there about any new account would
15 be with the bank designated as an authorized depository
16 under the U.S. Trustee guidelines unless first obtaining the
17 consent of the U.S. Trustee.

18 And then the other language I tend to see in these
19 sort of orders is for purposes to order any new bank account
20 opened by the debtors will be deemed a bank account as that
21 term is used and therefore essentially covered by Exhibit A
22 to this order. So you don't need a separate order to
23 accomplish that.

24 MS. WEISS: Okay. Yes, Your Honor, that's fine.
25 Actually Mr. Morrissey did raise that and we've agreed to

1 that.

2 THE COURT: All right. So I think we've addressed
3 paragraph 12.

4 And the only other comment I had was to add a
5 paragraph or some language in an existing paragraph that
6 says you'll serve a copy of this order on the banks within
7 three days of it being entered.

8 MS. WEISS: Okay.

9 THE COURT: All right. Before we adjourn until
10 Thursday of next week anything else we should discuss?

11 MR. ROSENTHAL: No, thank you very much for your
12 time.

13 MS. WEISS: Thank you.

14 MR. FRIEDMAN: Can I just --

15 THE COURT: My pleasure. What? There's always
16 something.

17 MR. FRIEDMAN: Can we just -- can we revisit the
18 joint admin order again?

19 (Laughter)

20 THE COURT: Well, nothing makes me happier than to
21 talk about the issue of joint administration. Anything?

22 MR. FRIEDMAN: No, I was just -- I just wanted to
23 know if I could count that as a win because they did change
24 the language of the order.

25 (Laughter)

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THE COURT: Well, to the extent you keep stats I think you can at least count it as a tie.

MR. FRIEDMAN: Oh, okay. Thank you.

THE COURT: Thank you.

(Whereupon these proceedings were concluded at 4:29 PM)

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

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

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