

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 12-11076-shl

4 Case No. 12-11790-shl

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6 In the Matter of:

7

8 ARCAPITA BANK B.S.C. (C), et al.,

9 Debtors.

10 - - - - - x

11 In the Matter of:

12

13 FALCON GAS STORAGE COMPANY, INC.,

14 Debtors.

15 - - - - - x

16 United States Bankruptcy Court

17 One Bowling Green

18 New York, New York

19

20 May 31, 2012

21 2:06 p.m.

22

23 B E F O R E :

24 HON SEAN H. LANE

25 U.S. BANKRUPTCY JUDGE

1 Motion to Authorize - Debtors' Motion Pursuant to Sections
2 365 (d) (3) and 363(b) (1) of the Bankruptcy Code for
3 Authorization for Arcapita to Make Investment to Support the
4 Lusail Joint Venture

5

6 Motion to File Under Seal - Debtors' Motion for Order
7 Authorizing the Debtors to File Under Seal References to
8 Terms of Confidential Lusail Agreements

9

10 Application to Employee KPMG, LLP as Valuation Advisor
11 Debtors' Application Pursuant to Section 327(a) and 330 of
12 the Bankruptcy Code for an Order Authorizing the Debtors to
13 Retain and Employ KPMG, LLP as Valuation Advisor to the
14 Debtors Nunc Pro Tunc to the Petition Date

15

16 Motion to Allow; Motion for an Order Pursuant to Section
17 105(a) of the Bankruptcy Code Directing that Certain Orders
18 in the Chapter 11 Cases of Arcapita Bank B.S.C. (c), et al.
19 be Made Applicable to Subsequent Debtor

20

21 Motion to (A) Authorizing Debtors to (I) Continue Existing
22 Cash Management System, Bank Accounts, and Business Forms,
23 and (II) Continue Ordinary Course Intercompany Transactions;
24 and (B) Granting an Extension of Time to Comply with the
25 Requirements of Section 345(b) of the Bankruptcy Code

1 Case Management Status Conference

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25 Transcribed by: Sherri L. Breach, CERT*D-397

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good afternoon. Please be seated.

MR. ROSENTHAL: Good afternoon, Your Honor.

THE COURT: All right. We are here for an omnibus hearing in Arcapita Bank, B.S.C., et al. Good afternoon.

MR. ROSENTHAL: Good afternoon, Your Honor. Michael Rosenthal, with Craig Millet and Janet Weiss from Gibson, Dunn and Crutcher.

THE COURT: Good afternoon.

MR. ROSENTHAL: We're here on behalf of the Arcapita debtors and Falcon.

Your Honor, I -- I have to apologize. My voice is -- is a little weak today. I fear it's because we -- we would have to listen to another joint administration objection, but maybe -- maybe we can resolve that.

THE COURT: Well, I always love those.

(Laughter)

MR. ROSENTHAL: Your Honor, a couple -- as is my custom, you know, I would like to go over some general comments about where we are.

THE COURT: All right. And what you might want to do to save your voice is just pull that microphone as close --

MR. ROSENTHAL: Sure.

1 THE COURT: -- as you can --

2 MR. ROSENTHAL: Okay.

3 THE COURT: -- just so you don't have to strain.

4 MR. ROSENTHAL: We have continued to cooperate
5 with the committee and the joint provisional liquidators on
6 the budget items, including deal fundings. We have reached
7 agreement on all deal fundings for this period, including
8 the Lusail funding that Your Honor has heard some about and
9 will hear more about today. And approximately \$4 million in
10 additional deal fundings which will be made over the next
11 four-week budget period.

12 With respect to the budget, Your Honor, we
13 continue to be very careful about what we spend. Our cash
14 position as of the May 26th -- I'm sorry -- April 26th was
15 -- May -- May 26th was \$122.4 million, and if you look at
16 our actual expenses as compared to our budgeted expenses
17 over the life of the case, actual expenses are less than
18 budgeted expenses by about \$8.9 million.

19 We've continued to have discussions with the
20 committee and the joint provisional liquidators about a deal
21 funding protocol. We haven't reached an agreement yet on
22 that. Frankly, things are working fairly well the way we've
23 been operating.

24 At the same time, we're still exploring a protocol
25 with the committee and the JPL. We're hopeful that we can

1 enter into something that makes certainly the budgeting and
2 deal funding process less expensive and more efficient.

3 A little report, Your Honor, the on the joint
4 provisional liquidation going on in -- in the Caymans. The
5 joint provisional liquidators filed an initial report with
6 the Cayman Court. I don't know if that was served on the
7 Court. Do you -- do you recall?

8 THE COURT: I don't believe I've seen that. I
9 don't think it was in the binder and I looked at the
10 subsequent pleadings that were filed, and I -- I don't think
11 I've seen that.

12 MR. ROSENTHAL: Well -- but I do have a copy that
13 I would -- I would be happy to tender to the Court.

14 THE COURT: All right. Thank you.

15 MR. ROSENTHAL: May I approach?

16 THE COURT: Yes, please.

17 Thank you.

18 MR. ROSENTHAL: Your Honor, I'm not going to refer
19 to it other than to say that I think the report indicates
20 that there's been significant cooperation between the
21 debtors and the joint provisional liquidators, and this is
22 their first report to the Cayman Court.

23 As -- as part of our discussions with the joint
24 provisional liquidator, we've also reached an agreement. If
25 you recall, we put a million dollars in the AIHL Cayman

1 account to cover fees and expenses of the Cayman -- of the
2 joint provisional liquidators to the extent they're approved
3 by the -- by the Cayman Court. Part of an agreement we
4 reached with the JPL was to add to that one million dollars,
5 so we would be transferring \$2 million more to that account.
6 Again, it's -- it's an account in the name of AIHL and would
7 not be used except pursuant -- pursuant to an order.

8 We are also, Your Honor, exploring with Cayman
9 counsel the possibility, perhaps, of an international
10 protocol with the Cayman court so that there can be more
11 coordination between this Court and the Cayman court on
12 certain issues.

13 One thing that I do want to point out to you with
14 respect to the Cayman proceeding is that the joint
15 provisional liquidator has received some requests from
16 creditors of AIHL that he establish a committee in the
17 Cayman case. Now the Caymans, we -- they don't -- they have
18 a -- they have a procedure for a creditors' committee. It's
19 not like our formal creditors' committee procedure over
20 here. It's more of an advisory group of creditors. We've
21 been told that the joint provisional liquidator is seeking
22 to convene a meeting of creditors and discuss whether a
23 Cayman AIHL committee should be -- should be appointed.

24 We are, frankly, still considering how to respond
25 to that -- to that news. We certainly don't want to

1 exacerbate the expense burden on these estates and we don't
2 want to undermine what the general unsecured creditors'
3 committee in these cases are doing, in part on behalf of the
4 AIHL creditors as well as the other Arcapita debtors.

5 We've been told --

6 THE COURT: Remind me again which entities are in
7 the proceedings in the Cayman Islands.

8 MR. ROSENTHAL: Only one entity, Arcapita
9 Investment Holdings, Limited.

10 THE COURT: All right.

11 THE COURT: The first tier subsidiary of Arcapita
12 Bank.

13 We do understand that the liquidator will take the
14 position that if you're on the official unsecured creditors'
15 committee you cannot be on the Cayman committee, and at
16 least initially will take the position that if there is a
17 Cayman committee appointed, that it would not be entitled to
18 engage its own counsel or other -- or other advisors. But
19 stay tuned. I -- I just want to throw that out there. It's
20 something that -- that may take place before our next court
21 appearance.

22 On the plan valuation business side, KPMG has been
23 doing a lot of work valuing specific portfolio assets. I
24 know you will hear a -- an application to employee KPMG
25 later -- later today. Rothschild has been working to put

1 together a comprehensive business plan that will incorporate
2 those specific portfolio values. We think that KPMG will be
3 -- will be nearing the completion of their work some time in
4 -- sometime in June.

5 And the reason I'm telling the Court is because I
6 -- I'm sure I've mentioned it before. We are very sensitive
7 to the expense burden on this estate, and the fact that we
8 are trying to come up with a plan -- proposal plan, try to
9 negotiate a plan sooner rather than later. We do not see
10 this as an eighteen-month case or a two-year case. We see
11 it as a case which, with any luck, may end before the end of
12 this year.

13 We would hope that we would be in a position
14 sometime late summer, early fall to file a -- file a plan
15 and -- and go forward with the plan process. We -- we're a
16 little bit inhibited because we have Ramadan, which is late
17 July, first part of August, and, of course, we have
18 everyone's vacation schedule in -- in August.

19 Two -- two other items. I've mentioned before
20 that we are negotiating a reduction in force that would
21 include an incentive plan for employees who are not
22 terminated who actually retain -- remain with the debtors.
23 Those discussions are continuing with the committee and the
24 joint provisional liquidator, and we believe that we will be
25 in a position to file a motion that would be heard at the --

1 at the June hearing on that reduction of force.

2 And, finally, we're trying to look ahead as to our
3 cash position. We know we have upcoming expenses. We know
4 the Lusail payment, provided the Court approves it, is about
5 a 30-million-dollar payment. We are exploring, and I've --
6 you know, it's very preliminary, but we are exploring
7 debtor-in-possession financing options that would be
8 available to provide additional liquidity. And, again, just
9 by way of a head's up to the Court that that may be -- may
10 appear on the next agenda as well.

11 THE COURT: All right. Thank you.

12 MR. ROSENTHAL: So the issues up today, Your
13 Honor, are Lusail. We -- we had a status conference with
14 the Court by phone and advised the Court that we were
15 hopeful that this would be done on a consensual basis and,
16 in fact, it is done on a fully consensual basis. We also
17 have matters related to the Falcon case, case management and
18 KPMG.

19 If the Court doesn't mind, I would rather take up
20 the Lusail matter first.

21 THE COURT: Sure. Whatever order you would like
22 to proceed.

23 MR. ROSENTHAL: Okay.

24 Your Honor, we -- we have two motions in Lusail.
25 The first is a motion to file certain documents under seal.

1 There's no objection -- there's no objection to this motion.
2 We understand certainly, Your Honor, that -- that -- that
3 bankruptcy proceedings are public proceedings and that these
4 motions are viewed very, very carefully. On the other hand,
5 we are trying to preserve a very valuable asset and the
6 underlying agreement with Quatter Islamic (ph) Bank provides
7 that the agreement shall remain confidential.

8 We obtain -- we -- we discussed this with Quatter
9 Islamic Bank, QIB, who said you can describe in detail these
10 agreements in the motion, which we've done. You can show
11 unredacted versions of these agreements to the committee and
12 the joint provisional liquidator, which we've done. But
13 other than that, we will not consent to the open disclosure
14 of all of these agreements on -- on an unredacted basis.

15 As a -- as a result, Your Honor, we filed the
16 motion to seal. We believe we've accurately described the
17 agreements in the -- in the Lusail motion that we filed. We
18 have no objections from the committee or the joint
19 provisional liquidator to the sealing of these motions. Any
20 part of these documents, any party can come into the court
21 and on -- on a showing to the Court obtain these documents
22 if it -- if it -- if it can make the showing.

23 We believe under the circumstances that the motion
24 to seal should be -- should be granted and that no one is
25 prejudiced by it. On the other hand, if the Court were to

1 deny the motion, we think there would be a possible argument
2 that QIB would be able to raise that somehow we had -- that
3 we had breached the lease and wouldn't be entitled to the
4 very benefits we're trying to protect through the -- through
5 the payment.

6 So I would ask the Court to approve that motion.

7 THE COURT: All right. Anyone want to be heard in
8 connection with the moment?

9 (No verbal response)

10 THE COURT: All right. I -- I don't hear any
11 objections.

12 I will grant the motion and I think it falls
13 within Bankruptcy Rule 9018. Just so you know, the reason I
14 didn't act on the motion before this is I never know if
15 something is going to be contested or not contested, and if
16 it's contested, what sort of public record will need to be
17 made and, if so, how to -- how to sort of address that in
18 the -- in the -- in the context of the confidential
19 information.

20 So I prefer not to deal with that until I know
21 what -- what has to be done and it wasn't any comment on the
22 -- on the request itself. So in light of that I will -- I
23 will grant the motion, and for the actual order I just had
24 two comments.

25 One is that I think the order should reflect that,

1 in fact, there was no opposition to the motion, and the
2 other is that -- remind me if there have been any redacted
3 versions that have been filed. In other words, my -- my
4 traditional -- traditional preference is that whatever can
5 be public is public as opposed to filing something entirely
6 under seal. I understand what's been said about the details
7 of the transaction, but to the extent that it can be
8 explained in -- in general terms, I would ask that you do
9 that in -- in whatever form is appropriate.

10 There are many ways to do that. Some parties say,
11 well, I have a pleading and I will redact what's
12 confidential. Other times people say, I can't really do
13 that. What I can do is I can file something that said, this
14 was filed under seal and give a general description of -- of
15 what it is.

16 I'll leave that to your considered professional
17 judgment.

18 MR. ROSENTHAL: Yeah. I -- I don't believe we
19 filed -- we filed those documents on a -- on a redacted
20 basis even.

21 THE COURT: Yeah. If you would -- what I would
22 ask is that you file something, one, that tells the public
23 that something has been filed and what it generally pertains
24 to, and then, two, if there's anything that you can say
25 publicly in general terms, consistent with the kind of

1 information provided already in public about -- about this
2 particular --

3 MR. ROSENTHAL: That's fine. I think we --

4 THE COURT: -- issue.

5 MR. ROSENTHAL: -- I think we've described them in
6 -- in fairly sufficient detail. So we can certainly
7 incorporate that.

8 THE COURT: That would be great. Again, it
9 doesn't need to be lengthy and I'll -- I'll leave it to you
10 in the first instance to craft it as appropriate consistent
11 with the confidentiality restrictions that you're under.

12 MR. ROSENTHAL: Okay. Thank you.

13 THE COURT: And if the order would just
14 incorporate that notion, meaning, essentially, a redacted
15 version having been filed or will be filed by -- by the
16 debtor and whatever language that would appropriately
17 characterize what it is you're going to file.

18 MR. ROSENTHAL: But -- but it need not be a
19 redacted version. It may just be --

20 THE COURT: No. No.

21 MR. ROSENTHAL: -- a notice.

22 THE COURT: It can be a notice of -- of what you
23 filed and a general description. Again, I --

24 MR. ROSENTHAL: That's fine.

25 THE COURT: -- sometimes if you file simply a

1 redacted version, it's -- it's so redacted that it -- it
2 tells you absolutely nothing and --

3 MR. ROSENTHAL: Yeah. I --

4 THE COURT: -- and a new document is more
5 appropriate.

6 MR. ROSENTHAL: Thank you, Your Honor. We'll --
7 we'll do that.

8 Your Honor, the next -- the next matter is the
9 Lusail motion itself. This is a motion to make a 30
10 million-dollar payment required under a -- under a land
11 purchase agreement for a piece of property that, frankly,
12 the debtor thinks is one of its most valuable assets.

13 We've been talking about Lusail. You've heard
14 about Lusail since -- since the first hearing. There are
15 really two aspects of Lusail. One is the acquisition of
16 Lusail and the -- and the asset that is the Lusail land
17 asset, and I want to talk briefly about that. And the
18 second is the transaction that occurred shortly before the
19 bankruptcy -- the Chapter 11 cases were commenced that
20 involved a financing with respect to that Lusail asset.

21 The latter issue on the financing, you know, the
22 character of that financing, the -- any arguments related to
23 that financing, as we said to the Court in our -- in our
24 telephonic call, are not up today. What is up today is
25 whether the debtors will be able to make a 30 million-dollar

1 payment on the land agreement.

2 So, Your Honor, in October of 2008 -- and I'm
3 going to simplify some of these facts because they're --
4 they're in the motion. But -- but in October of 2008, QRE
5 which is -- which was an Arcapita investment vehicle
6 portfolio company if you will, purchased a 50 percent
7 interest in some land in or around Lusail, Quatter. That is
8 very close to Dohah (ph). It currently holds that 50
9 percent interest in a joint venture that -- where the joint
10 venture partner is -- is an entity called Barwah (ph). And
11 the relationship between Barwah and QRE -- our entity, QRE,
12 is governed by a shareholder agreement.

13 The Lusail land is the asset that's owned by this
14 joint venture and it consists of 900 acres of land
15 undeveloped, but with infrastructure -- a significant amount
16 of infrastructure in place in this -- in this -- in this
17 area. Whether by coincidence or genius, the land turns out
18 to be a short -- just a few kilometers from where the main
19 stadium will be for the 2022 World Cup. You may know that
20 Quatter was recently selected as the -- as the locale for
21 that 2022 World Cup. While soccer may not be big here,
22 soccer is huge in the rest -- in the rest of the world.

23 And as a result of that, we've seen some
24 appreciation in the value of that land, and there may be --
25 there may be additional appreciation. Important is that the

1 government of Quatter has -- has committed to provide
2 significant funding for infrastructure and other projects in
3 order to support the 2022 World Cup.

4 It's for that reason and because we have
5 valuations that we've received from some valuation experts
6 in the middle east area -- DTZ is the name of the valuation
7 company -- that we believe this is a very valuable asset.

8 Now we have not -- we have not filed valuation
9 reports with the Court for -- for a -- what we think is a --
10 is an appropriate commercial reason. I mean, this is land
11 that will now or in the future be offered for sale and --
12 and we did not want the record to reflect what the valuation
13 reports reflect. However, they have all been provided to
14 the committee and its -- to the committee advisors and to
15 the joint provisional liquidators, and it's on the basis of
16 that and our other discussions with them that they support
17 this -- this payment.

18 The way this land was bought was it was bought, in
19 effect, on a land sale contract. So we bought it from an
20 entity called Katari DR (ph) for \$274 million. We paid 50
21 percent of that up front, 137 million and we still owe 137
22 million. And we have an obligation to make payments to
23 reduce that 137 million. The next payment is the one we
24 seek authority to pay and it's due June 1st. It's for \$30.4
25 million.

1 The -- let me go into the sale leaseback
2 transaction because that is how we get QIB involved --
3 involved in this whole situation.

4 In late 2011, early 2012 the company was
5 experiencing liquidity crisis for two reasons. One was the
6 crisis in the Euro-zone (sic), and the second was something
7 that was taking -- that took place middle of -- actually,
8 April or so of 2011 that the Court may have read about
9 that's referred to as the -- as the Arab spring uprisings.
10 And this was a group of political -- a series of political
11 revolts that occurred in Pahl Rain (ph) and -- and in other
12 middle eastern countries.

13 As a result of that, the ability to raise cash was
14 -- was impaired and the company knew that it had payments to
15 be made, not just on Lusail, but also on other portfolio
16 companies. I mean, the deal fundings are -- are typical of
17 the kinds of fundings that this company has to make in order
18 to sustain, preserve, maintain, grow its value in the -- in
19 the deal companies.

20 So late 2011, early 2012 it entered into
21 negotiations to sell -- actually, to -- the way we would
22 describe it in the United States is to borrow money. But
23 you know that this is a Sharea (ph) compliance institution,
24 so it looked for ways to raise money that were Sharea
25 compliant.

1 The vehicle that it shows was a typical Islamic
2 financing vehicle. You've heard of the Merabajah (ph).
3 This is called an ajara (ph). So an ajara transaction
4 occurs when you sell a piece of property for a purchase
5 price. You lease back the right to use that property and
6 you make payments under that lease, and then you have an
7 option from the -- from the buyer to buy the property back
8 for an agreed price.

9 When you -- you know, when you cut through the
10 transaction and the documents and the purchase price and
11 everything, what this amounts to in U.S. terms is
12 effectively a loan for \$200 million that has, because of the
13 payment stream under the lease and the option price, it has
14 an annual -- you know, an annual coupon of somewhere around
15 12 percent. So it's basically a 12 percent loan.

16 Now this was not a new structure that the company
17 had used. In fact, in early 2009 in the aftermath of Lehman
18 it used this exact same structure with QIB to raise 75
19 million which it subsequently repaid by exercise in the
20 option to buy the -- to buy the shares back.

21 There were a number of documents executed in
22 connection with the transaction, obviously, to protect the
23 rights of the various parties. The money -- and the money
24 came in to the -- to the bank. That's where all the money
25 was deposited at Arcapita Bank. We've -- we've told the

1 Court before.

2 Now I want to mention one other thing about the
3 sale lease back. We filed a supplemental declaration
4 because we wanted the Court to be aware that QIB and
5 Arcapita share a director. That was a disclosure point. We
6 -- we don't think it's material. We think that under
7 whatever standard the Court uses or chooses to use to
8 determine whether this -- the payment is going to be made is
9 a -- is a parent payment -- a prudent -- a prudent payment
10 the Court would -- under any standard, the Court would
11 approve this payment.

12 Now we -- as we told the Court before, we were
13 going to engage in negotiations with the committee and with
14 the joint provisional liquidator and we -- and we have.
15 We've provided them with very detailed information,
16 responded to numerous requests, been on numerous conference
17 calls, provided whatever they wanted with respect to this
18 transaction and the proposal to fund the \$30 million.

19 The -- after we filed the motion, the -- there
20 were discussions between the JPL, the committee, QIB to
21 address certain points that had been raised that were
22 important to the committee, the JPL and the debtors, and,
23 frankly, to -- to QIB. Those dealt with how the payment was
24 going to be structured, and this is separate and apart from
25 the prudence of making the payment.

1 So the first issue was, was it prudent to make the
2 payment from a business perspective, and the second was how
3 was it going to be structured to preserve the rights of the
4 parties and make sure that the payment was -- was accurately
5 reflected.

6 The -- there was also an issue that had been
7 raised under the lease about whether the filing of the
8 Chapter 11 cases actually constituted an event of default
9 under the leases because we need to make this payment for
10 the -- this land payment as a condition to the lease. So if
11 we do not make this payment it would be a breach of the
12 lease. On the other hand, if we make the payment we wanted
13 to make sure that no one would subsequently argue that the
14 lease had been breached by virtue of the Chapter 11 funds.

15 Now we -- you know, neither we nor QIB nor the
16 committee concede that we wouldn't have arguments about
17 whether a Chapter 11 filing can terminate a -- can terminate
18 a lease under our ipso facto provision. But this is a piece
19 of property in Quatter governed by law that is not U.S. law.
20 And so we wanted to make sure that we dealt with all these
21 contingencies.

22 To resolve all of those, Your Honor, we -- as part
23 of our discussions -- negotiated various agreement. Let's
24 talk about the agreements with the committee and the JPL.

25 The agreement we negotiated with the committee and

1 the JPL is that the money would be put in as a loan from the
2 bank, an interest-free inter-company loan from the bank to
3 QRE, \$30.4 million. QRE then turns around and -- and pays
4 the money as it's required to under the shareholder
5 agreement to the Lusail joint venture, which makes the
6 underlying land payment.

7 We have not filed the letter, but there is a --
8 there is a letter that's part of this transaction, which is
9 -- and we've referred to it in the order, but, again, we --
10 for commercial reasons we don't want to file these -- that
11 -- that is the -- that sets out the structure that we --
12 that will be used for this funding.

13 The other thing that it does is it reserves
14 everyone's rights, the JPL's rights, the committee's rights,
15 the debtors' rights, QRE's rights to argue that perhaps it
16 shouldn't have been -- it shouldn't have been reflected as a
17 loan. And this goes back to the underlying issue about
18 potential challenges to the -- to the Lusail transaction.
19 We're trying to preserve the status quo in terms of that
20 argument, but at the same time not lose the benefit of this
21 very valuable option.

22 Second issue, Your Honor, was what rights the
23 committee and the JPL would have with respect to the
24 ultimate disposition of the Lusail land. The company never
25 intended to sell this land for \$200 million. The reason for

1 the option is because this was a financing. The company
2 intended it would find a buyer who would be willing to pay
3 the true value of the land. It would exercise the option.
4 It would get the shares back. It would sell the land for
5 it's -- for it's true value.

6 And so there -- there were two purposes: One was
7 to obtain the funding that was necessary to support the
8 projects, but two was to preserve the -- the equity value of
9 the land.

10 The committee and the JPL both wanted consultation
11 rights with respect to the ultimate disposition of the land,
12 and we're -- and we're happy to give them. We -- we
13 incorporated into a letter agreement -- again, a letter of
14 agreement not filed with the Court -- provisions that
15 require us to give periodic information to the committee
16 about sale efforts, offers that may come in, and -- and the
17 like. And then ultimately we've said to the committee in
18 this letter something which I think would -- we would be
19 required to do anyway, which is that if we want to sell the
20 Lusail land we either need to get the committee's consent or
21 come to the Court.

22 My view of this, Your Honor, is because of the
23 inter-relationship of the bank, AIHL, QRE, you know, the
24 committee, QIB, we -- and the magnitude of this transaction,
25 if we were to sell the land that we would have to come to

1 the Court in -- in any event.

2 But in any event, we have reflected the consult --
3 the consultation rights in a side letter with the committee.
4 Again, that letter -- again, you know, everyone's -- you
5 know, that doesn't deal with any of the outstanding
6 potential issues, all of which the parties' rights have been
7 reserved.

8 And then, finally, to address the QIB issue about
9 whether they would claim that a default had occurred by
10 virtue of the filings, we entered into negotiations with QIB
11 represented by Weil Gotshal, and with the help of the -- of
12 the committee and the joint provisional liquidator we
13 negotiated a letter agreement with QIB, which I have and --
14 and by the way, Your Honor, I'm -- I'm happy to submit these
15 agreements -- these letter agreements to the Court.

16 But we entered into a letter agreement with QIB
17 where QIB agreed that if we made the payment and we made the
18 subsequent payments required pursuant to the lease, that it
19 would not contend that a -- a default had occurred, a
20 termination event had occurred by virtue of the filing of
21 the Chapter 11 cases.

22 THE COURT: Are they the only party that could --
23 that could raise that argument in your view?

24 MR. ROSENTHAL: We -- we believe they are, Your
25 Honor.

1 THE COURT: All right.

2 MR. ROSENTHAL: We believe they are. And -- and
3 they also acknowledge that they -- that they don't presently
4 have a termination right under -- under the lease agreement.

5 Now the letter also provides, though, that if
6 their -- if the Lusail transaction is challenged, if the QIB
7 transaction, the lease and the like is challenged or sought
8 to be recharacterized, that -- that they would reserve the
9 right and they have the right -- part of our agreement with
10 -- with them and with the committee -- they have the right
11 to terminate the letter agreement and -- and argue anything
12 they want to argue, including that the filing of the Chapter
13 11 cases was a termination event under the lease.

14 We have not given up the right to respond to that,
15 to counter that and -- and neither has the committee. But
16 it -- it is a factor in -- in this letter. We -- from the
17 debtors' perspective, we don't intend to do anything of the
18 sort, but it was something that QIB insisted upon.

19 The final aspect, Your Honor, is that -- let's see
20 if there are any other aspects under that one.

21 The final aspect of the letter with the QIB is
22 that the payment, the Lusail payment is due on June 1st
23 under -- under the agreement with QIB. So we wanted to get
24 an agreement from them, since the hearing is today and it's
25 seven hours ahead in Quatter, that the payment would --

1 could be made by a later date. And so they have agreed that
2 if the payment is made by 2 p.m., I believe it's -- it's --
3 it's Quatter time on June 4th, it would be deemed to be --
4 to be timely.

5 We have everything set up with JPMorgan so that
6 when the Court -- if the Court enters the order, we're
7 prepared to push the button and send the payment to make --
8 to meet that deadline.

9 Your Honor, we -- we think that -- that there's
10 more than ample support for the debtors' ability to make
11 this 30-million-dollar payment. We believe it's a sound
12 exercise of our business judgment. The committee -- the
13 committee shares the view. They filed a pleading in support
14 of the payment yesterday. The joint provisional liquidator
15 shares this view.

16 If we are not allowed to make this payment, we --
17 we risk two things: The worst obvious case is that we lose
18 the option entirely to -- to realize the benefit of the --
19 of the -- of the equity value in Lusail. Another -- another
20 possibility is that our partner, Barwah, may make the
21 payment, but extract a huge price from us in terms of a
22 reduction or discount in our interest as a condition to
23 making that payment.

24 Both of those factors, Your Honor, together with
25 our view about the ultimate value of this land came together

1 to cause the debtors to file this motion and to ask the
2 Court to approve it.

3 THE COURT: All right. Anyone want to be heard in
4 connection with the motion?

5 MR. DUNNE: Good afternoon, Your Honor. For the
6 record, Dennis Dunne from Milbank, Tweed, Hadley and McCloy
7 on behalf of the official creditors' committee.

8 The committee, after weeks of analysis and
9 deliberation, concluded that, as Mr. Rosenthal referenced,
10 the payment amount of 30.4 million was justified. But the
11 committee has asked me to make a few statement to -- to Your
12 Honor about how we got there.

13 The committee was concerned about two critical
14 facts: One is the limited amount of cash that's in these
15 estates today; and the second, obviously, is whether the
16 underlying asset value justifies the use of some of these
17 precious cash resources.

18 On the first point, the 30.4 million constitutes
19 almost a quarter of the \$122 million of cash that's in the
20 estates. I think it goes without saying that using 25
21 percent of the estate's cash is a momentous decision,
22 particularly -- and I've said this before -- when we're not
23 dealing with the manufacturing company. There's not a day
24 to day replenishment of cash through selling widgets or
25 through operations. That may actually be a finite amount of

1 cash that we see during this case, which is why Mr.
2 Rosenthal referenced the possibility of a debtor-in-
3 possession financing facility coming before Your Honor
4 shortly.

5 As a result of that in the committee's view, this
6 required a higher than usual showing of likely returns in
7 order to justify it which, of course, led -- segways into
8 our second concern.

9 We ultimately got comfortable, as a result of the
10 advisors to the creditors' committee spending a tremendous
11 amount of time with the debtors with their advisors
12 reviewing their valuations, their judgments and their
13 analysis as well as trying to get behind that to the
14 underlying data to come up with their own views as to the
15 wisdom of using this cash for this investment. And the net
16 result of that was that we do believe that this is money
17 that's justified to be spent today based on the likely
18 return to creditors in the future from this property.

19 The second point they wanted me to emphasize again
20 -- and we did this in -- on the chambers conference -- was
21 that this was not directly related to the sale lease back
22 transaction. Mr. Rosenthal did a good job of -- of walking
23 through the facts and, basically, in 2008 the company bought
24 the underlying property for 274 million, only paid half at
25 closing, deferred installment purchase prices and we're

1 basically only at the first one now, and the first one is
2 \$30.4 million.

3 And the point there is that that is an amount that
4 Arcapita would had to have paid whether or not the sale
5 lease back transaction occurred in March. Put another way,
6 let's assume it never happened and we never had all those
7 discussions about the propriety of that transaction. They
8 would be here today seeking approval of the 30.4 million.

9 The last point is the call right. And the call
10 right is key here for a number of reasons. Basically, the
11 call is the ability to repurchase the property that was part
12 of the sale lease back transaction for a set amount. The
13 documents say \$220 million. Mr. Rosenthal also described it
14 as, in essence, a loan. I tend to agree with that analysis,
15 but that's not how the documents are framed. They are
16 framed as a sale and a lease back and they are -- they
17 haven't been recharacterized by Your Honor.

18 So the way the documents work is, put aside the
19 call for a second, you would have no right to receive the
20 equity value, the difference between the \$200 million that
21 was loaned by QIB and the full value of the Lusail property
22 upon ultimate disposition absent that call right. And --
23 and that's why you've heard from the beginning of this case
24 that people say, well, that -- that could be a fraudulent
25 transfer. You should recharacterize it.

1 And if it was done as a loan, QIB as lender would
2 never be entitled, even if they exercised remnants as a
3 secured lender would never be entitled to more than the 200
4 million of their principle plus interest and fees and -- and
5 the other charges. And that's why whether or not there's
6 hair around the call is -- is a -- is a critical issue here.

7 We tried to address that with the letter that Mr.
8 Rosenthal referenced between QIB and the debtors, which
9 basically says, we agreed that we waive any right to pursue
10 a default based on the bankruptcy filing unless litigation
11 is commenced against them in which case all bets are off.
12 We understand that. And just so the record is clear, the
13 committee firmly believes that under U.S. law that provision
14 is an unenforceable ipso facto clause. We've also been
15 advised by our Katari counsel that it's unenforceable under
16 Katari law because the contemplated triggering event has not
17 occurred.

18 You don't have to get into that today, but I
19 wanted Your Honor to be aware of that because that was part
20 of our analysis to get to this position of, in essence,
21 relying, at least for now until there's future litigation,
22 on the call right. And hopefully we can avoid all -- all
23 future litigation on the sale lease back. But for purposes
24 of today, Your Honor, the committee supports entry of the
25 order and payment of the 30.4 million purchase price.

1 THE COURT: All right. Thank you.

2 Anyone else want to be heard?

3 (No verbal response)

4 THE COURT: All right. I think the papers that
5 I've received on this have been very helpful as have the
6 explanation of -- of counsel.

7 A couple of mentions have been made of the
8 chambers conference, which I had which -- when I saw that
9 this related to the Lusail transaction who we had allotted,
10 I think, an afternoon for it and the fact that I had heard a
11 lot about the Lusail financing. From the very first day of
12 the case I was concerned that this was going to be a hotly
13 contested issue that required evidence, but it sounds like
14 parties have been able to unpack the issues relating to
15 Lusail in a way that serves the best interests of the estate
16 and allows this particular application to go forward.

17 So I am happy to grant the motion and I think that
18 it satisfies the requirements of the Code. In connection
19 with that, I did have a couple of comments on the order. I
20 noticed the order is very sparse. In light of confidential
21 information there's -- it's essentially, outside of -- of
22 the Court for reasons that have been explained and I'm --
23 I'm perfectly fine with that. I -- I usually have the
24 opposite problem. These orders tend to be -- tend to be
25 phonebook size, so it's -- it's kind of a refreshing look.

1 But I -- I had just one or two comments. One, I
2 think, is it's worth noting in the recitals that there's no
3 opposition to the motion.

4 Two is that I see that the first page of the
5 motion says, Debtors have demonstrated that payment is a
6 required payment under Section 365(d) (3) of the Bankruptcy
7 Code. And I think it's based on the papers that have been
8 submitted and the explanation in here. I think it's
9 appropriate to add language that says, or in the
10 alternative, a sound exercise of debtors' business judgment
11 pursuant to Section 363(b) (1) because I think that's the way
12 it's -- it's been pitched and I think that's consistent.

13 You could also add, if you -- if you want, which
14 may be appropriate, but I'll leave it to your judgment as to
15 whether it's worth noting that relief is necessary to avoid
16 irreparable harm to the estate because I think that's --
17 that's really the motivating factor.

18 With those changes I'm happy to sign the order
19 granting the motion.

20 MR. ROSENTHAL: We -- we will -- thank you, Your
21 Honor. We will submit that. Would -- would you -- may I
22 approach and --

23 THE COURT: Certainly.

24 MR. ROSENTHAL: -- give you these letters?

25 THE COURT: Thank you.

1 And these are all confidential?

2 MR. ROSENTHAL: They are.

3 THE COURT: All right. Just give me a moment to
4 note that.

5 (Pause)

6 THE COURT: All right. And these are the letters
7 that you referenced earlier.

8 MR. ROSENTHAL: Your Honor, we -- we have some
9 other changes to the order that relate to the reservation of
10 rights that -- that spring from -- that spring from this,
11 but I -- they don't materially -- they --

12 THE COURT: All right.

13 MR. ROSENTHAL: -- don't change the substance of
14 the Court's ruling.

15 THE COURT: What -- what I would ask is that you
16 can email me all the orders as -- in their final form just
17 so I don't enter something that is -- that isn't the most up
18 to date version. So you can take whatever comments I have
19 and whatever the other language is being currently
20 negotiated and just send them to me. I know one of them --
21 this one is time sensitive, so just -- if you -- if you want
22 to get that one to me first separately because it is time
23 sensitive, that's fine. Just get it to me as soon as you
24 can. I'll -- I'll enter it as soon as I get it.

25 MR. ROSENTHAL: We will, Your Honor. Thank you.

1 THE COURT: Thank you.

2 MR. ROSENTHAL: The next matter, Your Honor, I
3 think we should take up is the -- is the matter related to
4 Falcon and my partner, Mr. Millet, is going to handle that.

5 THE COURT: All right.

6 MR. MILLET: Good afternoon, again, Your Honor.
7 Again, for the record, Craig Millet, on behalf of the
8 debtors. I'm acting sort of as the pinch voice for Mr.
9 Rosenthal considering that we've just about worn him out at
10 this point.

11 THE COURT: Wow. That's -- that's kind of you to
12 do so. It seems like a good idea given -- given the
13 circumstances.

14 I took a look at all the parties pleadings on
15 this, so I -- I will say I -- I don't know that it's worth
16 spending a lot of your voice or anyone's voice on -- on it
17 initially until I hear from the party that's objecting
18 because, obviously, your reply narrowed the scope of -- of
19 what you're seeking in terms of what orders you think are
20 appropriate to be applied to the new debtor and why that's
21 the case.

22 So in light of that, let me hear from the
23 objecting party first, which is --

24 MR. MILLET: May I make on preliminary comment
25 just --

1 THE COURT: Sure.

2 MR. MILLET: -- for a minute, Your Honor, if I
3 may? We did learn just outside the courtroom here before we
4 began that I understand that the opposing party is going to
5 say, okay. Certain orders can apply, but certain can't and
6 there's going to be almost different treatment for this
7 particular debtor as opposed to the other debtors.

8 We find that to be of concern because we do have
9 this massive estate that's being treated here. We do have
10 Falcon, if you can sort of imagine our order chart, if you
11 will, and you have three debtors: The wind farm debtor, the
12 rail invest debtor and the AEID debtor who are down here at
13 the portfolio level, who are owned through ALTH, a debtor,
14 who are owned through AIHL, a debtor, and then Arcapita
15 Bank, a debtor.

16 Falcon is in the same position. It's down here
17 like these other debtors. We're not treating these other
18 debtors special. We're not carving out the orders and
19 saying, as to this debtor we'll do this. As to this debtor
20 we'll do that. If we do this to Falcon, it's going to cause
21 a lot of complexity. I'll save the rest of my remarks until
22 afterwards --

23 THE COURT: All right.

24 MR. MILLET: -- but I just wanted the Court to be
25 aware of that.

1 THE COURT: But -- but am I to take your -- your
2 comments to mean that you're still willing, essentially, to
3 narrow it as you've set forward in -- in your reply, which
4 is, I guess --

5 MR. MILLET: Yes, Your Honor. Very much so.

6 THE COURT: All right.

7 MR. MILLET: It's just that we are -- we're
8 concerned about what you may hear about, well, we'll do this
9 one, but you have to do this special for this debtor or that
10 kind of thing.

11 THE COURT: All right. No. That's helpful.

12 MR. MILLET: Very well.

13 THE COURT: All right. Just in the interest of
14 fairness, I will tell you my -- my view looking at the
15 papers that, I guess, two or three observations. One is, I
16 think, there's been an effort here to limit what orders
17 apply and to back out the ones that have raised the most
18 concern and, two, to explain why those particular orders
19 that are sought to apply should apply. And I thought that
20 was a very helpful thing to do.

21 Two is, again, because the issue of joint
22 administration seems to haunt me in a lot of these cases, it
23 is really an administrative convenience and I think I and
24 every other judge in this court are always very careful to
25 note that it is not substantive consolidation and I think

1 parties are always very careful, as is the Court, to guard
2 the line as to anything where a case begins to -- or there
3 is even a hint of sliding into something that looks like
4 substantive consolidation, and I've had more than a few
5 instances where that has come up and parties have vigorously
6 popped up to say we're concerned that we're getting close to
7 something that looks like what we said we weren't going to
8 do.

9 So that is how I approach these issues. And --
10 and I do think at the same time, however, that this is
11 designed to make cases less costly and more efficient. And
12 if taken to its extreme, the idea of having each debtor not
13 be jointly administered means that I don't have enough time
14 in my court calendar to -- to have hearings on cases that --
15 that I have already, much less any new cases coming down the
16 pipe.

17 So I'm very much inclined to grant the relief as
18 it has been amended in the reply and then supported by the
19 committee. So I just didn't -- didn't want to -- to ambush
20 you or making comments and had no idea where I was coming
21 from.

22 MR. WOOD: Thank you, Your Honor. I appreciate
23 that and I'll take those comments to heart. My name is Trey
24 Wood and I represent Tide Natural Gas Storage I and II, LP,
25 the objecting parties.

1 Your Honor, first of all, we do appreciate the --
2 the efforts the debtors made to limit the orders and I think
3 that resolved many of our issues and we appreciate that.
4 And in that vein we're going to spend our time just pointing
5 out of the remaining orders, which one we have no problem
6 with.

7 THE COURT: All right. Let's do that.

8 MR. WOOD: Okay. Thank you, Your Honor.

9 Before I start, I -- I did want to note for the
10 record, Your Honor, that as you could tell from our
11 response, we do have an issue with the appropriateness of
12 the Falcon bankruptcy and whether --

13 THE COURT: Oh, but that's a different issue. You
14 can always make -- none of this -- again, these are largely
15 procedural orders and they deal with how cases progress.
16 They don't speak to the merits. People are always free to
17 file whatever motions they need to file to protect their
18 rights in a bankruptcy, whatever those motions look like
19 depends on case by case.

20 MR. WOOD: Thank you, Your Honor. I just wanted
21 the record to reflect that we're reserving our rights in
22 that aspect. Thank you, Your Honor. And I'll be quick,
23 Your Honor.

24 The first order I would like to take up --

25 THE COURT: And are we working off the list in the

1 reply brief starting on page 6.

2 MR. WOOD: I will, Your Honor.

3 THE COURT: I just mention that because they are
4 helpfully --

5 MR. WOOD: Yes. Yeah. I just --

6 THE COURT: -- numbered.

7 MR. WOOD: I would like to just take up joint
8 admin, just at the very last -- some of them are easier to
9 deal with and I -- and I understand the Court's comments and
10 I won't spend a lot of time on joint administration, but I
11 was just going to bring up that last.

12 Your Honor, the first one is order extending time
13 to file schedules and statements. We have no objection to
14 allowing that to being entered.

15 THE COURT: All right. That's 10.

16 MR. WOOD: Yeah. It's docket number -- yeah,
17 paragraph 10.

18 THE COURT: Yes.

19 MR. WOOD: Paragraph 11, Your Honor, we -- we view
20 that as an advisory opinion and we understand --

21 THE COURT: Well, I -- I'm going to -- I'm going
22 to disagree with you on that. It's -- it's a reflection of
23 the unusual circumstances of this particular debtor. All it
24 does is restate what the code provides for. It's not an
25 advisory opinion. It says, this is what the bankruptcy code

1 gives you as a protection when you file, and it reflects the
2 fact that there are participants in this case who are sort
3 of an unusually high percentage of folks who may be outside
4 of -- of the United States where restating those principals
5 may be helpful. It doesn't change anything. I looked very
6 carefully.

7 In fact, my comment, when that order was proposed
8 to me, is that it should actually mirror the actual language
9 of the code, no additions, no subtractions because we're not
10 adding or subtracting anybody's rights. So I don't think
11 it's an advisory opinion. And to the extent it is an
12 opinion, it's -- it's a correct opinion of the law because
13 it just references the code.

14 So I don't think it's a problem. Maybe it doesn't
15 -- doesn't seem to be particularly necessary given what --
16 from your vantage point as somebody who is dealing with a --
17 with folks domestically. But -- but given that there may
18 come a time when the relationship of these -- of these
19 entities, which -- which clearly overlap in a serious way,
20 it's necessary for folks to understand that this applies to
21 you -- to you as -- to this case as well.

22 So I don't think it's an advisory opinion. And
23 it's been done in other cases as well.

24 MR. WOOD: Your Honor, with the Court's
25 clarifications, we will have no opposition to adopting

1 number 11.

2 THE COURT: All right.

3 MR. WOOD: Thank you.

4 Twelve, Your Honor, we would ask that -- that for
5 Falcon only that they file the list of creditors. There's
6 only two, and there's one equity holder. We don't think
7 that's over burdensome for them to --

8 THE COURT: Well, but if -- if you know who they
9 are already, I'm not sure how it's -- it's damaging to you.
10 And -- and, again, there's a lot of sequencing that goes on
11 early in these cases and -- and usually I try to allow
12 debtors to get done what they have to get done in -- in an
13 order that reflects what they think is -- is on fire and
14 what is less on fire. And -- and these motions, this
15 particular motion, is one that sort of falls into that. And
16 provided they're not asking for time that I think is -- is
17 egregious or inappropriate and will prejudice a party in a
18 -- in a material way, I usually show some latitude.

19 So, again, that's my view and, actually the party
20 I'm usually most interested in hearing from on this
21 particular issue is the U.S. Trustee's Office which is the
22 consistency police because I think consistency is a value
23 for all litigants in this courtroom where we -- we really
24 shouldn't be making things up case by case by case. And so
25 that's -- that's how I view those.

1 And let me ask in that connection whether the U.S.
2 Trustee's Office has any views about the application of this
3 particular order to this particular debtor. And it's fine
4 if you're agnostic.

5 MR. MORRISSEY: Yes, Your Honor. For the record,
6 Richard Morrissey for the U.S. Trustee.

7 First of all, a general statement which is that
8 the U.S. Trustee does not object to the relief sought in the
9 motion.

10 As -- as to the --

11 THE COURT: All right. I don't think you need to
12 say anything else if that's the case.

13 MR. MORRISSEY: Right.

14 THE COURT: But -- but --

15 MR. MORRISSEY: But I just -- I just thought that
16 in case the Court or parties in interest may be curious, on
17 the issue of a creditors' committee in -- where you have an
18 additional debtor coming on late, especially if there's a
19 debtor with only two creditors, we -- what we would not do
20 is have a separate committee for the Falcon case. It would
21 only be the unusual circumstance where there's a creditor
22 with an enormous case that's not already encountered for in
23 the other cases where we would conceivably add somebody to
24 the existing committee.

25 THE COURT: All right.

1 MR. MORRISSEY: But since none of those facts are
2 in evidence right now --

3 THE COURT: All right.

4 MR. MORRISSEY: -- all I'll say is that we have no
5 objection.

6 THE COURT: All right. Thank you.

7 MR. WOOD: Your Honor, with that -- with the
8 Court's comments, the U.S. Trustee's comments we will adopt
9 paragraph 12, Your Honor.

10 THE COURT: All right. So then I think we're up
11 to 14.

12 MR. WOOD: Fourteen. Your Honor, all we asked on
13 14 is that we receive notice of what those insurance
14 payments were for Falcon and who they're going to and why.
15 They're asking to pay prepetition insurance policies.
16 Again, Falcon is -- as we understand it is a non-operating
17 debtor.

18 THE COURT: All right.

19 MR. WOOD: And all we want is notice of what --

20 THE COURT: Yeah. I -- I would imagine that
21 there's no objection of the debtors to doing that and I -- I
22 see shaking of heads. So I think that that's something that
23 -- information you will get, and with that I will approve
24 14.

25 MR. WOOD: Thank you, Your Honor.

1 Fifteen, Your Honor, is cash management order. We
2 have no opposition to entering the order with this -- a
3 couple of caveats.

4 It -- it allows transfer -- our concern is the
5 intercompany transfers.

6 THE COURT: All right. Well, I -- I think we've
7 -- we've definitely spent a lot of time talking about
8 intercompany transfers in this case and inter-debtor
9 transfers, and I don't know how much conversation you've had
10 with the committee and the debtors about understandings that
11 have been reached to address those concerns. And there --
12 there have been -- I think that was one of the primary
13 concerns of the committee when it came on the case.

14 And so I think you're -- you're not wrong to
15 identify it as a concern, but I think that there has been a
16 lot of attention paid to that and I -- I don't see any
17 reason why that concern and that attention wouldn't also
18 apply to this debtor now that it's in this case. So -- and
19 what I guess I'm trying to do is avoid -- avoid having an
20 extended discussion that we've already had in this -- in
21 these cases generally about it.

22 So let me ask if the debtors and the committee can
23 shed any light on this, one, as to whether there's been
24 conversations with this particular creditor of this
25 particular debtor, and, two, whether there's anything you

1 can say to -- to perhaps allow comfort.

2 MR. WOOD: Your Honor, my issue is narrow. Can I
3 state it and then --

4 THE COURT: All right.

5 MR. WOOD: -- that will save us some time.

6 It's -- I couldn't tell from the budget that's
7 attached to these what monies are actually going in and out
8 of -- of Falcon, and that was my only concern is --

9 THE COURT: All right.

10 MR. WOOD: -- how do we determine what Falcon --
11 so as --

12 THE COURT: All right.

13 MR. WOOD: -- so as the creditors of Falcon we can
14 monitor that.

15 THE COURT: All right. Well, let me ask did you
16 raise that question with the debtors --

17 MR. WOOD: Yes.

18 THE COURT: -- before today? All right. Is that
19 something that the debtors can provide information on?

20 MR. MILLET: Well, Your Honor, it was raised
21 outside the courtroom --

22 THE COURT: Oh.

23 MR. MILLET: -- a few minutes beforehand.

24 THE COURT: Well, that -- the reason why I mention
25 that is these sort of things should not be coming to me in

1 the first instance and -- because they are conversations
2 parties can really can and should have outside the
3 courtroom. I -- I understand there are times when I get
4 dragged in the middle of what seem to be negotiations and it
5 happens sometimes unavoidably, but when I can avoid it I
6 would like to.

7 So -- so what I would ask is you have that
8 conversation and if it's still an issue you can give
9 chambers a call and we'll figure it out. But I -- I imagine
10 that you can find a way to get that information in -- in an
11 acceptable form from the debtors.

12 MR. WOOD: That's fine, Your Honor. With that
13 caveat, we will adopt 15.

14 Sixteen is ordinary course professionals. We --
15 again, we just wanted to know -- get -- have notice of which
16 ordinary course professionals are being retained in -- in
17 Falcon.

18 THE COURT: All right. I'll -- I'll have the same
19 view on that.

20 MR. WOOD: Seventeen, Your Honor, we have no
21 objection.

22 Your Honor, the professionals, we raised the issue
23 of conflict. Your Honor, we have -- all we want is to
24 reserve the rights on conflict and on the -- our ability to
25 object to the allocation of administrative fees to the

1 Falcon estate.

2 THE COURT: Well, I -- I think that's a right that
3 you have already, right; isn't it? So -- so I think that
4 that's fine. I think the committee's papers on that also
5 were helpful. So what does that leave?

6 MR. WOOD: Your Honor, that -- there was a catch
7 all phrase that -- that allowed for application of future
8 orders. I understand that's going to be taken out because
9 it's not necessary at this point, and that leaves joint
10 administration order and, Your Honor, in light of the
11 Court's comments --

12 THE COURT: Well, I think there are also some --
13 there are some -- there's 20, 21, 22, 23, 24, 25. So --

14 MR. WOOD: Those are all professionals.

15 THE COURT: Those are all professionals, so I
16 assume you have no objection. It's sort of if the shoe
17 fits, then it will be something that -- that this particular
18 debtor will be involved in. If it doesn't, then -- then it
19 won't.

20 So -- all right. So --

21 MR. WOOD: And the joint administration, Your
22 Honor, we will withdraw our objection to the --

23 THE COURT: All right.

24 MR. WOOD: -- to that order.

25 THE COURT: All right.

1 MR. WOOD: Thank you, Your Honor.

2 THE COURT: Thank you.

3 So I imagine your rebuttal can be fairly brief.

4 MR. MILLET: It will be very brief, Your Honor.

5 Mainly, in essence, that's fine with --

6 THE COURT: All right.

7 MR. MILLET: -- a couple of very short comments.

8 The insurance matter, one thing that has not been
9 addressed is there is an insurance claim in favor of this
10 debtor of about \$650,000 for damage to an aircraft it used
11 to own. That's why we're trying to protect this insurance
12 policy. There may be no prepetition amounts due, but we're
13 trying to make sure that if there, it's covered. So that's
14 that point there.

15 With respect to future orders, that's correct.
16 The order will not have a catch-all global provision that
17 says anything offset in the future will --

18 THE COURT: Right.

19 MR. MILLET: -- automatically be here. It will be
20 applied to Falcon. However, there are two motions or
21 there's a handful of retention motions that have already
22 been filed that are pending or being adjourned to a future
23 date. And because they were filed before the Falcon filing,
24 they didn't specifically say they pertained to Falcon.

25 THE COURT: All right.

1 MR. MILLET: Whatever orders are entered in those,
2 the Court can --

3 THE COURT: All right. Well, just -- just make it
4 clear to --

5 MR. MILLET: -- address at that time that --

6 THE COURT: -- to the objector here what -- what
7 orders those are and -- and what you're seeking to do and --

8 MR. MILLET: It's only two motions and we'll --

9 THE COURT: All right.

10 MR. MILLET: -- do that, Your Honor.

11 THE COURT: All right.

12 MR. MILLET: Thank you very much.

13 MR. WOOD: Your Honor, I apologize to the Court.
14 There was one order that the debtor took off the list and we
15 agreed to add back on, and it's the trading order. I think
16 it's 49. I think --

17 THE COURT: All right.

18 MR. WOOD: -- Barclays have concern. We have no
19 opposition to that being adopted in the Falcon case. That's
20 one of the orders the debtors' took off in their reply.

21 THE COURT: All right. Thank you.

22 MR. MILLET: I'm tempted to object just to make
23 something, but that's fine, Your Honor. We certainly accept
24 that.

25 THE COURT: That's fine. I will wait for an

1 appropriately drafted order to address the revised relief as
2 we've discussed.

3 MR. WOOD: And, Your Honor, may I be excused?

4 THE COURT: Certainly.

5 MR. WOOD: Thank you.

6 THE COURT: All right. I think we are on cash
7 management; is that correct?

8 MS. WEISS: Your Honor, if I may, this is Janet
9 Weiss from Gibson Dunn. If I may, I would like to do the
10 KPMG retention --

11 THE COURT: All right.

12 MS. WEISS: -- motion first.

13 THE COURT: Let's do that.

14 MS. WEISS: This order is an order of the debtors
15 to retain KPMG in its capacity as providing valuation advice
16 with respect to the underlying portfolio assets of these
17 debtors. As you know the Arcapita Bank has operations on
18 the AIHL side. The assets really go down to the levels that
19 are below the debtors. And the valuation work that is
20 proposed to be done by KPMG is at the level that is below
21 the debtors, but is the source of the value, the primary
22 source of the value that will be used for distributions in
23 this case.

24 THE COURT: All right. Well -- well, what --
25 let's just sort of get to the issues here. What -- what can

1 you tell me about the division of labor that's contemplated
2 between KPMG, Alvarez and Marcel and Rothschild, which I
3 think is -- and -- and perhaps you've already had further
4 discussions that -- that the issues have changed in the
5 sense that maybe you've reached some agreements, maybe you
6 haven't. But that seemed to be the primary objection.

7 MS. WEISS: Yeah. Okay, Your Honor. I'm happy to
8 answer that. And I don't think we have any agreements on
9 that issue.

10 What KPMG is doing in its valuation is really more
11 akin to an appraisal. It's going to the underlying assets
12 in the locations around the world where they are located.
13 They are not valuating the debtors' interests in the assets
14 except to -- in two conditions. One is, obviously, it's --
15 it's going to value the proportional interest, and then in
16 the forced sale context it will look at selling the minority
17 interests in these assets.

18 But it's not valuing in general the collection of
19 assets to come to what is the value of the debtor.

20 THE COURT: Although, isn't that implicit in what
21 -- in what you've just told me if you're valuing the asset
22 by assets, you add them all up and then you have the value
23 of the debtor, right? Am I missing something?

24 MS. WEISS: Your Honor, these are -- as you know,
25 these are minority investments in a whole host of different

1 classes of assets. And what these appraisal is doing is
2 just looking at the value of the assets. It doesn't layer
3 in the capital structure. It doesn't layer in, I don't
4 believe, the money that needs to go into these assets to get
5 the value.

6 THE COURT: All right.

7 MS. WEISS: And their work --

8 THE COURT: It's just the hard asset itself that's
9 the subject of whatever these companies are doing.

10 MS. WEISS: Yes, Your Honor.

11 Okay. I'm sorry, Your Honor. Also, it -- it
12 includes the future income strength. But these are more
13 akin to valuations, I would say a comparable analogy would
14 be a valuation of a piece of real estate, an operating piece
15 of real estate. It -- it doesn't tell you how the debtor is
16 going to reorganize with it, but it does tell you what the
17 value is.

18 THE COURT: All right. So how does that compare
19 with the other two firms?

20 MS. WEISS: What Rothschild is doing is they are
21 looking for the exit strategy. They are looking for how
22 does this company get out of bankruptcy, Chapter 11. And
23 how -- what Rothschild is doing is, obviously, it needs to
24 know the underlying value of the assets. These assets are
25 spread throughout the world. They require local knowledge

1 of markets. They require knowledge of special asset
2 classes, and that's not really the focus of what Rothschild
3 does.

4 What Rothschild is going to do is going to look at
5 the asset value, is going to layer on the existing capital
6 structure. It's going to do the analysis of what kind of
7 debt structure these debtors can maintain going forward, and
8 it's going to come up or assist the debtors in coming up
9 with an economic solution to what this case is.

10 One example that I think makes it clear what's the
11 division of labor is that KPMG is substantially finished
12 with the assets that they're valuing and they've done a
13 substantial portion of the work. And -- which is the reason
14 why KPMG is going forward today and not being adjourned with
15 the rest of the retention hearings.

16 By contrast, Rothschild is far from over with its
17 work. It's beginning to start in earnest. It has been
18 working, but it's beginning to start in earnest when it gets
19 the value of the underlying assets. And it -- it layers on
20 how we can take these assets, maximize the value, get a
21 distribution to the creditors and come out of the
22 bankruptcy. So that's --

23 THE COURT: All right. And what is Alvarez and
24 Marsal --

25 MS. WEISS: Alvarez --

1 THE COURT: -- doing?

2 MS. WEISS: -- and Marsal is really -- is really
3 more like a crisis management firm. What they are doing is
4 the creditors' committee has seen a huge number, really a
5 huge amount of information that's coming from the debtors,
6 and that's Alvarez and Marsal that's really leading the
7 chart on that. They are the ones who are attracting the
8 cash flow. They are the ones who are doing the day to day
9 financial information that's coming out of the company.
10 They are the ones who are really the liaison with the
11 creditors' committee.

12 THE COURT: Well, but -- but let me ask you what I
13 think is the question or the point that will be made
14 shortly, which is, is it more efficient to have fewer
15 parties offering these services because once you get
16 comfortable with the debtors' business and its assets,
17 there's a certain learning curve for that in order to do any
18 of these jobs that you're talking about, so -- except
19 perhaps maybe the appraisal, but particularly for Rothschild
20 and Alvarez and Marsal.

21 MS. WEISS: It's -- it's -- as Your Honor knows,
22 it's not uncommon or it's actually -- it's fairly typical to
23 have both an investment banker and a crisis management firm.
24 And they do very, very different things. And the kind of
25 capacity that Alvarez and Marsal has to have people go on

1 site to look at the cash flow, to look at different asset
2 classes and figure out --

3 THE COURT: I realize that, but there's been a
4 point made, I think, at a number of these hearings about the
5 limited amount of cash and I think that that sort of
6 heightens the scrutiny that -- that you're going to get and
7 that you -- you are getting from interested parties as -- as
8 to hiring professionals. I suspect that that's what this is
9 a reflection of.

10 So that's why I raise -- raise the point. So let
11 me -- tell me whatever else you want to hear -- whatever
12 else you want to say and then I'll hear from other parties.

13 MS. WEISS: What I think is the most efficient way
14 to run the cases and the best way to conserve cash is to
15 have the people who are best efficient, who are of the best
16 and most knowledgeable at doing the specific task. And what
17 -- and that's what we've done here. We are not having any
18 learning curve on exactly what needs to be done in a chapter
19 11 case, how to liaison with the committee exactly these
20 kinds of assets from Alvarez and Marsal. That's their bread
21 and butter and they do it very efficiently and they do it in
22 a very cost effective manner.

23 Rothschild, on the other hand, is an investment
24 banker and they provide a different sort of service, and the
25 efficiency is they know what they're doing. There's no

1 learning curve on getting the economic exit strategy for
2 this company and everything else that they do. So the most
3 efficient thing we can do is we can get people who are
4 specialized in the work stream that we're asking them to do.

5 THE COURT: All right. All right. Let me hear
6 from any party that wants to be heard in connection with
7 this.

8 MR. DUNNE: Good afternoon, Your Honor. For the
9 record Dennis Dunne from Milbank Tweed on behalf of the
10 creditors' committee.

11 I'm not going to go over our arguments in the
12 pleading, but I did want to discuss briefly a couple of
13 things, the committee's primary concerns here, as well as
14 address what I think some of the disconnect is on the
15 valuation that KPMG would perform compared to what
16 Rothschild might do here, particularly on -- in this company
17 on these assets.

18 But starting with the committee's primary concerns
19 -- and this is going to be, I think, one of my mantra's in
20 the case -- is that this concern deals with the overall fees
21 and administrative expense costs in the estate when we're
22 dealing with an estate with limited cash resources. Right.
23 Basically, they have two asset classes.

24 On the one hand they have \$122 million of cash
25 that's likely not to increase in the near term absent a

1 debtor-in-possession financing facility, and they have a
2 number of illiquidated (sic) investments of uncertain value
3 that they hold through various intermediate holding
4 companies and structures.

5 The administrative expense costs for professionals
6 on both sides of the aisle can substantially erode into the
7 cash that's on hand as well as the ultimate recoveries for
8 creditors here. The committee has been very concerned about
9 driving down those costs. They're meeting with the debtors
10 to discuss ways to streamline work streams and to reduce
11 professional fees in this case. But then we come to our
12 second concern, which is a little bit of the
13 incrementalization and the creeping retention of
14 professionals.

15 We submit, and this is one of the reasons behind
16 our objection, that it's better practice to retain the major
17 advisors on the debtors' side and on the committee's side in
18 well -- one fell swoop at one hearing where interrelated
19 concerns of efficiency or overlap can be addressed by the
20 parties together and adjudicated by Your Honor at once
21 because, when viewed in isolation, each of these could
22 appear reasonable. But when you aggregate them, and what
23 we're principally concerned about is the aggregate fee load
24 for the professionals in this case, they could become
25 unreasonable.

1 So let me turn to KPMG. If you've looked at it in
2 isolation, I don't believe that their economic structure is
3 objectionable. They're being compensated on a discounted
4 hourly basis -- rate. We understand that one of their
5 principal tests is the valuation of the portfolio company,
6 which companies -- 39 of them -- which is a critical element
7 of the path to any plan negotiations. And we -- we
8 understand that -- and know that A&M has been retained to
9 provide turn-around and operational assistance and, frankly,
10 as Ms. Weiss said, most of the work product that we've seen
11 from the debtors has -- has emanated from A&M.

12 If this is where it ended, the committee's
13 concerns might have been substantially ameliorated. But we
14 also know that there's -- there's Rothschild out there and
15 it -- and it's -- frankly, the committee's been struggling
16 with where does Rothschild fit in with KPMG and A&M. In
17 many cases, Rothschild performs the principal enterprise
18 valuation work as well. In this case they are not, at least
19 with respect to the portfolio company levels.

20 And we have raised the issue of potential
21 duplication in efficiency and overall costs with respect to
22 three advisors on the debtors' side, but we haven't resolved
23 those issues yet. So let me address the valuation issues.

24 As I've said before, this is not a manufacturing
25 company. It's an investment vehicle. They own 35 interests

1 in various companies through a series of intermediate
2 holding companies. What KPMG is doing, as I understand it,
3 is they're going through each of those portfolio companies
4 and valuing each of them so that you'll have a sense of what
5 each one of these investments is worth.

6 I think Your Honor hit the nail on the head when
7 it said, well, doesn't that -- don't you kind of just build
8 up from that and slot it in? I -- I believe you're right;
9 that, yes. It may be that with respect to portfolio company
10 A, the debtors only have a net 20 percent interest in it.
11 But you'll get the aggregate number from KPMG. Let's assume
12 they do that and it's worth \$100. Okay. Well, 20 percent
13 of that is \$20. That's on the asset side.

14 They also mention you have to put the balance
15 sheet on. Okay. Well, there's -- you know how much the
16 debt for borrowed money is in these estate and you put that
17 together. Is that the valuation work that we expect to pay
18 Rothschild market rates for. That's what we're -- we're
19 struggling for because in many cases they -- struggling with
20 because in many cases they have done more than that.

21 And if all they're -- they're doing -- and I don't
22 mean to minimize it. But if what they're really principally
23 retained for its plan negotiation between the various
24 creditor constituencies, well, then let's call it that and
25 let's -- let's make sure that we don't have overlap and make

1 sure that people are -- are being compensated commensurately
2 with that scope of services if that is -- is accurate.

3 So in sum, Your Honor, we don't begrudge KPMG
4 being paid for what we believe is necessary work that has
5 been done to date. Somebody has to value the portfolio
6 companies. We would prefer that Your Honor adjourn
7 consideration until -- of their retention application until
8 the June omnibus hearing so we can hear everything at -- at
9 once.

10 Short of that, we would propose that approval
11 today be on the interim and let us return to the court on
12 the June omnibus hearing for consideration of any final
13 approval. That way Your Honor can have both KPMG and -- and
14 Rothschild's order side by side while we vet any issues as
15 to scope or overlap and you can decide those issues
16 together.

17 Failing that, I think it -- it actually puts
18 Rothschild in an unfair position that it would put all the
19 risk on their application to solve for any adjudicated
20 concerns of inefficiencies or overlap or -- or scope.

21 THE COURT: Well, what's your understanding of the
22 timing for KPMG? I know you say it -- that proceeding with
23 it today would put all the risk on Rothschild, but it sounds
24 like KPMG has -- has already done most of the work and, in
25 fact, I was unclear whether they will have done all of the

1 work by the time we reconvene in June, in which case if
2 Rothschild hasn't -- has not really gotten that far because
3 they're taking -- what they are taking the values from KPMG,
4 then, you know, no -- no slight to that firm as opposed to
5 any other firm, but just in the sequence of things, that
6 might be the appropriate place to -- for any limitations you
7 might urge.

8 So I -- I am a little concerned and hate to push
9 off certain kinds of retentions too far where it's clear the
10 work is -- is in progress and nobody begrudges the fact that
11 the work is necessary and -- and needs to be in progress.

12 MR. DUNNE: Yeah. No. It's -- it's an interest
13 comment because it's -- I haven't fully heard it before
14 today characterized that way. And you could hear what was
15 said today, and let's explore this, as being that KPMG is
16 about done, right; that they are going to finish their
17 valuation work. I know that they were targeting delivery of
18 their first set of valuations for the end of the month, but
19 assume -- this month, so today. So assume it slips --

20 THE COURT: Right.

21 MR. DUNNE: -- a few days or a week. Is what's
22 being contemplated, and this really is a question for the
23 debtors because I'm not clear in my mind, that they go pens
24 down and their work is done and they hand the baton to
25 Rothschild to say run with these numbers and -- and do what

1 you want with it on -- you know, for plan purposes or
2 negotiations? That's not how I -- I thought they were going
3 to have an ongoing role and a continuing role interfacing
4 and working with Rothschild going forward --

5 THE COURT: And I guess that's -- that's more of
6 your concern, which is if there's an eye going back and
7 forth what --

8 MR. DUNNE: Right.

9 THE COURT: -- does that look like.

10 MR. DUNNE: Yeah.

11 THE COURT: All right. Thank you.

12 MR. DUNNE: That's all I have, Your Honor, unless
13 there are questions. Thank you.

14 THE COURT: All right. Anyone else want to be
15 heard in connection with the application?

16 MR. ALEXANDER: Good afternoon, Your Honor. Derek
17 Alexander of Debevoise and Plimpton for Rothschild,
18 investment bankers and financial advisors to the debtors.

19 I just want to make a couple of comments and so as
20 you've clearly seen, even though the hearing for
21 Rothschild's retention is not up to date, it is --

22 THE COURT: People are talking about you.

23 MR. ALEXANDER: -- very much Rothschild's --

24 THE COURT: Yes.

25 MR. ALEXANDER: -- role in this case and their fee

1 structure that's being sort of looked at side-long in
2 connection with this hearing.

3 First, I want to make clear that, you know, the
4 debtors have, you know, had their application in for
5 Rothschild since April 3rd, and in the two months since
6 Rothschild has been very much at work. It's work that has a
7 great deal to go, but it's already very much underway.
8 Rothschild is working on its business plan, working with the
9 debtors and with the committee on -- you know, on the
10 services that the debtors have retained Rothschild to do.

11 We're certainly concerned, and you can see why
12 today, at the risk that any professional faces, particularly
13 any professional with a fee structure such as investment
14 banks typically have at any delay in retention. It raises
15 concerns that come simply from getting out of sync like
16 this.

17 And I think for now it's -- it's important for
18 Rothschild to make clear that, you know, some of what's
19 being said addresses Rothschild's scope of services,
20 Rothschild's fee structure are things that we'll address
21 together with the debtors in due course. There are things
22 that have been said in the papers and today that, you know,
23 we will address as irrelevant, even though we're continuing
24 to work with the committee to try and come up with some sort
25 of consensual resolution.

1 We think that the scope of services is clear. We
2 think that the overlap, the potential for overlap has been
3 addressed. And we also think that the total fees and
4 particularly the fees of Rothschild are reasonable, but
5 we'll come to that in due course.

6 THE COURT: All right. Thank you.

7 MR. MORRISSEY: Your Honor, there is one thing
8 that I was planning to say today and one thing that I wasn't
9 planning to say, although it was inspired by one comment
10 made by the Court. I think I'll start with that.

11 The Court mentioned the fact that with various in
12 sundry financial advisors, investment bankers, different
13 professionals that there's a learning curve involved, and
14 that got me to thinking that although KPMG's intended role
15 here is circumscribed as Ms. Weiss was describing, I think
16 that KPMG's role has also evolved since it first came on
17 with the company.

18 As far as the learning curve concern is -- is
19 concerned, the fact is from the application that KPMG was
20 involved with Arcapita prepetition as well. And in
21 paragraph 11 of the application, which is dated May 4th, the
22 engagement was principally focused on a potential
23 refinancing and/or restructuring of the debtors' \$1.1
24 billion syndicated Marabajah facility. And so its role has
25 morphed a little bit since then.

1 So although -- so I think that the division here
2 has been constructed somewhat artificially because of the
3 fact that -- that roles have changed.

4 But still I do believe that if the debtor succeeds
5 in -- in telling the Court that KPMG is going to do X and
6 Rothschild is going to do Y and Alvarez and Marsal are going
7 to do G and -- or C, and -- and you can put a wall of
8 separation between the different firms, I think it will work
9 out fine.

10 But I do believe that Mr. Dunne's point is well
11 taken that I don't think you can do that or accomplish that
12 if the final hearings occur at different times. The -- I
13 understand from what Ms. Weiss has said that KPMG's work is
14 mostly complete at this point. The application was filed on
15 May 4th, which is about roughly speaking a month and a half
16 after the petition date.

17 Now we usually are the people complaining that
18 retention applications are filed too soon for Rule 6003
19 reasons, but in this case if the debtor wanted to get a
20 final order done so quickly for KPMG, it could have filed
21 the application a little sooner and -- and had them all
22 lined up a little before.

23 Now part of the delay had to do with the
24 difficulties with formation of the committee and all, and I
25 understand -- and I understand that. But I -- I do agree

1 with Mr. Dunne that this should be a -- if it is approved
2 today, that it should be an interim and not a -- and not a
3 final order.

4 I also wanted the Court to be aware that Mr. Dunne
5 said that the committee is still negotiating concerning the
6 Rothschild retention, also A&M. The U.S. Trustee is doing
7 the same thing. So we haven't quite finished.

8 I would like to say, however, in support of this
9 application that we have resolved certain issues. There
10 were issues as to the form of the order that one of my
11 colleagues, actually in my absence, negotiated with KPMG.
12 Also, there were issues -- conflict issues -- potential
13 conflict issues --

14 THE COURT: Yeah. And I -- I saw a few
15 supplemental --

16 MR. MORRISSEY: Yes.

17 THE COURT: -- declarations addressing that.

18 MR. MORRISSEY: And those -- and those elide our
19 concerns on -- on that score, also.

20 But I do believe that if the KPMG retention order
21 is entered on a final basis today we're going to have
22 something hanging over our heads until the next hearing,
23 which is going to be a cloud of uncertainty regarding
24 Rothschild's role, where it starts, where it ends, and is
25 there going to be overlap between that and -- and KPMG and

1 what they're doing or what they've done. And as I said a
2 moment ago, I think constructing the wall of separation
3 between the two is going to be a lot easier if the final
4 orders are entered --

5 THE COURT: All right.

6 MR. MORRISSEY: -- at the same time.

7 Thank you, Your Honor.

8 THE COURT: All right.

9 MS. SPIGEL: Good afternoon, Your Honor. Robin
10 Spigel, Willkie, Farr and Gallagher, LLP, counsel for KPMG,
11 LLP.

12 I just wanted to clarify that KPMG has been
13 working diligently since the petition day -- date in good
14 faith and has done a substantial amount of its work. It
15 projects to be -- it projects that it will be substantially
16 complete, the work will be, by the end of June and,
17 certainly, there will be a lot of reports, valuation reports
18 delivered to the debtors and other type of work product by
19 June 26th. So delaying the retention until June 26th, even
20 on an interim basis, really exposes them.

21 In addition, we had filed a supplemental
22 declaration just clarifying that KPMG is constrained by its
23 internal policies. It can't deliver its work product to an
24 entity that's not a client, essentially, because the
25 retention hasn't been approved. So if we put off another

1 month, they're going to have to either slow roll what
2 they're doing or they -- you know, they can continue to
3 work. They have been working, but they certainly are going
4 to be constrained to provide the work product that the
5 debtors need to move forward on these cases. And it pushes
6 everything back by a month for what seems like reasons of
7 other firms and not KPMG. I'm not -- I haven't heard here
8 today that anyone really disputes --

9 THE COURT: Well -- well, I don't think -- and,
10 again, this is one of those things where in making certain
11 arguments it -- it sometimes comes off as casting aspersions
12 about somebody else. I don't think anyone's casting any
13 aspersions on the professionalism of anybody. And it's just
14 a matter of the sensitive cash position of this -- of this
15 debtor -- these debtors and -- and just sort of where --
16 what one party is doing begins and ends as opposed to
17 another party.

18 So I don't -- I -- what I heard Mr. Dunne just say
19 was that what you're doing is something that's very
20 important and it has to be done. So I -- I think you have
21 the committee at hello as -- as to that issue. So I don't
22 take any -- I don't take it as -- as in any way, shape or
23 form to be a reflection of KPMG.

24 So I appreciate your comments and I understand why
25 you need to stand, but I -- I wouldn't worry about that.

1 MS. SPIGEL: Okay. I just wanted to clarify --

2 THE COURT: Fair enough.

3 MS. SPIGEL: -- KPMG's position.

4 THE COURT: All right.

5 Let me just say what I'm -- what my concerns are
6 and what I'm inclined to do.

7 I don't take this as -- as sort of aspersions on
8 anyone. It often can be difficult and challenging to figure
9 out where the division of labor is because you're asking
10 professionals to do the job to the best of their abilities
11 and sometimes for pennies and for a pound, and that's not
12 the fault of the professional. So it can be challenging.

13 And this issue came up quite a bit recently in the
14 American Airlines' case and was fairly hotly contested on a
15 number of -- of applications. But what I tried to do at
16 least there is -- is deal with them in groups where people
17 are working on similar issues where you have the concern
18 about the overlap to deal with them together because,
19 otherwise, I'm not in a position to -- to make that call.

20 Now, first of all, that assumes that I want to
21 make the call. I don't because you all, of all the people
22 who -- who have spoken about this, I'm the one that's least
23 knowledgeable in terms of trying to decipher that.

24 So what I'm inclined to do is -- is approve KPMG
25 on an interim basis, which I don't think is in any way,

1 shape or form a reflection of the work that they are doing,
2 which everyone seems to be -- agree that it is important and
3 needs to be done, and no one's, I think, said anything
4 negative in any way, shape or form about the work that
5 they've done on the merits. So, but rather, it's a question
6 of -- of what the professionals are going to be doing going
7 forward.

8 Now my hope is that parties in good faith can sit
9 down and try to figure out what an appropriate division is
10 here and if there's some bells and whistles language-wise
11 that you can work those out and then we can get this done
12 fairly quickly. Again, I -- it's -- it's often difficult
13 for a Court to try to figure out when you get into the weeds
14 of some of these retentions where one -- one starts and one
15 ends.

16 If you have it worked out such that the issue
17 about a deliverable is a problem and you say, well, we've
18 reached some sort of agreement about what -- and I don't see
19 any reason why you couldn't reach such an agreement -- about
20 what to do in terms of the various professionals and the
21 division of labor. And you say, but -- and having that
22 worked out we would really like to come in so that we can
23 get a final order and we can get -- can get this -- our
24 deliverables to us, then you just call chambers and we'll
25 set something up before the end -- end of June because I --

1 I don't think it's anyone's interest to slow that down if
2 it's going to cause harm to the debtor and to the case.

3 MS. WEISS: Your Honor, I have a couple of
4 comments, if I may.

5 One, I think we're right at that point where we
6 need the deliverable, and KPMG is going to be constrained to
7 giving it to us causing delay and probably additional
8 expense while we're in the bl. So I think that -- I think
9 that we're really right at that time. Do we have a week
10 before it's done? I don't know the exact, but we're not --
11 you know, they're only three, four more weeks before the
12 next hearing and we're already there.

13 So let me just say a couple of comments about what
14 does the delay get us.

15 The committee's --

16 THE COURT: Well, the delay partially is a result
17 of what I have in front of me and what I don't, and whether
18 the allegation is -- well, not the allegation. That's too
19 strong a word. Where the concern is that the overlap is
20 between a professional I have in front of me and a
21 professional I don't. I'm -- I'm whistling in the dark. I
22 -- I really don't have a basis, and then we end up having to
23 have the other entity, whose application is not up, having
24 to stand up and say, no. We're good. We're doing
25 everything we're supposed to, and I don't even have those

1 papers in front of me and I don't blame them for doing that
2 because people are talking about them.

3 So I don't see any reason this -- this can't be
4 fixed quickly. And, again, fixed implies that there's
5 something that's broken. It really is probably an
6 overstatement; that people can't have a meeting of the minds
7 as to where to draw these lines.

8 Again, I haven't heard anybody say that what KPMG
9 is doing and will finish doing very shortly, perhaps within
10 the hour even, is not of value to the estate and isn't being
11 done at rates that everyone thinks is appropriate. I think
12 the concern is about what's going to happen going forward.
13 Is it a deliverable -- it's going to be handed over and then
14 they're done? Is there going to be ongoing consultation.
15 And, again, it -- it's not -- it's not a criticism that
16 those issues have to be hashed out. They -- they always
17 have to be hashed out.

18 So I would imagine you could -- you could bring
19 those conversations to a fruitful conclusion very quickly.
20 And I have a lot of things going on in this courtroom in the
21 next month, but I -- if you all can figure it out, I'll --
22 I'll squeeze you in and I -- because I -- no one has a
23 desire, I think, to delay the ability of the debtors to get
24 the information that they need.

25 So -- so that's where I'm coming out. Again, from

1 your perspective -- I completely understand your
2 perspective, but -- but put on the robe for a second, which
3 is how am I supposed to make a decision about whether
4 there's overlap here when I only have one application in
5 front of me? I really can't. And it -- and it puts me in a
6 position of saying unkind things without any foundation, and
7 I don't like to do the first when I can avoid it, and I
8 certainly don't want to do it when I don't know what I'm
9 talking about, and that's where I am.

10 So I can't -- I really can't do it where -- on
11 this kind of a record. But, again, I would think that the
12 parties can circle around and get this done very quickly,
13 and then we'll -- we'll come in and we'll get KPMG done on a
14 final basis. The debtors can get their deliverables and we
15 can then -- the other -- that will also give us the benefit
16 of knowing that the other retentions are largely -- largely
17 been worked out even before they come in for a hearing.

18 MS. WEISS: Your Honor, if I -- I understand your
19 comments and I -- we will do that. I just do want to make
20 one comment about the timing, which was that all of the
21 retention hearings were up for today. At the request of the
22 U.S. Trustee we adjourned them to the hearing on the 26th,
23 and the only reason we couldn't do that with KPMG was due to
24 the nature that their work was going to be substantially
25 completed, they don't want to provide work product or

1 reports --

2 THE COURT: All right.

3 MS. WEISS: -- without being formally retained.

4 And so, Your Honor --

5 THE COURT: Well, I -- I can understand your
6 frustration. It's -- but, again, what I have in front of me
7 I have not read those papers on the other retentions because
8 they weren't up for today. So I -- I'm not in a position
9 and don't think it's prudent or fair to shoot from the hip
10 on that. And I think what Mr. Morrissey said is right. I
11 can envision a circumstance where it does make sense to say,
12 here's what you do, here's what you do, and here's what you
13 do and there's not a problem at all. But I think folks are
14 sensitive given the cash situation of the company.

15 So I would ask parties to speak soon, maybe right
16 after this hearing, and to try to get this done quickly, and
17 that you would let me know and I'll -- I'll squeeze you in
18 as quickly as I can because I -- I have no desire to delay
19 it either if it's going to make things more difficult for
20 the debtors.

21 MS. WEISS: Okay, Your Honor. I -- when we are at
22 the point where it's going to delay, we will be sure to come
23 back to the Court because our -- that is our concern. We
24 don't want to start delaying cases.

25 THE COURT: Well, let me -- let me make it clear

1 what my offer is. My offer is if you've worked it out, come
2 in and we'll get this -- we'll get this done on a final
3 basis. If it's going to be a contested hearing, I still
4 don't have the other applications teed up, so then you are
5 stuck with the end of June because I -- I just can't pull
6 that rabbit out of my hat given the schedule that I have
7 this month.

8 So, again, these issues are almost uniformly
9 worked out in large cases because people are professionals.
10 Everyone understands what has to be done and it's just a
11 matter of getting a certain amount of comfort. So I think
12 it's unfortunate that things sort of got teed up in sort of
13 a split way, but I -- unfortunately, that's water under the
14 bridge so I can't really do much about that at this point.

15 MS. WEISS: Okay. Thank you, Your Honor.

16 THE COURT: Thank you.

17 MS. WEISS: The next thing I would like to get to
18 is the cash management order. Your Honor, as you know,
19 we've been living with the interim cash management order
20 since the first days of the case. It's, as you know, a
21 fairly unusual situation in that these orders are not for
22 cash collateral. They really came up in the sense of cash
23 management and then had added on top of them as a resolution
24 the budget, and the budget now has become the major form of
25 communication between the debtors and the committee in terms

1 of what's going to happen going forward.

2 So we are here on another interim budget. I've --
3 both parties are here, but both SCB, Standard Charter, and
4 the committee have agreed to the form of the budget.
5 Alvarez has supplied a huge amount of information with
6 respect to every expenditure that's made, the basis for
7 them.

8 THE COURT: Give me one second.

9 (Pause)

10 THE COURT: I'm sorry. Proceed.

11 MS. WEISS: So Alvarez has provided a huge amount
12 of information, and based on a -- that information and the
13 discussions among the parties, we were able to agree on the
14 budget.

15 In terms of -- and I will in a minute let both of
16 those parties speak. There was one request by the committee
17 about changing the form of order which Your Honor knows we
18 have done now for the second, third and forth, and the
19 committee has requested that we put in the order language
20 making clear that this order does not give the debtors the
21 right to do transactions or spend money that is outside the
22 ordinary course of business and that's not in the budget.

23 And, Your Honor, we do not interpret these orders
24 to be that. We interpret these orders to be authority to
25 spend what's in the budget and as -- as a consequence of

1 being a debtor-in-possession being able to conduct business
2 in the ordinary course.

3 THE COURT: All right. Thank you.

4 MS. WEISS: Thank you.

5 THE COURT: All right. Anyone want to be heard in
6 connection with, I believe we're talking about the fifth
7 interim; is that correct?

8 MR. FLECK: Yes, Your Honor.

9 THE COURT: As I said before, you're not anywhere
10 close to the record, so -- on interim orders.

11 MR. FLECK: Good afternoon, Your Honor. Evan
12 Fleck of Milbank Tweed on behalf of the official committee.

13 I agree with Ms. Weiss said with respect to
14 agreement on the budget. We appreciate the debtors'
15 efforts. It always seems to come down to right before the
16 hearing, but we did get to an agreement and we're
17 comfortable with the budget.

18 The clarifying point that was mentioned is
19 important for us. I think it's manifest. But the reason
20 why we spend so much time on the budget is to get
21 comfortable that this is the working understanding between
22 the parties for the relevant time period. And in reviewing
23 the language of the order, it -- it wasn't clear that the
24 budget controlled what was being spent.

25 So our understanding and what we're going to tweak

1 the language to reflect is that with respect to non-ordinary
2 course payments, the debtors -- or transfers of cash that
3 the debtors seek to make that are outside of the budget,
4 they'll come back to the court for approval. We'll have
5 discussions --

6 THE COURT: No. I -- I think you're making
7 explicit what was already implicit.

8 MR. FLECK: That's right, Your Honor.

9 THE COURT: All right. That's fine.

10 MR. FLECK: And with that, we're comfortable with
11 the order and the budget.

12 THE COURT: All right.

13 MR. FLECK: Thank you.

14 THE COURT: No. I -- and I had always understood
15 it that way. I think Mr. Rosenthal has been very -- from
16 the get go to, I guess, lower the blood pressure of -- of
17 folks in the case, has used the budget in a very helpful way
18 to -- to get -- allow people to get comfortable with the
19 case as we've gone forward. So -- all right. Thank you.

20 MR. FLECK: Thank you.

21 MR. MORRISSEY: Your Honor, just one brief
22 comment. Only that the new arrival, Falcon, will come under
23 this cash management order, this interim cash management
24 order from here on in. I don't think there's any need to
25 put a special provision in the order to that, but -- to that

1 effect, but I figure the record should reflect the general
2 understanding that that is the case.

3 THE COURT: All right.

4 Yeah. Do we have an order that essentially brings
5 them in in terms of administratively consolidating them? I
6 guess we will once -- once one of these orders is entered
7 and, therefore, it will apply in the order course.

8 All right.

9 MR. GREER: Good afternoon, Your Honor. Brian
10 Greer from Dechert, LLP for Standard Charter. We have no
11 objection to that change.

12 THE COURT: All right.

13 Thank you.

14 All right. So I will await that order as tweaked
15 and I'll -- as part of a package of orders and with the
16 understanding that the Lusail order is time sensitive.

17 So -- and I guess your date is June 4th, so my
18 intent is if you can get it to me before the end of the week
19 I'll sign it before the end of the week.

20 MR. ROSENTHAL: Your Honor, actually, we -- I
21 think we revised the order while we were doing the rest of
22 the hearing --

23 THE COURT: Oh, well, that's productive.

24 MR. ROSENTHAL: So we are -- I think we are ready
25 shortly after the hearing to --

1 THE COURT: All right.

2 MR. ROSENTHAL: -- to send it -- to send it to the
3 Court.

4 THE COURT: Okay. Great. I'll --

5 MR. ROSENTHAL: One thing I would ask, Your Honor,
6 before we get -- before we adjourn, I know there's a hearing
7 on June 26th. I know there's a hearing on August 1st. I
8 don't believe there are any omnibus hearings scheduled after
9 that and we would -- we know we have something coming up
10 late August, early September, so we would like to get a
11 setting from the Court, if that's possible.

12 THE COURT: Absolutely. Yeah. Why don't you
13 contact chambers and we'll get you dates another couple of
14 months out as you need them. So, certainly. I have a -- as
15 I sort of a comically large calendar --

16 MR. ROSENTHAL: That's fine.

17 THE COURT: -- which I -- I use to do that. So I
18 don't have it -- I don't have it with me, but I'm sure we
19 can -- we can find you dates. Absolutely.

20 MR. ROSENTHAL: Thank you, Your Honor.

21 THE COURT: All right. And what I would like the
22 parties to do, just because I -- I don't want to leave KPMG
23 or the debtors high and dry here. Today is the 31st. I
24 would ask that you talk today or tomorrow to try to resolve
25 the issues as to overlap. I would think that -- that

1 something that is not going to be that difficult to do at
2 the end of the day considering all the other challenges in
3 this case.

4 MR. ROSENTHAL: Well, can -- one thing that Ms.
5 Weiss did not know was that there is a meeting on the 12th
6 of -- I forget what month this is. The 12th of June --

7 THE COURT: Don't worry. I have the same problem.

8 MR. ROSENTHAL: It's a meeting of KPMG and the
9 company. So we -- we've had other discussions with KPMG, so
10 I'm -- I'm not certain that --

11 THE COURT: No.

12 MR. ROSENTHAL: -- that will be an issue, but that
13 -- that is an impending date.

14 THE COURT: No. Well, that's why --

15 MR. ROSENTHAL: And we --

16 THE COURT: -- I would ask that -- that people
17 have conversations this week with an eye towards resolving
18 the issue and that you give -- give me a holler. I'll leave
19 it to you whether you want to do it Friday at the end of the
20 day -- let's make it Friday at the end of the day as to
21 where you are because, again, I don't see any reason -- this
22 is going to have to be grappled with sooner or later and
23 it's going to be a function of -- of whether there's a
24 deadline, and right now the only operative deadline is June
25 26th.

1 MR. ROSENTHAL: I understand.

2 THE COURT: And -- and I -- I don't blame anybody.
3 Everybody is governed by deadlines. So if there's no
4 deadline, then nothing will happen just because some other
5 deadline will intervene. So -- so I'm going to ask the
6 parties to talk to each other about this issue, give
7 chambers a call Friday by five o'clock just to let us know
8 where you are.

9 And if it's hopefully something that you've worked
10 out by then, then we can get you on for -- for the following
11 week, have you come in just for that limited purpose. I
12 imagine you'll have a much more sparse courtroom attendance
13 for that if we're just entering a final order on KPMG, but
14 then you'll be able to get your deliverables and not have to
15 worry about any impact on the -- on what you need to do.

16 MR. ROSENTHAL: Thank you, Your Honor.

17 THE COURT: Thank you.

18 All right. Anything else before we adjourn?

19 (No verbal response)

20 THE COURT: All right. Thank you very much.

21 (A chorus of thank-you.)

22 (Whereupon these proceedings were concluded at 3:50
23 p.m.)

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
Motion to Authorize - Debtors'		
Motion Pursuant to Sections 365 (d) (3) and 363(b) (1) of the Bankruptcy Code for Authorization for Arcapita to Make Investment to Support the Lusail Joint Venture	34	17
Motion to File Under Seal - Debtors'		
Motion for Order Authorizing the Debtors to File Under Seal References to Terms of Confidential Lusail Agreements	15	12
Application to Employee KPMG, LLP as Valuation Advisor Debtors' Application Pursuant to Section 327(a) and 330 of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ KPMG, LLP as Valuation Advisor to the Debtors Nunc Pro Tunc to the Petition Date	--	--

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RULINGS

DESCRIPTION	PAGE	LINE
Motion to Allow; Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code Directing that Certain Orders in the Chapter 11 Cases of Arcapita Bank B.S.C. (c), et al. be Made Applicable to Subsequent Debtor	--	--
Motion to (A) Authorizing Debtors to (I) Continue Existing Cash Management System, Bank Accounts, and Business Forms, and (II) Continue Ordinary Course Intercompany Transactions; and (B) Granting an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code	--	--

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

I, Sherri L. Breach, CERT*D-397, certified that the
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Sherri Breach

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