UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 12-11076(SHL)
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In the Matter of:

ARCAPITA BANK B.S.C. (C), ET AL.

Debtors.
- - - - - - - - - - - - - - - - - x

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

June 26, 2012
11:14 AM

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

ECRO: Emmanuel

Doc. #153 Application to Employ Mourant Ozannes as Special Counsel -- Debtors' Application Pursuant to Section 327(e) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ Mourant Ozannes as Special Counsel Nunc Pro Tunc to the Petition Date

Doc. #242 Application to Employ Ernst & Young as Auditor Debtors' Application Pursuant to Section 327(a) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ Ernst & Young as Auditor to the Debtors Nunc Pro Tunc to Petition Date

Doc. #246 Application to Employ Houlihan, Lokey Capital, Inc. as Financial Advisor and Investment Banker/Application of Official Committee of Unsecured Creditors' for an Interim Order Under 11 U.S.C. Sections 328(a) and 1103, Fed. R. Bankr. P. 2014 and 2016, and S.D.N.Y. LBR 2014-1, Authorizing Employment and Retention of Houlihan, Lokey Capital, Inc. as Financial Advisor and Investment Banker Nunc Pro Tunc to April 12, 2012

Doc. 245 Application to Employ/Application of Official Committee of Unsecured Creditors of Arcapita Bank B.S.C. (C) et al., Under 11 U.S.C. Section 1103 and Fed. R. Bankr. P. 2014 and 5002, for Order Authorizing Retention and Employment of Milbank, Tweed, Hadley & McCloy LLP as Counsel, Effective as of April 10, 2012

Doc. #234 Application to Employ/Application of Official Committee of Unsecured Creditors of Arcapita Bank B.S.C. (C) et al., Under 11 U.S.C. Section 1103 and Fed. R. Bankr. P. 2014 and 5002 And S.D.N.Y. LBR 2014-1, for Order Authorizing Retention and Employment of Walkers as Cayman Islands Counsel, Effective Nunc Pro Tunc to April 16, 2012

Doc. #235 Application to Employ/Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consultants, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to April 12, 2012

Doc. #236 Application of Official Committee of Unsecured Creditors of Arcapita Bank B.S.C. (C), et al. Under 11 U.S.C. Section 1103, Fed. R. Bankr. P). 2014 and 5002 and S.D.N.Y. LBR 2014-1, For Order Authorizing Retention and Employment of Hassan Radhi & Associates as Bahraini Counsel, Effective Nunc Pro Tunc to April 16, 2012

Doc. #149 Application to Employ King & Spalding LLP as Special Counsel -- Debtors' Application Pursuant to Section 327(e) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ King & Spalding LLP and King & Spaulding International LLP as Special Counsel Nunc Pro Tunc to the Petition Date

Doc. #12 (FINAL) 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

Doc. #244 Motion to Seal/Motion of Official Committee of Unsecured Creditors of Arcapita Bank B.S.C. (C), et al., for Order Authorizing Parties to File Under Seal Names of Debtors Investment Vehicles and Portfolio Corporations

Doc. #206 Motion to Seal Debtors Motion for Order Authorizing the Debtors to File Under Seal Confidential Employee Information (related document(s)(205)

Doc. #237 Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Debtors Motion for Order Pursuant to Section 1121(d) of the Bankruptcy Code Extending the Debtors Exclusive Periods to File a Plan or Plans of Reorganization and Solicit Acceptances Thereof

Doc. #238 Motion to Approve Debtors Motion Pursuant to Sections 105, 501, 502 and 503 of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003 (C) and Local Bankruptcy Rule 3003-1, for an Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof

Doc. #243 Motion to Extend Time Debtors Motion for an Extension of the Time to Assume or Reject Unexpired Leases of Non-residential Real Property Pursuant to 11 U.S.C. 365 (d)(4)(B)(i)

Doc. #205 Motion to Authorize Debtors Motion for an Order Pursuant to Sections 363 (b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Employee Programs and Global Settlement of Claims

Doc. #273 Supplemental Motion to Approve -- Supplement to Debtors Motion for an Order Pursuant to Sections 363 (b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 9019 Authorizing Debtors to Implement Employee Programs and Global Settlement of Claims

Doc. #113 (FINAL) Motion 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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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning. Please be seated.

All right. We're here this morning for an omnibus calendar in Arcapita Bank B.S.C., so let me get appearances from counsel.

MR. ROSENTHAL: Good morning, Your Honor. Michael Rosenthal with Janet Weiss and Matt Kelsey at Gibson, Dunn & Crutcher on behalf of the Arcapita debtors.

MR. DUNNE: Good morning, Your Honor, Dennis Dunne from Milbank Tweed Hadley & McCloy, here with my colleague Nick Kamphaus on behalf of official committee of unsecured creditors.

MR. MORRISSEY: Good morning, Your Honor. Richard Morrissey for the U.S. Trustee.

THE COURT: All right. Good morning to you all. So we have a variety of matters to get through, but let me just -- I had a couple of preliminary things to mention that would be of assistance to me in the future.

One is, it's not the biggest issue in the world, but I notice that the binder has the list of documents that actually don't track the agenda and that sort of hop around a little bit, so you have some of the -- for example, the motions on the employee program, that's number 1, but the objections at the end of the binder.

So whoever puts those together just in the future, it's always best to just have all like things together, just because it makes it a little bit easier to find stuff and unpack, so that would be helpful.

The second is, I think we got a couple of calls this morning, as well as an hour or two before the last hearing for live lines for witnesses. And that's fine, I think we told folks that was fine, if it's not something that there's going to be a contested matter. But in general, I try to do that a little bit earlier when you know that you can, just so we can get all those issues addressed.

And I guess the final thing is I think we'd gotten an order that I think I had even signed last time, and then I think we got another order saying that the order was circulated hadn't been seen by everybody. So when in doubt, I think if you're going to send orders after hearing, just make sure that the cover e-mail reflects that everybody's seen it and signed off on it, and make sure that's the case, because obviously I don't want to enter things twice. There's enough paper in this courthouse without that.

So just a couple -- none of these are big issues, but just housekeeping for future reference.

MR. ROSENTHAL: Well, Your Honor, I certainly understand all those issues. And we'll make sure the binders are in order. That's -- I don't know what happened there.

THE COURT: Again, I mean, I can read. I looked at the index. I found everything I needed, so it's not the end of the world, but just for future reference.

MR. ROSENTHAL: And in terms of -- we don't have any -- everything is resolved except for one sealing motion, so I don't think there are any witnesses on the line. There may be some on court call.

THE COURT: No, I think the idea is that a lot of folks will want to be able to have a live line to say just in case I need to chime in, we don't expect to say anything. My general preference is that where folks know that to be the case, and certainly given your client, folks understandably make that request, is to try to just get those in the day before the hearing just so we don't have to deal with the morning of, in terms of chambers.

But I'm fairly liberal about that anyway. I can understand the need to keep costs down and not to have to make witnesses or even attorneys do the travel when it's not necessary, so.

MR. ROSENTHAL: Understood.

THE COURT: All right. So you were just about to tell me that everything's resolved. So I got I think most of that. So why don't you tell me where things are.

MR. ROSENTHAL: Let me give you, as is my normal course, let me give you a couple of comments to start on where

we are going. But the headline for this hearing I think is that there are a lot of hearings up. We've done a lot of work outside of the courtroom to resolve potential objections which the parties might have filed. And, you know, I'm pleased to report and we'll report some of the changes in the orders, but I'm pleased to report that with the exception of the sealing motion, that will involve a short argument I think, that all of the other matters have been resolved in the ways that we'll describe to the Court.

THE COURT: All right.

MR. ROSENTHAL: The period, Your Honor, since the last hearing has been one where we've continued to be very busy in meetings with the committee and meetings with the joint provisional liquidators. We've continued to cooperate with respect to providing information about the debtor's perspective deal fundings. And you will hear that we have an agreement on all of the deal fundings with the exception of one for about a million dollars, that we're going to put in the budget, but we're going to continue to talk about before we fund that matter, and either reach an agreement or hopefully, ask the Court to set a hearing.

We already have a July 9th hearing, which would give us kind of a time frame. But generally, you know, we have continued the cooperative spirit that I think has typified this case from the outset.

With respect to protocols, there was a time when we were talking to the joint provisional liquidator about a protocol. The joint provisional liquidator no longer believes that a protocol is necessary. He's fine with how things are going. The committee did send us, we sent the committee a draft protocol, they sent us a response, and we're about to send them a response to that protocol. All with an idea towards trying to make the deal funding process more efficient and less expensive.

With respect to the joint provisional liquidator, a couple of things. We have, and I think I may have, with my lack of voice last time, indicated that we were in discussions with the joint provisional liquidator. We still are in discussions about a comprehensive settlement with the joint provisional liquidator of a number of issues.

And in connection with that, one of the things that they were talking about is transferring more money to the Cayman account of joint provisional liquidator. We haven't done that. It's about $6 million, but we would do that in the event that we reached this comprehensive agreement with the joint provisional liquidator. Which we would expect, Your Honor, to present to the Cayman court and to this Court for approval because of some of the provisions. And obviously we would talk to the committee before we did that.

We're continuing to explore the possibility of an

international protocol-type order. In the Caymans, they refer to it as a validation order. That would basically ensure that the orders that this Court enters are honored in the event -- in the Cayman proceedings, and in the event the Cayman proceedings turn into something else, such as a winding-up proceeding. Which we don't expect, but at the same time we have to be aware of that possibility.

If Your Honor recalls, I reported at the last hearing that some creditors had of AIHL, Arcapita Capital Investment Holdings, had requested the joint provisional liquidator to convene a meeting of creditors, and perhaps establish, see if there was an interest in establishing a Cayman creditor's committee for AIHL.

The joint provisional liquidator filed an application with the Cayman court, that's actually to be heard on Thursday, asking the Court for permission to set up, to schedule a meeting on 21 days notice, I believe. And at the meeting, the creditors will be asked whether they want to convene to have a committee.

In the Caymans, a committee has no -- it's unlike the committee here. They don't take an affirmative role in the matter, but they do have the ability to consult with the joint provisional liquidators, in the role that the provisional liquidators have.

We had discussions with the UCC here. We had

discussions with the joint provisional liquidators. We had discussions with our Cayman counsel at Mourant Ozannes about how to respond to this application.

And in the end, based on what we heard about the law in the Caymans and the like, we decided that the debtors would not oppose convening the meeting, or appointing the committee, but we wanted to make clear to the Court in the Caymans that we thought that any further role of the committee to investigate any transactions, for example, was squarely within the ambit of the U.S. official unsecured creditor's committee. And that we would reserve the right to resist any effort of that committee, either to try to expand its role, or the joint provisional liquidator's role, or to hire counsel for that matter.

THE COURT: So you're okay with a set of traditional committee as it's understood in that proceeding, absent expanding those powers?

MR. ROSENTHAL: That's correct. And I'd like to approach the Court. We filed something again after these discussions with the Cayman court basically making that point.

THE COURT: All right.

MR. ROSENTHAL: May I approach?

THE COURT: Thank you.

(Pause)

THE COURT: Thank you.

MR. ROSENTHAL: That was quick reading.

So, Your Honor, we expect tomorrow the Court will give the joint provisional liquidators authority to convene a meeting, and there will be a meeting down the road. Again, the joint provisional liquidators have said that no party that is on the official unsecured creditor's committee here would be allowed to be a party to the committee in the Caymans.

I want to spend a little time, Your Honor, on what's happened on the valuation side. If you will recall, we had a discussion at the last hearing about the engagement of KPMG. Well, ever since the beginning of the case, KPMG has been engaged to prepare a comprehensive and detailed analysis of the portfolio assets owned by the debtors. So it has done a thorough review of the various portfolio companies, not all of them, but companies that represent perhaps 95 percent of the book value of the debtors. And it has been engaged in this process for the first three months of this case. It's been an expensive time consuming process.

KPMG has indicated -- has given us their preliminary report. I think at the last hearing I said some of us were going to London to meet with them, we did, the middle of the month. Gave us their preliminary report.

THE COURT: And that's why we had the interim order that was entered so they could give you the deliverable.

MR. ROSENTHAL: That's correct. And that meeting did take place in London mid-month. KPMG is now at the point where

they are going to begin to roll-out their reports beginning in July, and with the hope that by the end of July, virtually all of the reports will be available.

In connection with that, there will be meetings and discussions set up with the committee and with the joint provisional liquidators to go through these assets, asset-by-asset, portfolio company-by-portfolio company. And also as you'll see from some of the agreements on exclusivity, we will provide the joint provisional liquidators and the unsecured creditor's committee with the supporting documentation that KPMG looked at and relied on.

At the same time KPMG's been doing their work, Rothschild has been busy trying to put together a going concern type business plan for the company. One of the key inputs for that is the valuation work that KPMG is doing. So there was only so far they could go until these reports were available. But that will be continuing after this hearing.

The -- so that's basically the valuation report. It's tied into the exclusivity resolution, and I'll get to that when we get to exclusivity.

As you know, Your Honor, we've been working forever since we filed this case on a very, very comprehensive reduction in force, key employee incentive plan, key employee retention plan, that's before the Court today with no objections.

On the budget, we continue to be very careful about our spending as always. Our cash position as of June 16th was that we had $87.4 million, and that excludes, if you recall, there's $35 million tied up with three entities in Bahraini. So the 87.4 is after reducing for that 35 million.

There -- in terms of where we are actual budget, you know, actual expenditures versus budget expenditures from the beginning of the case, our actual expenditures are less than our budgeted expenditures by about $13 million.

There is additionally, Your Honor, there is -- there was an escrow that we identified at King & Spalding that related to the Elysian project, which was a condo hotel project in Chicago. It's $10.76 million that as of about two hours ago, has been wired to the AIHL JPM account. That is not in these numbers. And it was wired to that account because the funds were repayment of the Marhaba facility at that level.

And if you recall, the agreement that we reached with -- among the parties is that funds that came up attributable to assets portfolio companies owned by AIHL would be deposited in the AIHL JPM account.

We continue to explore debtor-in-possession funding options. We -- our current table -- timetable calls for us to receive proposals by some time the middle of July, July 20th I think. And we're hopeful that we will be able to file a motion and come before the Court on a DIP motion, maybe an interim DIP

motion some time in August, but certainly no later than the beginning of September.

And then the one final point, Your Honor, is as you know, the 9th you have a hearing scheduled on the Rothschild application. I don't want you to think that because we've got a hearing scheduled that we haven't been trying, you know, diligently and trying to work this out with the committee, we have. So there have been a number of discussions, a number of proposals going back and forth. We'll continue to work on that. But we need to set the hearing. The hearing's been set for the 9th, and we need to go forward with it. Rothschild's been working for three and a half months now, and needs to know whether they're going to be retained or not, and what the terms of the retention.

THE COURT: Fair enough.

MR. ROSENTHAL: Your Honor, I -- before we go into the matters specifically up today, perhaps Mr. Dunne wants to make an opening, or I can go into the agenda.

THE COURT: Mr. Dunne, anything to add?

MR. DUNNE: It's rare that I actually decline a request to remark, but I'll actually save my remarks for the exclusivity which is where I'll give a little bit of referendum of how the committee is seeing the case today.

THE COURT: All right.

MR. ROSENTHAL: Now, with the Court's admonition that

the book, that the binder was out of order, may we take the matters out of order?

THE COURT: Absolutely. That will be just fine.

MR. ROSENTHAL: So I was instructed --

THE COURT: No, I wouldn't say the binder's out of order. I know it was in an order, I'm just -- for future reference I was just saying that perhaps you could tweak that order. So that's fine. It really is not a big deal, but just -- so what would you like to look at first?

MR. ROSENTHAL: So on some of these things, I take instruction from the people who are working with me, and they would like me to --

THE COURT: That's a wise way to proceed.

MR. ROSENTHAL: -- finish all, yeah, finish all of my matters first, so.

So the first one actually, if you look at agenda item 8, which is the exclusivity motion. Your Honor, I'm not sure how much you want in terms of background regarding the motion given that it's been resolved.

THE COURT: Well, I don't need a whole lot given the updates about the case and where things have been and where they're going. Often times I'll ask for a lot more if I'm not clear as to what is the case. So I don't need any particular speeches in light of the updates you've given me.

MR. ROSENTHAL: Okay. Well, let me just say, we think

we've more than met the for cause standard of 1121. We -- you know, this is an investment bank that has numerous portfolio companies. We've spent the first three or four months of the case, three months of the case stabilizing the operations of the business, creating a rapport with the committee.

And as I said, at the same time, KPMG has been doing this work that all of us believe is essential to what the business plan will look like, and what the reorganization plan will look like.

We are now at the point where we need time to vet that valuation work with the committee and with the JPLs and finalize the business plan and the reorganization plan.

In any event, Your Honor, we filed a motion to extend exclusivity for 120 days. The joint provisional liquidators did not have an issue with that, but the committee did raise some issues with us. And after negotiations, we reached an agreement with the committee to limit this original extension to 90 days, not 120 days.

And, you know, we've reserved the right to request a further extension. Of course, the committee reserves the right to object to a further extension.

As part of our negotiations we agreed to provide the committee with some information. And, of course, we'll provide the JPL with the same information. Some of it I've mentioned, but let me go over this because I think it's important to the

agreement with the committee.

We agreed to provide the committee through its advisors with the nonprivileged information and documents that KPMG relied on in making their assessment of these valuations. And we agreed to provide this unlinked, if you will, to the provision of the KPMG report. So, in other words, we're going to try to start producing that information as quickly as we can collate it for the various properties, put it into the data room, make that available to the committee's advisors and the joint provisional liquidators.

By contrast, the KPMG reports, which we've also agreed to make available when they are available from KPMG, will come out sort of on a rolling basis. I think it'll come out infrastructure will be one week, real estate, all the real estate properties will be in another week. And when those reports come out, there will be meetings with KPMG.

THE COURT: How many reports do you anticipate or bundles of reports?

MR. ROSENTHAL: Twenty-nine reports.

THE COURT: All right. And so what's the period for the roll-out over time?

MR. ROSENTHAL: We're hoping that during July --

THE COURT: All right.

MR. ROSENTHAL: -- that it'll be rolled out during July.

And we have put together with some input from Gibson Dunn and some input from Rothschild and A&M, we put together a template for each report, which is a fairly complicated, you know, detailed template. So that for each particular portfolio asset, there are pages of -- in this template, that KPMG will populate to indicate how they reached their valuation.

So point one is we'll provide the committee with access to the non-privileged documents. Point two is that assuming the committee and its advisors will agree to a report release that KPMG has circulated and we have circulated that to the committee. It's just basically we did this for the debtors, we didn't the report for you-type release that we provide the committee with the valuation reports and meetings with KPMG.

The next aspect, Your Honor, is that we are, as I told you we're working diligently on preparation of the company's business plan, and we hope to be able to produce that by the end of August and deliver to the committee and its advisors by the end of August.

And finally, one of the things that's been occurring throughout this process, but now that the valuation reports are available, and the business plan is going to be finalized, will be actually more key, will be that the debtor has been engaged in some equity marketing efforts in reference to raising new capital.

So we've agreed to provide the committee advisors with reports every two weeks regarding this equity marketing process. We have to be sensitive to the fact that potential investors, you know, are not going to want to know -- have their interest be known until they actually make a commitment.

So our agreement with the committee is that we would generally indicate the nature and number of potential investors, you know, sort of who we were targeting generally, but we wouldn't share the identities of the investors until the entire equity pool had been committed.

And we also agreed that we would consult with the committee regarding the status and the progress of the potential equity raise, and sort of the terms we were looking for, how we were going to ensure that the investors had financial wherewithal, that the money would be there when we needed it, those kinds of things.

So those are the components of the agreement with the committee that led to the --

THE COURT: Does somebody have an open line? If you do, please mute it or get off the phone, thank you.

MR. ROSENTHAL: That led to the settlement on a 90-day initial extension of exclusivity.

So with that, Your Honor, we would ask the Court approve the exclusivity motion as presented, with the exception of the period of the exclusivity would be 90 days and not 120.

THE COURT: All right.

MR. DUNNE: I didn't have to wait long, Your Honor.

THE COURT: No, you did not.

MR. DUNNE: For the record, Dennis Dunne from Milbank, Tweed, Hadley & McCloy on behalf of the official committee of unsecured creditors.

I will be brief, Your Honor, but the committee did want me to put some remarks on the record, as well as to just quickly go through the agreement, which I think Mr. Rosenthal accurately set forth, but from our perspective, and what we hope transpires over the next few months.

I think the committee and the debtors have worked arduously over the past few weeks to reach this consensus and avoid a contested hearing, but I want to start off with a thought that Your Honor probably had. Which was, what was so difficult? This was the first extension of exclusivity in a relatively large Chapter 11 case, and extensions are routinely granted, at least out of the initial period when you have very large cases.

I, too, have only very rarely have been in the position of objecting or potentially objecting to exclusivity this early in the case, but want to explain why we came close and why this case was different.

First of all, as I think I've said in every hearing, the debtors are simply holding companies here. They have no

operations. Their management is to basically oversee their stock and over investments. So, in essence, this is a balance sheet restructuring. They had too much debt when they filed and they need to figure out either through equity infusion or otherwise how best to right-size their balance sheet, given future cash flows.

It means that we don't have to wait in Chapter 11 for operational fixes like Your Honor's dealing with in other cases right now. On the plus side, the lack of operations means that a quit exit from Chapter 11 is possible.

On the down side, the lack of operations means that there are enormous pressures on the debtor's current cash position, and as a result, a quick exit from Chapter 11 is required.

A protracted stay in Chapter 11 arose what may be a finite pool of cash that the company has in its accounts. There are no revenues from operations that replenish those funds on a day-to-day basis. As a result, we need to move this case forward very quickly and should be able to.

As Mr. Rosenthal mentioned, exclusivity is being extended from July 17th to October 15th. We believe a plan should be filed before the expiree of that extended period. The debtors have told us of the tasks that they're currently undertaking, and we believe that that is a realizable goal.

Let me go through what we believe will happen over the

next couple of months, and what we view as kind of milestones or benchmarks for the summer.

As Mr. Rosenthal mentioned, one of the key cornerstones of any plan will be the results of KPMG's efforts with respect to the valuation reports, and there are more than two dozen of them. I think we heard 29, and they'll be rolled out to us. And that process should conclude by the end of July 2012.

Similarly, we need a business plan. The company is working on that. Our understanding is that we'll have that delivered to the committee prior to the end of August 2012.

Also Mr. Rosenthal mentioned ongoing discussions with respect to potential equity investors, parties that would be willing to put in money in exchange for the stock of reorganized Arcapita, and that they expect -- we originally heard they expect to or hoped to have a commitment by the end of July. But I think given Ramadan that that would slip to August, so we're kind of all kind of targeting end of August for that. And we under -- we all hope that those commitments will be firm ones.

As an aside here, I'm learning more about what a firm commitment means in Bahrain. It does not mean, as it might appear, that a firm commitment is a minimally conditioned promise to fund on a future date. Our understanding from discussions with Bahraini members of the committee or counsel,

is that you also need to have the funds on hand when -- to have a firm commitment for Bahraini purposes. So hopefully we have that at the end of August.

And ultimately each of these milestones, Your Honor, is tailored to conduce plan negotiations, and those are targeting to commence, and hopefully conclude in September.

As a result, optimally, we should not be back before Your Honor in October looking for an extension of the plan filing exclusive period. We should instead have a plan on file that both the committee and the debtors support.

Similarly, if any of these kind of interim checkpoints are materially missed or fail to materialize, it's possible that the committee is back in front of Your Honor saying, look, we're turning to a different place now, we think some other remedy or relief is appropriate. Obviously all parties reserve their rights to deal with that, if those circumstances arise. We hope not.

Lastly, Mr. Rosenthal also touched on this, we reached agreement on the sharing of certain information. In the past, and I think that Your Honor has heard this from me, I've complimented the debtors on their information sharing, which has been exemplary. Most of those items dealt with areas where the debtors wanted or needed committee support for particular actions, budgets, sale funding, deal funding. We're now moving on to a slightly different area, and frankly the information

sharing to date has been less exemplary with respect to these broader areas of inquiry and what do I mean by that, I mean areas where the UCC needs to be proactive. So that it is in a position to assess relatively quickly whether a plan that's presented to us by the debtors is the best path forward. Does it maximize value for the unsecured creditors, or is there another path available to the estate that we should explore.

In connection with the exclusivity motion, we've reached agreement with respect to one of these key areas. The UCC needs to see and review and assess the underlying data that KPMG is reviewing and that's rolling up into their evaluation, so that we can determine is it aggressive, is it conservative, are there certain conditions that we think make realization of various amounts less tenable, more likely or not.

The debtors have agreed to provide us that data now, subject -- or as soon as practical, subject to them collating it, and putting it in a package that can be presentable to us.

And with that, Your Honor, we support the extension of exclusivity for 90 days. And unless Your Honor has any questions, I'll yield the podium.

THE COURT: No questions, thank you.

Anyone else want to be heard as to the motion to extend the exclusive periods?

All right. Given everything I've heard, I think the debtors have more than satisfied requirements of 1121 to extend

the exclusive periods, and I'm happy to see that the level of cooperation and communication again that has occurred between the debtors and their constituencies, particularly the committee. And so I will grant the motion.

MR. ROSENTHAL: Thank you, Your Honor. The one point I want to make in response to Mr. Dunne is the equity raise, it's a difficult process, and Ramadan is July 20th through August 18th. So, you know, I think the end of August is too early for that. That wasn't -- you know, we didn't commit to the end of August, but August/September we have to, because we've got to get the -- the business plan is going to depend on some of that.

THE COURT: The two of them are tied.

MR. ROSENTHAL: So, you know, we're doing it as quickly as possible, but that's the only caveat.

THE COURT: All right.

MR. ROSENTHAL: Your Honor, if we could skip around one more time and this time --

THE COURT: Absolutely.

MR. ROSENTHAL: -- and go to cash management.

We filed, Your Honor, a budget -- we filed an interim budget on June 25th for the period July 1st through August 4th, and basically an overview of that budget, Your Honor, is that we expect receipts during the period of about $912,000.

As I just mentioned to the Court, there will be $10.7

million that's probably before the beginning of this period, so it should be in the bank either today or tomorrow, which would not be in the prior budget, because it wasn't contemplated, and it wouldn't be in this -- in these budget numbers yet. But that would be coming in as well.

Disbursements for SG&A will be $4.76 million in the budget. There's staff disbursements of about 3.7 million. That includes, Your Honor, a portion of that includes the --

UNIDENTIFIED: Oh, sorry. Oh, okay.

MR. ROSENTHAL: I'm sorry. So that's 3.7 for staff. There is a payroll adjustment that's reflected as $4.3 million. That effectively is the -- you'll hear more about that, but that's the reduction in force, keep Kirk (ph) allocation.

Deal funding is approximately $4 million. All of this is approved, Your Honor, except for -- I told the Court there's about a million dollars which we've agreed to discuss further, and we'd ask the Court if we're unable to reach an agreement -- it's in the budget, so if we're able to reach an agreement, we wouldn't have to come back to the Court. If we are unable to reach an agreement, we would ask that the Court hear us on the 9th.

I don't know whether it would require an evidentiary hearing, or whether we would do it on argument, but I think we'd have to contemplate that it might require a brief evidentiary hearing.

THE COURT: All right.

MR. ROSENTHAL: We'd let the Court know as soon as possible if that would be okay.

THE COURT: Yeah. Do you want to, since we're talking about it now, when do you think you'll reasonably know?

MR. ROSENTHAL: Your Honor, I think it will be within a week. We have arranged to or trying to arrange for KPMG and Houlihan Lokey and A&M to get together to discuss this particular funding requirement, in light of KPMG's conclusions about valuation. So I think it's going to take probably a week in order for those discussions to occur and presentations to be made, and a decision whether we're going to go forward or not.

THE COURT: All right. Well, maybe you could just give me an update on Tuesday, the 3rd, and let me know, and then if you need to go forward, we can -- then you can have a further update later in that week just to let me know. I think I have an evidentiary hearing in another matter scheduled on the 9th as well, that's why I particularly want to make sure that everybody shows up and -- with witnesses, if you're going to show up with witnesses, and you know you're on, so we'll --

MR. ROSENTHAL: That's fine, Your Honor. We would intend, I think, to put our direct on by, you know, declaration and --

THE COURT: That's fine.

MR. ROSENTHAL: -- compliance with the case

management.

THE COURT: Now, I believe the other matter I have is on in the morning, and I don't recall off the top of my head how long it's anticipated that will go. I think I was told about two hours, if needed, and I suspect that may be a safe estimate for any evidentiary hearing that you have. So I think we're likely to do it that afternoon.

MR. ROSENTHAL: That's fine. And that's also the time we've set aside for the Rothschild hearing as well.

THE COURT: Correct.

MR. ROSENTHAL: I think we can do all of those. So with that, Your Honor, I'd like to ask the Court to approve this proposed interim budget, which will be the sixth --

THE COURT: The sixth.

MR. ROSENTHAL: We haven't set a record yet?

THE COURT: No, you're not even close.

Anyone want to be heard on the sixth interim order authorizing debtors to continue to use cash management systems, et cetera, consistent with the budget that's just been discussed?

All right. I'm happy to approve that.

MR. MORRISSEY: Your Honor, I have no objection to the Court signing the motion. But I was wondering if Mr. Rosenthal could give us an update on the three bank accounts, I think it was three, perhaps four in Bahrain where the debtor's money has

been, shall we say, detained?

THE COURT: I believe you had asked nicely, then very nicely, and then not so nicely to turn those funds over and were contemplating your options.

MR. ROSENTHAL: That's correct, Your Honor. We've asked nicely, we asked not so nicely. We are putting our heads together with the committee actually and the JP Alst (ph) to figure out how we can -- you know, what the next step is. We have tried to frankly use the good offices of the Central Bank of Bahrain to see if they can be helpful to us, but we have so far not been successful in releasing that money.

We've taken a hard look at the -- there are agreements called placement agreements, by which the company placed money with these banks, and actually it's part of what they -- these agreements go back to 2002 in some cases or 2005, it's just part of what the -- how the bank did business. They didn't keep all their money. They placed it with other banks.

And then in return, there are takings agreements, where other banks placed money with Arcapita, it's the reverse of it. So it's, you know, in U.S. terms, it might be short term bank lending type situations. And it is those placement and takings agreements that are the issue.

We placed $35 million there. The banks that we placed it with claim that they placed through takings agreements $35 million with us. And that's the issue we're struggling with.

THE COURT: All right. Is there any -- I'm sure the intent is to try to resolve that as best you can, short of taking sort of more formal aggressive action, which is I'm sure not desirable. Any sense of the timing for resolving that? That may be a question you just can't answer now.

MR. ROSENTHAL: I don't right now, Your Honor.

THE COURT: All right.

MR. ROSENTHAL: And by the way, I'm not acknowledging -- by making my statement to you, I'm not acknowledging that, you know, takings agreements are valid agreements or anything here.

THE COURT: No, no. You're just give me a general update about the circumstances and what's in play, that's fair enough.

MR. DUNNE: Your Honor, let me just address the committee's perspective on this, because we've been very concerned about this. I'll echo what Mr. Rosenthal said. We think probably the best way to resolve this is through the auspices of the Central Bank of Bahrain, the regulators who are all involved to try to facilitate the right answer.

But I want to be categoric about this, the right answer from the committee's perspective is the return of every dollar of those funds to the Arcapita estate where they should've been. We believe that under U.S. law they clearly would've been -- they clearly would be preferences in terms of

somebody arguing that as a result of depositing X dollars with a bank a few days before the filing, lo and behold, it gets stuck there, because the bank alleges you wonderfully gave me a set-off claim that I didn't otherwise have by depositing these funds. And it would've either under the settlement provisions or under preference provisions be capable of avoidance and clawback. But hopefully we don't get there.

THE COURT: All right.

MR. ROSENTHAL: We're certainly not foreclosing any arguments. We agree with -- and this is one where I think we're on all fours with the committee, we'd like to get the money back as soon as possible as well.

THE COURT: But it sounds like there may be more -- certain appropriate steps that you have to take, should take, or prudent to take in certain order for lots of reasons that we don't need to get to.

MR. ROSENTHAL: That's correct.

THE COURT: And so -- all right. Thank you. So I will approve that interim order.

MR. ROSENTHAL: Thank you, Your Honor. Now, I'd like to go to -- my last thing is a presentation of the application of King & Spalding. So this is matter number 5. But just to give you an idea of where -- and that will be followed by Ms. Weiss, who will present the rest of the debtor's applications. And if the committee doesn't mind, then we'll finish our

motions, our applications, and then we'll turn to the committee's retention applications, all of which are resolved.

Your Honor, we filed an application to retain and employ King & Spalding. This is not for bankruptcy related representation. King & Spalding has been involved with the debtors for a number of years. They're experts in Sharia compliant financing, they've done a number of the debtors transactions for portfolio companies here in the United States, also in the Middle East, in Europe, and in Asia.

And they have been an integral part, along with Linklaters, you know, we engage Linklaters as well, because Linklaters had been involved with some of the investments in Europe primarily. So King & Spalding is to a large extent, the U.S. law firm that Arcapita looked for to do their transactional work before the filing. And we are -- we would like to retain King & Spalding to continue to do that work.

They will file fee applications in accordance with the interim procedures order, and we believe that it is something that the debtors need to do. It's not duplicative of the services that either Gibson Dunn or Linklaters are providing on a general basis. And we think it's important to be able to carry on the continuity with these investments that King & Spalding brings to that.

We had a comment from the committee with respect to how we would account for the funding of the professional fees

that were paid to King & Spalding, because a number -- some of their work is done -- most of their work is done on behalf of either the holding companies that own -- further down the chain that own the portfolio companies, which are all in the AIHL chain, perhaps even the working capital facilities that extend the Marhaba loans to the holding companies and the like.

And so we have inserted into the order, in effect a place holder, that everyone reserves their rights to argue that to the extent that the bank makes a payment on account of those professional fees, that no one is giving up the right to argue that that should be reflected as an administrative claim of the bank against AIHL. And similarly, AIHL is not agreeing that it's appropriately reflected that way.

So we just have a place holder that we've put in this order to resolve the committee issue.

THE COURT: All right. Anyone want to be heard in connection with the King & Spalding application?

All right. I will grant that application.

MR. ROSENTHAL: Thank you, Your Honor. With that, I'll turn it over to my partner, Janet Weiss.

THE COURT: All right.

MS. WEISS: Good morning or afternoon --

THE COURT: Good morning.

MS. WEISS: -- Your Honor. This is Janet Weiss from Gibson Dunn for the debtors.

I'm going to go to item 2 on the agenda, which is the retention of Alvarez and Marsal. You may recall that Alvarez and Marsal were retained on an interim basis. They had in their retention motion, a disclosure of a potential fee, an incentive fee, which was based on a percentage of the hourly rate.

At this time, Alvarez and Marsal was not going to pursue that in conjunction with its final retention, but in accordance with an agreement with the committee at the time of the final fee app, the determination and a negotiation with the committee to determine whether at that time A&M will make a motion for that incentive fee.

So, Your Honor, with that agreement, A&M is seeking final approval for the retention as financial advisor to the debtors. Their interim order was entered on May 15th.

Alvarez and Marsal has been doing a lot of work in this case, producing information, reports, particularly a lot of information for the committee. They've been helping the debtors with the cash flow analysis, the deal funding analysis, the -- some of the agreements which the debtor is party to. And they have been acting as the main liaison, a financial perspective with the committee.

A&M is going to be retained on an hourly basis. And as I mentioned, they're not going to be pursuing the incentive fee at the time of their final retention. That will be a final

fee application.

With that, the agreement -- there's an agreement between the debtors, the committee, and A&M for the retention. We believe this allows a maximum amount of flexibility in retaining A&M.

We also had discussions with the U.S. Trustee and agreed on the indemnity language which is the standard language that the U.S. Trustee likes to see. And with that, we would ask for an order approving the final retention of A&M.

THE COURT: All right. Does anyone want to be heard as the application to retain Alvarez and Marsal?

All right. And when you say that there may be a request at the time of the final fee app for this incentive, this transaction related fee, I'm assuming that the -- even though it's not being asked for now, that the parties have some understanding of what the guidance that will be applied? In other words, you can argue whether it's appropriate or not appropriate, but nobody's sort of saying, well, we're going to ask for, we don't know what it's tethered to, or how you decide -- how Alvarez and Marsal will decide whether they're going to pursue that kind of request.

MS. WEISS: Your Honor, I think we're closer to the second, that there's a lot of flexibility, and there have not been -- there's not been an agreement about what the parameters would be, and the goals that would need to be achieved to ask

for the incentive fee.

THE COURT: All right. Well, the reason why I ask is I just don't want to find ourselves in a situation where there's a request at the end, and then if one says, well, you know, we were over here, we didn't really have any expectation. So I'm just trying to figure out what metric folks are going to use to sort of look at the past and decide whether it's a good idea, whether you're reserving the right to ask for it.

MS. WEISS: Your Honor, what this is, this is not in any way based on a standard that's more like a 328 standard, where there's an agreement up front. I think that there's been an agreement with the committee that at this point A&M is not going to be seeking a retention incentive fee.

THE COURT: All right.

MS. WEISS: Even if there hadn't been an agreement with the committee, I think that at the final fee application, they'd be entitled to if they saw fit to ask for a fee enhancement. And this is an agreement more in that nature with the committee.

THE COURT: Okay. That's helpful. Thank you.

MR. MORRISSEY: Your Honor, the way I understand this agreement, and I was not privy to it, is that it's a prerequisite. Committee consent is a prerequisite for filing the request.

MS. WEISS: Your Honor, that's correct.

MR. MORRISSEY: To say nothing of actually having the Court grant the application.

THE COURT: All right. Thank you.

MS. WEISS: Yes, Your Honor, that's correct.

THE COURT: I will grant the application to retain Alvarez and Marsal consistent with the revised terms. Thank you.

MS. WEISS: Thank you, Your Honor. The next matter is agenda item number 3, which is the final retention of KPMG for the valuation work. As Your Honor recalls, they were retained on an interim basis. I believe we've resolved the issue with the committee, and so we are seeking their retention on a final basis at this point.

They are being retained under 327(a). I think Your Honor has heard a lot about the work they're doing in connection with the valuation of the underlying assets, which are going to form the basis of both the business plan and the plan of reorganization, and will be the building blocks upon which Rothschild will base their work.

The -- Mr. Rosenthal has described the agreement to provide some of their work data, or their work data untied to the provision of the reports. That's not in the order, but I wanted to clarify that that is the agreement, and that is an agreement that we've reached with the committee.

KPMG will be compensated on an hourly basis. We've

also discussed that there's not any overlap between the work that is being performed by KPMG, Rothschild and Alvarez and Marsal. I think, Your Honor, as we are before you more, I think it's becoming apparent that these are distinct roles, and we have an agreement that KPMG can be retained on a final basis, even though the Rothschild retention motion's not being heard at this date.

THE COURT: All right. Anyone want to be heard in connection with the application as to KPMG?

MR. MORRISSEY: Your Honor, and just to be clear, in the interim order there was a provision saying that all parties except for the U.S. Trustee are precluded from objecting to KPMG's fees, on the grounds that they're -- the services were duplicate.

That provision is not in the final proposed order. So I just thought the Court should be aware of that fact. And otherwise, there were certain additions made to this and other proposed orders that Ms. Weiss will be describing as we go along. Unless the Court wishes, I don't think it's necessary to go into all the little changes that were made on -- at my request. But obviously if the Court wants to know about them, I'll be --

THE COURT: No. Unless you think there's something germane to some of the issues that we've actively engaged on.

MR. MORRISSEY: That's fine, Your Honor. We have no

objection to the proposed order here with KPMG.

THE COURT: All right. I will grant that application.

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

The next application before Your Honor is item number 4, it's the retention of KPMG. It's actually a separate office in the U.S., and this with regard to tax advice. The debtors, as we've talked about, have a very complicated organizational structure. They have operations and assets in the United States, and are required to file U.S. federal and state tax returns.

They're seeking to retain KPMG to give them advisory advice and analysis with respect to tax matters. KPMG has been acting in this capacity for the debtors for the last 12 years. They're very familiar with the debtor's business, as well as the books, records, and financial information. And they will be compensated on an hourly basis.

THE COURT: All right. Anyone want to be heard in connection with the application to retain KPMG LLP U.S. as tax consultants?

All right. I will grant that application.

MS. WEISS: Thank you, Your Honor.

Your Honor, I'm going to move next to item number 7 on the agenda, which is Ernst & Young's retention. We have in the court Michael Riela who's representing Ernst & Young from Latham and he can be heard, if he chooses to be heard. But we

have an agreement, I believe, with the debtors.

MR. RIELA: Good afternoon, Your Honor, Michael Riela, Latham & Watkins on behalf of Ernst & Young, the Bahrain entity.

Ernst & Young will be retained obviously subject to your Court's approval to do various audit related tasks on a fixed fee per audit basis under Section 328 of the Bankruptcy Code. There were no objections that were filed, but in the last day, we have heard some comments, suggestions from the United States Trustee, mainly in connection with indemnity, notification to the Court if Ernst & Young feels it needs to terminate its engagement, a limitation of liability and certain timekeeping issues.

With respect to indemnity and notification of the Court, I've been able to talk with my client in Bahrain last night and get agreement on language as to that. With respect to limitation on liability and timekeeping, I think there may be -- I would still need to talk to my client and get their approval, but I'm very optimistic that we should be able to get an agreement with the U.S. Trustee on both of those issues.

My suggestion would be unless Your Honor objects, would be that we would submit to the Court a proposed order once it's been agreed upon by the U.S. Trustee and myself, and on notice to anybody else who needs to see it.

THE COURT: All right.

MR. RIELA: So unless Your Honor has any other questions, that's my presentation.

THE COURT: All right. Thank you.

Anyone else want to be heard as to the application to employ Ernst & Young as auditors?

MS. WEISS: Your Honor, I don't object to Mr. Morrissey going, but I did want to present the case, the motion so that that's before Your Honor.

THE COURT: All right.

MS. WEISS: So that -- and I'm happy to have Mr. Morrissey go now or go after.

MR. MORRISSEY: I'll wait, thank you.

MS. WEISS: Your Honor, on the assumption that we will be reaching an agreement shortly and presenting a proposed order to the Court, the debtors are seeking to retain Ernst & Young as their auditor.

As this Court may know, our original view of their services were more in line with an ordinary course professional. We had discussions with the U.S. Trustee, who advised us that ordinary course professionals should not include attorneys. And so this is why at this time we're seeking their retention under 327(a).

They're paid on a per project basis. Each retention and each separate work that they do in terms of separate audits are pursuant to a separate engagement letter. They're on a

fixed fee basis. A lot of the work they're doing is essentially required by the Central Bank of Bahrain in connection with regulation in Bahrain of Arcapita Bank.

And the agreement is that for additional engagements that E&Y will be performing for additional audits, we'll seek additional approval from Your Honor. I believe that since this motion has been filed, there is maybe one or two more engagements that haven't been finalized, but we will be before Your Honor to seek approval of those as well.

As Your Honor noticed -- as we've told Your Honor, E&Y's being compensated on a fixed fee basis. The assumption on the fixed fee is that the debtors are able to assist in the analysis and have the appropriate information. In the event that that's not a good assumption, E&Y may seek additional compensation, but that's not contemplated at this time.

THE COURT: All right. Mr. Morrissey?

MR. MORRISSEY: Your Honor, the U.S. Trustee doesn't object to the retention of E&Y in the Bahraini operation. I guess one of the problems that Mr. Riela was bringing up is that they're not accustomed to working with debtors before this Court, and it's traditional for financial professionals to report their time, assuming they're not operating on an hourly basis in half hour increments.

So they're going to have to change their ways, and I hope that that's the message that Mr. Riela is going to be

conveying to them. But I'm sure that's something that can be worked out.

THE COURT: All right.

MR. MORRISSEY: Thank you.

MR. RIELA: One thing to add to that, Your Honor, that's right. E&Y Bahrain has been doing work on this file since the petition date, so they've had, you know, four solid months at this point or three solid months of performing work.

Certainly with respect to, you know, fixed fee type of work, the fact that it's not a U.S. entity, I think that it would be a little bit of an education process going forward with respect to, you know, keeping detailed time entries in half hourly or whatever other increments.

I think particularly given the fact that we are dealing with a, you know, fixed fee type of matters, you know, certainly at the very least, we would be able to provide, you know whatever time entries are kept in the ordinary course of E&Y's Bahrain's business, as well as a good faith estimate of the amount of time that's spent on each project in each of our fee applications.

To the extent that we're -- you know, that that's what's required as going forward or whatever, is more detailed time entry like you would see from a U.S. based lawyer. I'm not entirely sure at this point as to what kind of detail there is.

Certainly, you know, you're not to belabor the point of a fixed fee nature, and the fact that our -- that E&Y Bahrain is not a U.S. professional. It is our intent to provide as much information to this Court as absolutely possible --

THE COURT: All right.

MR. RIELA: -- to do assessments.

THE COURT: I appreciate that. It's a different circumstance where you don't normally do this sort of thing.

MR. RIELA: Right.

THE COURT: And, in fact, you have to change your practices, so I appreciate their cooperation, and I would be surprised if you can't work out the details in the final order.

All right. Subject to that, I will grant that application and obviously folks will make sure to take a look at and sign off on the final orders so that everybody can be on the same page.

MS. WEISS: Yes, Your Honor. It's our hope that we will have an agreed upon order shortly.

THE COURT: All right.

MS. WEISS: With that, Your Honor, I'm going to cede the podium to my colleague Matt Kelsey.

THE COURT: All right. Thank you.

MR. KELSEY: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. KELSEY: Matt Kelsey, Gibson Dunn appearing on behalf of the Arcapita debtors.

Your Honor, keeping to the tradition here of this hearing, I thought we'd skip to agenda number 6.

THE COURT: All right.

MR. KELSEY: Which is the debtor's application to retain Mourant Ozannes, which is a special Cayman counsel. In this case, the debtors need Cayman counsel, as Your Honor's aware, AIHL is in a provisional liquidation proceeding in the Caymans. And the debtors will need advice from time to time on Cayman law related issues.

We got an informal, I wouldn't say objection, but a comment from the U.S. Trustee, which we've agreed to and Mourant agreed to. And that is for any work that Mourant does for any U.S. debtor, whether it's in these Chapter 11 cases or in the Cayman Islands, Mourant will file a fee application for that work.

And with that, Your Honor, we'd submit that the application be approved.

THE COURT: All right. Anyone want to be heard as to this application for Mourant?

MR. MORRISSEY: Your Honor, once again the U.S. Trustee has no objection to this, their retention. Obviously the concern with Cayman counsel, with the fact that there is a Cayman Islands proceeding is the question of -- for which court

is the lawyer doing work. And that's what Mr. Kelsey was driving at when he said that they're going to apply here fee, so we'll be able to see what work they did, and whether it properly was work for this bankruptcy case in New York. Thank you.

THE COURT: All right. I will grant that application.

MR. KELSEY: Thank you, Your Honor. All right. Skipping ahead to agenda item number 9, which is the motion of the debtors to set a bar date and approve noticing procedures in a form of claim form.

This is a pretty standard bar date motion, Your Honor. We received several comments to the proposed form of order from the committee and from the provisional liquidators Zolfo Cooper which we're happy to include in the order. I thought I'd highlight at a high level what those changes are.

First, Your Honor, we made clear in the bar date order that it doesn't create a bar date in the Cayman's proceeding. Second, there is a change in the order that clarifies what an affiliate claim is. And so what we've done is included in the definition of affiliate, those entities in which the debtors have control through a proxy.

So they may have control through direct stock ownership, but they may also have control through a proxy vote. We think it's tantamount to the same thing, and it will reduce clutter and confusion if we broaden the definition of an

affiliate in that way.

And finally, Your Honor, at the request of the committee, instead of having individual participants in the Marhaba's filed individual claims, we've agreed that the agent under Marhaba facility can file a claim on behalf of all of the participants. We set the bar date at August 30 just before Labor Day, but gives parties in interest, you know, nearly double the amount of statutory minimum which I believe is 35 days.

We'd ask Your Honor with provisions to the order that the bar date motion be approved.

THE COURT: All right. Anyone want to be heard as to the motion on the bar date?

All right. I will grant that motion. And obviously just what will be helpful is most folks do this, and I'm sure you are doing this anyway, but is to look closely at the Court's -- this Court has a form order and if possible, just to highlight the ones where there are variations, because otherwise that's exactly -- we go through it line-by-line. So since you're sort of working off that template and are aware of where those changes are, that would be very helpful.

MR. KELSEY: We will do that, Your Honor.

THE COURT: Okay. Thank you.

MR. KELSEY: Thank you.

THE COURT: And I will grant the motion.

MR. KELSEY: Thank you, Your Honor.

Moving along, Your Honor, to agenda item number 10, is the debtor's motion under 365(d)(4) to extend the 120-day deadline to assume or reject unexpired leases of nonresidential real property.

As Your Honor is aware, the 120-day deadline expires July 17th. As you've heard from Mr. Rosenthal, we're still in the process of formulating our business plan and creating a plan. So at this time it would be premature for the debtors to make any decision on assumption or rejection.

We'd note that there's no prejudice here on the extension to the lessers in two ways. One, the debtors are current on all post petition rents. And two, we've put a provision in the order that gives the landlords the right, you know, to seek relief to cut that deadline short. We're looking for the full 210-day extension in this motion. We submit it should be approved, Your Honor.

THE COURT: All right. Anyone want to be heard on this motion?

All right. I will grant the motion for the full time, given that there's, as you said, language that provides that a party can come in and seek to shorten it.

MR. KELSEY: All right. Thank you, Your Honor.

So the next item is agenda item 16, which is the motion to approve employee programs and a global settlement.

Your Honor, this is -- obviously it's a complicated motion, it's a complicated program. The complexity was necessitated by the nature of the debtor's business. By the fact that the debtor operates in multiple foreign jurisdictions, and by the fact that many of these employees are employed not by the debtors, but by non-debtor affiliates who receive funding from the debtors.

In connection with this motion, we've made a number of related filings. We filed a motion to seal certain confidential information related to the identity of the employee, the amount of award they would receive under this program, and performance incentives. And that actually is -- that motion is agenda item 17.

I -- and we filed a supplement to the motion, Your Honor, that it runs through for the Court, and I think we did this on Friday, the changes that we've made to the program from -- since filing the motion to where we are today. Most of those changes result from discussions with the committee and with the U.S. Trustee.

You know attached to that supplement were under seal versions of the new keep and occur performance metrics, and in the hearing binder that was sent down to you, I am not sure if you got the unredacted version. But I have copies of it here.

THE COURT: If you would pass those up, thank you. Thank you. All right.

MR. KELSEY: Okay. So in addition to the supplement to the motion which outlines some of the changes, we submitted a declaration of Brian Cumberland from A&M, and we also supplemented that declaration. Mr. Cumberland is here in the court with us today, and available for cross-examination. And we'd ask the Court to enter the declaration as supplemented into the record as evidence.

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

All right. I know there was an objection by the U.S. Trustee's office, but I also know there were significant changes after the objection. And consistent with what was outlined in the supplemental declaration of Brian Cumberland, as well as the attachments that I've been now, let me just clarify these -- they weren't in the binder that I have. These are attachments to Mr. Cumberland's declaration?

MR. KELSEY: No, they were attachments to the supplement to the motion, which has a red lined form of order.

THE COURT: Oh, right.

MR. KELSEY: And then revised keep and occur participants' awards and metrics.

THE COURT: All right. Yeah, I don't think they made it in there either. No.

All right. So, Mr. Morrissey, why don't you just for the record explain the status of the objection of the U.S.

Trustee to the motion.

MR. MORRISSEY: Your Honor, to start with Mr. Rosenthal said at the outset that the only thing that's still in dispute is the sealing motion, and to a certain extent that's absolutely correct. But the sealing motion --

THE COURT: If you'd do me a favor, just because that air conditioner in the back, sometimes it's a little hard to pick you up. If you could slide that microphone a little closer to you, that'd be helpful. Thank you.

MR. MORRISSEY: Sure. Is that better, Your Honor?

THE COURT: Yes.

MR. MORRISSEY: Okay. Because the sealing motion is tied to the other motion, it's not quite true that only the sealing motion remains to be dealt with here and that remains in dispute.

But if I may begin, Your Honor, with the good news. The U.S. Trustee did not object to the global settlement that's part of the motion. Nor did the U.S. Trustee object to the severance program. It was only the keep and occur --

THE COURT: Right.

MR. MORRISSEY: -- components of that large motion.

And since then, there's more good news to report. Since the U.S. Trustee filed the objection, we have come a long way, in that the debtors have disclosed their benchmarks, that is the milestones that the keep and occur participants must

reach in order to earn their respective bonuses.

In addition, as Mr. Kelsey just said, Mr. Cumberland has contributed a supplemental declaration that provide -- that sheds more light on the details of the bonus programs. More than was provided in the original motion and the declaration attached to that motion.

In addition, Your Honor, the committee has weighed in with a statement of support for the bonus programs, and also shed more light on its perspective of the bonus programs.

THE COURT: And I realize that you filed your pleading before I think you had seen the committee's response, which I think was enlightening. So all right, what issues do you have, if any, left as to the substance of the motion putting aside the sealing issues for a second which we'll get to.

MR. MORRISSEY: Well, Your Honor, I was just going to make one more point in debtor's favor, which is they reduced the number of plan participants, which we considered to be good news.

The problem, Your Honor, is that although we got to see the information that Mr. Kelsey just outlined, we don't represent anybody else. And --

THE COURT: So let me see if I can get this to sort of the head, get this to a head for a second. Am I correct in understanding where you're headed, which is that your objection to this is informational. Meaning that it's related to the

sealing to the extent that if a party wanted to know the details and weigh in on this, that they couldn't, because of the information that's been filed under seal, but -- so am I understanding your point correctly?

MR. MORRISSEY: Yes, Your Honor. Just to take an example. The debtors make reference --

THE COURT: Well, let me before we get to the example, but my -- I just want to see if there's any objection to the terms themselves as being inappropriate under the Bankruptcy Code, putting aside the information of information and sealing for a minute.

MR. MORRISSEY: Your Honor, from the U.S. Trustee's perspective and based on the U.S. Trustee's limited knowledge of the facts of the case, the U.S. Trustee does not see any problems with the --

THE COURT: All right.

MR. MORRISSEY: -- program at this point.

THE COURT: All right. And I understand your informational objection. We'll get there. So as a matter of fact, why don't we get there now, because as you say, there is some relation obviously between the two.

Let me ask the debtors, have you had any requests for information about the details of the incentive and retention programs?

MR. KELSEY: No, other than from the committee and the

U.S. Trustee and we've --

THE COURT: All right.

MR. KELSEY: -- provided unredacted versions of those.

THE COURT: All right. And -- all right, that was my next question. So everything that has been made -- that you have and that you made available to me has been made available to the parties who have inquired?

MR. KELSEY: Yes, Your Honor.

THE COURT: All right. I do agree, and I'm just going to sort of cut to the chase, on the motion to seal. I do agree with the U.S. Trustee's office reaction in looking at the motion to seal which said well we normally don't make these sort of compensation things public. You know, there is no normal in bankruptcy or it's the new normal once it happens.

And I can see institutionally why the U.S. Trustee's office would pipe up on that, because it's important to them to have Brightline rules. So I can certainly understand to the extent to which there might be arguments about specific bits of information. For example, if you're going to give a particular confidential looking forward, EBITDA targets or something of that nature, that way you're getting into a certain level of detail which you think is helpful to give everyone comfort, but that because they are business projections and essentially almost only previews of the business plan that you wouldn't want out there. And I don't have a problem with that, and I

don't expect the U.S. Trustee's office would either.

But I do have a problem with the notion that well, we're not going to get into what people are paid. I understand that that is probably a particularly sensitive subject in Bahrain, and I don't pretend to understand the business norms as to what would go on in Bahrain as to that. But once you file here, I think you're stuck with being here.

So I do agree with the U.S. Trustee's office on the sealing issues generally. And that's also consistent with my general view about sealing which is -- and I understand in the exchange of information and filing of documents that it is often very important to say we, the parties, need to be able to talk frankly and don't want to have to parse through every bit of information that may be confidential and not confidential, so we put a blanket over it.

But once you're in court, I think it's very important to have transparent proceedings and information is a huge way to alleviate a lot of concerns in bankruptcy. So -- and it's just part of the U.S. Court process.

So what I ask really in all sorts of circumstances is for parties to winnow down as much as possible what needs to be under seal, including -- the issue came up in a trial I had recently, in a trial I have coming up later this week, that you know, people asked to seal the courtroom for witnesses, and I say no, we're going to do the witness, and we'll talk around

the issues, and then if we need to have that precise bit of information subject to a particular question, then we'll seal the courtroom for that.

So I would imagine if you applied those principals here, we could probably work out something that is amenable to all sides. It may not be as comforting an outcome as your client might like, I understand that, particularly in light of how compensation may be dealt with. But I don't think that that idea that compensation's generally confidential is going to carry the day in the context of this sort of motion.

MR. KELSEY: I understand, Your Honor. Are you willing to indulge a counter argument to this, at least from our perspective why this case is a little different?

THE COURT: All right.

MR. KELSEY: Okay. The motion itself in the first instance provides significant transparency. The cost of each of the programs is disclosed. The number of participants in each of the programs is disclosed. The insider participation is disclosed. A general description of all of the performance metrics are disclosed. And the two parties in interest who have their antenna on this issue, the creditor's committee and the U.S. Trustee have received this information.

The issue we have here in the context of this motion, we're not just seeking a keep and occur, we're laying off 40 percent plus of the debtor's employees. And the purpose of the

keep and occur is to enhance value and to focus on current employees who aren't being RIF'd on productivity if you disclose the targets, even if you don't disclose the names, if you disclose the targets and you disclose the award, we're afraid that from 150 employee organizations, you have 55 participants, people will be able to back in pretty quickly who's getting what.

And instead of focus -- being focused on their job and enhancing value, people will be focused on well, why didn't I get a better bonus, or how come I --

THE COURT: But why isn't that true in every case, though? I mean, right, why isn't -- and I haven't seen that when I've seen these motions. I've just seen them, here's what they are, here's what people are contemplated to be getting and the numbers are there.

And I'm particularly concerned about going down that route because I don't know where it ends. I think it would invite people to start filing motions to seal for all these motions, which is -- which I haven't seen. And second, it would seem to be in great tension with what Congress has clearly announced its displeasure at certain aspects of retention programs.

And I know there's a line between the two, and I think you've done a good job explaining what's an incentive, and what's a retention, I'm not casting any aspersions here, but I

think the statute reflects Congress' clear direction to courts to look very carefully at these issues, and often there's overlap or there's questions about where one begins and the other ends.

And so I don't really know -- I'm uncomfortable going that route. Again, if it's just a general discomfort about the numbers being out there, I -- that's not confidential business information. It may be uncomfortable, but unfortunately, a lot of things in bankruptcy are uncomfortable.

So I think that's not going to carry the day by itself, lest I issue a sealing order here that goes that route, and then I invited sealing orders in every one of these motions in perpetuity.

MR. KELSEY: I appreciate the Court's concern from a policy perspective. One other point I would make just because there's another argument here. Which is salary and bonus info at least in this industry, as I understand, is confidential. There is a fear that remaining employees may be poached by competitors.

You saw from --

THE COURT: Well, is there a way to do that in terms of percentage numbers, some sort of disclosure that is a little less uncomfortable for the debtors? Perhaps there's a way to do that and maybe I'll leave that for you to have a discussion with the U.S. Trustee's office to try to accomplish the goals

of transparency while not putting the debtors in a bad way. Because that's not my intent, and you run into the potential damage to the business, that's a different story.

On lack of comfort, unfortunately, is not a cognizable basis. But I would ask that you talk to Mr. Morrissey and see if you can come up with something that accomplishes the general walls of transparency, but is contoured to the circumstances of the industry, which I don't profess to be an expert on, sufficient to -- expert enough sufficient to say what is and isn't appropriate.

So there's probably some wiggle room there, as I suspect there usually is.

MR. KELSEY: Okay. And so as I heard Your Honor, you gave at least examples of the kind of guidance. Obviously some of these targets, as you've seen, relate to performance metrics of portfolio companies.

THE COURT: And that I think is not a problem. I mean, that's classic information to seal, although I always remark that as soon as people say that, we'll have a trial and then people will blurt those numbers out anyway and try to put them back on ice.

But, yes, I totally understand that. And I'm not talking about those. Those I think are appropriate for sealing because they are essentially tied. They're predictive goals, and particularly also, they're in the formative stages. You

know, when you're ready to roll out a plan of reorganization is one thing. But I don't think that's what Mr. Morrissey is talking about. He's talking about well what are people going to get. That's what these --

MR. KELSEY: Right. And we can obviously -- we will and that's what you're telling us, and we will, we'll work with the U.S. Trustee and get to yes on disclosing amounts per month per employee. I don't see a benefit in disclosing any individual employee's name.

THE COURT: No, I don't think that's appropriate or necessary. I think titles more than does the trick.

MR. KELSEY: Right. Thank you, Your Honor.

THE COURT: Mr. Dunne?

MR. DUNNE: Your Honor, I just want to be heard briefly with respect to the program generally, not with respect to the sealing motion.

THE COURT: All right. Well, if you'd indulge me for a second. Anybody else want to comment on the sealing aspect of our conversation so we can close that?

MR. MORRISSEY: Your Honor, I think that last point that Mr. Kelsey made, and Your Honor's response to it is deserving of support. Because one of the problems with not telling others besides me, as well as the committee about what's going on here, is the debtor made certain assertions, for example, who is an insider and who isn't. And the debtor

may be perfectly correct, but somebody, someone somewhere may want to challenge the debtor's definition.

But I believe that divulging the title without necessarily divulging the name would accomplish that purpose. So the U.S. Trustee --

THE COURT: All right.

MR. MORRISSEY: -- would have no problem with that.

THE COURT: Okay. Right. All right. So I sort of jumped the gun on the sealing thing but I thought we had reached that point anyway. So I'll ask the parties to work together on that. And again, I think we can accomplish both sets of goals there and work that out.

So I think now we're back to the motion that you started with before I went out of order, consistent with proceedings today. And so I think we were up to Mr. Dunne's comments on the motion in general.

MR. KELSEY: Right. I was just going to make two or three observations it sounds -- and I don't want to steal victory from -- you know, defeat from the jaws of victory here. But one thing that I think is important about this program is that the seven most senior members of the debtor's management have opted out from any of the benefits of any of the programs that are described here.

In my professional experience, this is a first. And I think it sends a strong message to creditors and remaining

employees that if senior members in management are willing to make significant and personal sacrifices for the benefit of creditor recoveries and employee morale, I mean part of the deal with the committee to get their support on this deal was for these members to back out and they said fine.

You know, we have a fragile organization here, especially in light of the size of the lay off, and we're willing to take a hit here. That to my mind is unprecedented. Too, we're very grateful for the committee's statement in support. I think it reflects the amount of effort that both the debtors and the committee put into this so that we could come to an arrangement where the debtor's legitimate business needs were accommodated, but also, you know, the committee's legitimate concerns.

And finally, there's one open issue as between the debtors and the committee. And that it's not open, I think I'm about to close it. But I want to describe it to the Court. Which is we describe in the motion that some employees are the recipients of or have been the recipients of loans.

THE COURT: Right.

MR. KELSEY: And the loans will be repaid by a clawback from their severance award. In certain instances, the severance award will not completely pay back the loan, so there will be an amount outstanding. We're working with the committee on how to resolve the extra amount. And so we'd like

to add a provision in the order that would give committee consent with respect to any forgiveness of those outstanding loans.

THE COURT: All right.

MR. KELSEY: And I think, Your Honor, unless you want -- have any specific question you'd like me to answer about the programs.

THE COURT: No, I think the additional, the committee's filing and the supplements that were provided were enormously helpful in terms of understanding the big picture going on here, which I think is very important to get a handle on.

So, all right, Mr. Dunne.

MR. DUNNE: Thank you, Your Honor. And actually counsel for the debtors has, I think shortened what I need to say because he touched on one of the issues.

At the outset we spent -- the advisors for the creditor's committee spent a considerable amount of time and effort trying to refine the programs to put in a position where we thought it would garner creditor committee support. And we have to appreciate the debtor's flexibility in corporation of our comments, so that we could actually get to a position where we are today, where we had an agreement.

My one specific comment and it's the reason I rise relates to that last point, which came up today. Is that

there's an overall employee loan program that Arcapita has in place with a number of its employees. So that a number of the employees who are about to exit the company owe money back to the company, and those employees are receiving dollars under one of the programs Your Honor hopefully will be approving today, those will be netted in most cases.

There are three where the loan exceeds the amounts flowing the other way, and we resisted the suggestion that that excess be forgiven, if you will. And the reason, there were a number of reasons, but one of which is we don't even have the bar date yet, and those employees may be filing claims. And if we find they file claims, we'd like not to forego or extinguish counterclaims or offsets we have.

We have an agreement that they're not going to do that unless we work -- unless they have the committee's consent and we work out something.

THE COURT: All right.

MR. DUNNE: So for today, that's always the ultimate.

THE COURT: All right. Mr. Morrissey, I saw you rise.

MR. MORRISSEY: Your Honor, a technical matter and I might have missed it, and I apologize if I did. But I'm not sure if Mr. Cumberland's supplemental declaration was admitted into the record, or if even Mr. Kelsey wanted to do that. But I certainly do not want to cross-examine Mr. Cumberland.

I just wanted to clarify one statement that was made

in that declaration. It's on page 7, paragraph 11, the last bullet point. There's always a question about whether a keep program is retentive or incentive based. And this paragraph says that one of the reasons for the keep is regarding multiple participants where there are new performance goals, and for these participants relating to preventing these employees with direct reporting responsibilities from leaving the Arcapita Group.

And that sounds retentive, but my understanding and Mr. Kelsey can answer this, is it doesn't mean exactly what it seems to say, but if Mr. Kelsey can explain that so that our concerns are relayed regarding whether this is the incentive based or retentive based.

MR. KELSEY: Well, the -- I thought -- maybe I don't understand the issue. But for certain employees who are participants in the keep, who have a number of different performance objectives, so this is never a stand alone one, they can earn a portion of their keep award, if they're able to prevent their team, the employees that report to them, without any cash, would able to prevent them from leaving.

All right. And so if they think that these team members are valuable, the idea is, well, you get a bonus if you keep them from leaving, assuming it works --

THE COURT: Right. It's in the manner of an incentive for the business to do well, rather than a retention of that

individual and I think it's the -- I take the U.S. Trustee's comment to be that they're policing, Congress has expressed displeasure for certain kinds of programs as opposed to other kinds of programs.

So I think that's a very helpful comment. I did see that actually and have a note next to it and had not gotten to it yet. And so that's helpful, thank you.

MR. KELSEY: Thank you, Your Honor. And as for the technical point, I thought I offered the declarations to be admitted for evidence, but I don't know.

THE COURT: They're in.

MR. KELSEY: All right.

THE COURT: All right. Anybody else want or need to be heard in connection with what now we've addressed both the motion on the merits, as well as the related sealing motion?

All right. So I'm going to -- in light of what I think were very, very helpful follow-on proceedings that were provided, I'm going to grant the motion consistent with the changes that have been made, which I also think were very helpful, and again, I think it's another fine example of the ability of the debtors here to work with their constituencies and with the U.S. Trustee's office.

These are often very thorny motions, and I appreciate everyone's efforts and reasonable behavior. So -- and so I will grant the motion as it has been revised, consistent with

the supplemental documents and the discussions here today.

And as to the sealing motion, I will await essentially an agreement. And if there is no agreement, folks can call chambers and we'll figure out where to go from there. But I suspect that there can be, based on the guidance I've given and what I see in front of me, as to what information can be made public, just because in the interest of full disclosure and transparency on court proceedings on things that are important.

And again, I think Mr. Morrissey is right, that you never know who may chime in until you see what you file. So again, it's not at all -- I'm not casting any aspersions on the debtors here because obviously the debtors have been incredibly transparent with anyone who expressed an interest. And obviously the committee's signing on to this is evidence of that, so. But I do think is a policy matter that transparency on these particular issues are important.

So all right, that resolves 16 and 17 in one fell swoop.

MR. KELSEY: That's right, Your Honor. As a housekeeping matter, I think that the debtors are anxious to kick off the RIF, the lay off process, which is not simply something you can do like that tomorrow. I know we'll probably work with the committee on a form of order, but in case a form of order that's not mutually agreed upon gets finished, I was wondering if Your Honor could so order the record so that the

debtors can kick off the RIF.

THE COURT: Yeah, I'm happy to do that. Anyone have any objection to that?

All right. I will certainly so order the record and I will await a final agreed upon order, but I understand it may take a little bit of time.

MR. KELSEY: Thank you, Your Honor, I appreciate it.

THE COURT: Certainly.

MR. KELSEY: I think that's what's left on the agenda are the committee retention applications, and we'll cede the podium to Mr. Dunne.

THE COURT: All right. What about 18 and 19, which is Houlihan and --

MR. DUNNE: Those are mine.

THE COURT: All right. Then you're both way ahead of me.

MR. DUNNE: For the record again, Dennis Dunne from Milbank Tweed on behalf of the official creditor's committee.

Confession, Your Honor, I'm struggling with the disparity between index and agenda as well. I think that we're on to the retention of Milbank Tweed which is on the agenda as number 11, but was in the binder as 10. And there's a related motion which is another sealing motion, though I didn't think we drew fire from the U.S. Trustee's office on that one, and would like to take those together.

THE COURT: All right.

MR. DUNNE: The sealing motion shows up as 14 on the agenda.

THE COURT: All right.

MR. DUNNE: Your Honor, we drew no objections to the committee's application to retain Milbank. The application is supported by the affidavit of Robert Moore, who's a member of the firm, and who is on the line.

We're seeking nunc pro tunc approval back to the date of our selection as counsel, April 10th, 2012. The Office of the United States Trustee was given an opportunity to review. We had a number of discussions with no objections.

We did add one paragraph to the proposed final order, which was to anticipate a comment that we were going to receive from the U.S. Trustee's office, and to make it consistent with other orders that we've recently entered in this district, which is to basically require that when we get to the time when Milbank as a firm increases their annual hourly rates, we will file a public notice to -- we'll file a notice to the U.S. Trustee and the debtors with respect to that.

THE COURT: All right. Anyone want to be heard in connection with the application to retain Milbank as counsel?

MR. MORRISSEY: Your Honor, I can comment on both of those motions if the Court would prefer unless Mr. Dunne --

THE COURT: Sure.

MR. MORRISSEY: -- wants to go first.

The ceiling in this case is very limited and expressly so, and I'm certainly glad that Mr. Dunne is responding to my objections before I even have a chance to make them.

THE COURT: All right. Well, let's --

MR. MORRISSEY: The U.S. Trustee has no objection.

THE COURT: All right. And so I think we segwayed from -- I'll grant the application as to Milbank and anyone else want to comment on the motion to file very particular bits of information under seal which is number 14 on the agenda?

All right. I'll grant that motion as well.

MR. DUNNE: Your Honor, moving to agenda items number 12 and 13, which I'll propose to do collectively because I have one comment, one change to the orders that is identical in both.

And this is the selection of Walkers as Cayman Island's counsel for the committee, and Hassan Radhi & Associates as Bahraini counsel to the creditor's committee.

We have received no objections, but in discussions with Mr. Morrissey he's requested and we've agreed to put in some clarifying language in each of them. Which basically says what I think was the case in any event, that each professional will be providing legal services solely with respect to the law and the jurisdictions in which they practice.

So there will be a separate order with reference to

Walkers, that will say it shall provide legal services as required by the committee solely with respect to Cayman law, and correspondingly with respect to HR&A, that they will provide legal services solely with respect to Bahrainian law.

THE COURT: All right. Anyone want to be heard in connection with either of those two applications?

All right. I will grant them both.

MR. DUNNE: So that brings me to agenda item 18 and 19, Houlihan, Lokey and FTI.

I am going to start out with comments about both of them generally, because there were a number of issues with respect to overlap of services, avoiding duplication, and minimizing costs.

I believe we have resolved that issue, and then I will walk through some separate changes for FTI and some separate changes for Houlihan.

THE COURT: All right.

MR. DUNNE: I believe there's one open issue with Houlihan which I'll deal with.

Let me just say at the outset that Houlihan Lokey was selected by the creditor's committee as the creditor's committee's primary and financial advisor. FTI was selected to perform very discreet tasks, which the committee has been doing, in my view, an unusually good job at going from task-to-task in terms of identifying and instructing FTI very

specifically, as opposed to more broadly.

And generally to date, they've spent most of their time on the budget. You know, we were on the fifth or sixth interim today, and they've been scrubbing that number, doing confirmatory diligence for the committee. And there are going to be a number of similar tasks for FTI as we go forward with respect to, for instance, in plan related services looking into inter-company claims, legitimacy of that. They have created kind of a cottage industry for themselves in doing those substantive consolidation related type exercises. And I expect the committee will lean on them for that.

We have added a paragraph to those respective orders. That places the burden -- it's not going to be on the committee, but also on FTI and Houlihan that they will coordinate on the services they are providing to the committee, in order to ensure that there is no unnecessary duplication of services by either of the firm during the cases.

And with that, as well as the general explanations we provided to the debtors and the U.S. Trustee, I think we've resolved the overlap of services and the scope of retention for both. And unless there are comments on that, I can turn to specific issues with respect to FTI.

THE COURT: I know there was an objection on that issue, so let me hear from the debtors, just to clarify that that's been resolved.

MS. WEISS: Yes, Your Honor. Based on the representations that Mr. Dunne made in the discussions between the debtors and the committees -- the committee, we're withdrawing our objection to the motion.

THE COURT: All right.

MS. WEISS: Thank you.

THE COURT: All right. So we can turn to the specific comments.

MR. DUNNE: With respect to FTI, we have added two provisions requested by the United States Trustee. One is similar to the provision we anticipated, FTI did not. They were asked to provide ten days notice to the debtors, the U.S. Trustee, and the committee in connection with any increase in their hourly rates. They will do that.

They've also agreed to include a provision that says any material expansion in the scope of their services set forth in the application will be subject to Court approval. That's also fine for FTI. So I think that that resolves FTI, but let me just confirm with Mr. Morrissey.

THE COURT: All right. Any other -- anybody want to be heard?

MR. MORRISSEY: No objection to that one, thank you.

THE COURT: All right. Thank you.

MR. DUNNE: The -- that brings me to Houlihan. Let me say at the outset that the Houlihan order is an interim order.

We're basically approving their retention application except for the successor transaction back end fee, which is still the subject of negotiation between the creditor's committee and Houlihan.

Let me tic through two provisions that will be added to the order and then get to the one open one.

The first of the two is with respect to Section 330 review. We have revised the reservation of rights with respect to the United States Trustee's review under Section 330 for Houlihan's fees to be consistent with the state of the art of the orders that have recently been entered in this district.

It has also been revised to provide that the financial restructuring professionals at Houlihan will detail their time records in half hour increments, and will submit a narrative summary by project category of services rendered.

This will not apply to Houlihan's non-financial restructuring employees, but with respect to their bankruptcy restructuring employees, that's acceptable.

So let me get to the open issue, and it goes basically to the U.S. Trustee made the request that any material expansion of scope of services for both FTI and Houlihan be subject to Court approval.

It was acceptable to FTI, it's not for Houlihan, and let me explain why. And it's basically because Houlihan is getting paid on a flat monthly fee. They're getting paid

$200,000 per month going forward. If their services are expanded it doesn't cost us, or the estate anymore money, simply as a result of expanding the scope of services. Which is not true vis a vis FTI because they're on an hourly rate basis. So you expand services and the cost increases commensurately.

So we agree that's not appropriate, in fact, to the extent that they could do more services for the same amount of dollars, it's actually more efficient. However, I believe it would be appropriate that if the scope of services expanded and the economics were requested to be increased as a result of that, we'd obviously have to come back to the Court to deal with the -- really the economic component of that.

THE COURT: All right. Mr. Morrissey, any comments?

MR. MORRISSEY: Your Honor, very briefly. Very often when we see a fee application or a retention application I'm sorry, we see a list of services. And the last item is a catch all provisions which says something along the lines of, and anything else our client asks us to do.

And we generally oppose those types of provisions, only because we can get surprised at the time the fee application is filed. Where someone might say I had no idea that these professionals were doing thus and so. And it amounts to, in our view, even though the catch all provision is there, it amounts to an expansion of the services agreed to at

the time of retention.

So, for example --

THE COURT: I understand, but I guess my thought is that presumably the driver for that is the bill, right. And so when the bill comes due, and you say, well, you all of a sudden are working on topic 10, we don't see topic 10 anywhere, but it's covered by the catch all. But if there's a monthly retainer arrangement which can't be changed absent a further order of the Court, I would think that we're not going to have that problem.

So I certainly understand the general objection to that. And it sounds right to me, and I think it's consistent with what I've seen in the past. But here if there is a monthly retainer arrangement, it doesn't sound like it would do anybody any harm.

MR. MORRISSEY: Yes. But it could be also wasting resources of others besides professionals themselves. If I can give a hypothetical example not for this case.

Say for example a debtor has -- is retaining a professional, financial professional. The debtor has no intention whatsoever of selling the business. The financial professional goes up, the debtor says kind of secretly to the professional, why don't you go do some marketing here, see what we can get for this company.

No one has any idea that this professional was going

to be engaged in that service, and then you see it at the time of the fee application. It's beyond the scope of the original retention, and obviously someone can object at the time of the fee application. But I think people should know, and there should be full disclosure not only as to who the professional is and what they're making, but also what it is that they're going to be doing.

THE COURT: Well, again, generally I think I am sympathetic to that view. But here I don't -- I don't want to fix a problem that doesn't exist in the context of the actual case. And I'm very happy to draw sort of policy lines as I did with the issue of sealing, where I think it's important, and I can't see how to distinguish one case from another case, and I might have -- might find that that's a problem going forward.

But here, I think that if you have a monthly fee arrangement that can't be changed absent an order of the Court, it actually will save money because it won't require the parties to sort of ring their hands a little bit if they need to adapt in some small ways to the circumstances of the case.

And obviously the other professionals, all their applications are subject to court approval. So I don't think it's an issue, and in fact, the flexibility may actually be of some benefit. So I'm going to allow it under the facts and circumstances of this case. But certainly would not allow it if it had a monetary tail to that particular dog, then I think

it really is a problem. And so here I'm not concerned about it.

MR. DUNNE: Thank you, Your Honor. That actually completes our presentation and --

THE COURT: All right.

MR. DUNNE: -- takes us through all the advisors to the UCC.

THE COURT: All right. I will grant that application consistent with our discussion, and I believe that's everything on the agenda. So if you would be so kind as to remind me, do we have another omnibus? We have another omnibus date set, I believe, for --

MR. ROSENTHAL: I think it's August 1st.

THE COURT: August 1st. All right. And then I know we're here --

MR. ROSENTHAL: On the 9th.

THE COURT: -- on the 9th. So just give chambers a holler a week from now and let us know where things stand, and because I obviously want to be able to accommodate whatever time you might need if it comes to that.

MR. ROSENTHAL: That's fine. And we may also be address at that call where we are on Rothschild as well.

THE COURT: All right. That would be helpful.

MR. ROSENTHAL: Because I think those are --

THE COURT: That would be helpful.

MR. MORRISSEY: Your Honor, just one final comment which is, there were a lot of items on today's agenda. And I think the Court should be aware both the debtor's side and the committee side were extremely cooperative in dealing with many issues that I raised on all kinds of different pleadings here, and that I think saved us a great deal of time today.

THE COURT: I -- this case has been very well managed by everyone. So I'm very appreciative of that, and I know it did not come in as a planned filing. So I am -- you can't miss the fact of the cooperation and the good faith dealings with all the parties. So I am very appreciative of everyone's efforts, it makes my job much easier.

So thank you very much, and look forward to hearing from you next week.

Oh, as to orders, what I would say is if you could just send them. I have a number of them here, but at the same time I know there have been a lot of tweaks, so I'll -- consistent with my prior practice, I'm going to ignore what I have and wait till I get the final version. And just please when you send them along, again, feel free to e-mail them, and just have the e-mail reflect that after consultation, everybody signed off, and here's the final versions.

And if they're not all in one e-mail, just let us know in that e-mail, here four or five, the rest are to come, just so we know when we get the final e-mail that we have everything

that we're supposed to have.

MR. ROSENTHAL: We'll do, Your Honor.

THE COURT: Thank you very much.

MR. ROSENTHAL: Thank you for Your Honor's time.

(Whereupon the proceedings were concluded at 1:06 p.m.)

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I N D E X

RULINGS

RULINGS

RULINGS

RULINGS

	Page	Line
Doc. #205 Debtors Motion for an Order Authorizing Debtors to Implement Employee Programs and Global Settlement of Claims	73	13
Doc. #273 Supplement to Debtors Motion for an Order Authorizing Debtors to Implement Employee Programs and Global Settlement of Claims	73	13
Doc. #113 (FINAL) Motion Authorizing The Debtors to Retain And Employ KPMG LLP As Valuation Advisor	46	2
Application to retain Alvarez and Marsal as financial advisor	44	5
Application to retain KPMG LLP U.S. as tax consultants	46	17

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

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: June 27, 2012

Shelia G. Orms

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