

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 12-11076-shl

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6 In the Matter of:

7

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

9

10 Debtors.

11 - - - - - x

12 Adv. No. 12-01662-shl

13 HOPPER

14 Plaintiffs,

15 V

16 FALCON GAS STORAGE COMPANY, INC.

17 Defendants.

18 - - - - - x

19 Adv. No. 12-01708-shl

20 FALCON GAS STORAGE COMPANY, INC.

21 Plaintiffs,

22 V

23 ENTERPRISE JET CENTER, INC.

24 Defendants.

25 - - - - - x

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United States Bankruptcy Court
One Bowling Green
New York, New York

August 1, 2012
11:10 a.m.

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

1 Motion to (A) Authorizing Debtors to (I) Continue Existing
2 Cash Management System, Bank Accounts and Business Forms and
3 (II) Continue Ordinary Course Intercompany Transactions; and
4 (B) Granting an Extension of Time to Comply with the
5 Requirements of Section 345(b) of the Bankruptcy Code.

6
7 Application to Employ Epiq Bankruptcy Solutions, LLC as
8 Information Agent/Application of Official Committee of
9 Unsecured Creditors of Arcapita Bank B.S.C.(C), et al., for
10 Entry of an Order Authorizing the Employment and Retention
11 of Epiq Bankruptcy Solutions, LLC as the Information Agent
12 for the Official Committee of Unsecured Creditors Effective
13 Nunc Pro Tunc To April 24, 2012

14
15 Supplemental Application to Employ Ernst & Young as Auditor
16 Debtors' Application Pursuant to Sections 327(a) and 328(a)
17 of the Bankruptcy Code for an Order Expanding the Scope of
18 their Retention of Ernst & Young as Auditor Nunc Pro Tunc to
19 the Petition Date

20
21 Motion for Relief From Stay Re: Tide Natural Gas I, LP and
22 Tide Natural Gas Storage II, LP

23
24 Adversary Proceeding: 12-01662-shl Hopper v Falcon Gas
25 Storage Company Inc. Pretrial Conference

1 Adversary Proceeding: 12-01708-shl Falcon Gas Storage
2 Company, Inc. v Enterprise Jet Center, Inc. Pretrial
3 Conference

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5 Motion to Authorize Debtors Motion Pursuant to Bankruptcy
6 Rule 9019 for an Order Authorizing and Approving the
7 Settlement With Enterprise Jet Center, Inc.

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

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated.

We are here this morning for Arcapita Bank omnibus hearing. Proceed.

MR. MILLET: Would the Court like appearances from all parties first or --

THE COURT: Sure. I wasn't sure who was going to end up weighing in on some of the contested matters, but let's -- let's say those that we know of.

MR. MILLET: Very well, Your Honor. Craig Millet of Gibson, Dunn and Crutcher on behalf of Arcapita Bank, the debtors. I'm joined by my partner, Janet Weiss today. I'm also joined by Kareem CiAhmed (ph) from the company, and Mr. Rosenthal's not with us today. He sends his regards. Contrary to popular belief, he's not playing as part of the U.S. men's basketball team in the Olympics. But -- but we did force him to go on on a short vacation for --

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

MR. MILLET: -- his well-being and, certainly, ours as well.

THE COURT: -- an equally admirable pursuit.

MR. FLECK: Good morning, Your Honor. Evan Fleck of Milbank, Tweed, Hadley and McCoy on behalf of the official committee of unsecured creditors. I'm joined by Nicholas Kamphaus, also of Milbank. Thank you, Your Honor.

1 THE COURT: All right. Good morning.

2 MR. WOOD: Your Honor, Trey Wood, on behalf of
3 Tide Natural Gas Storage I and II, Limited Partnership. We
4 have a pending motion to lift stay. I didn't know if you
5 want appearances on that right now or --

6 THE COURT: Sure, since you're here.

7 MR. WOOD: Okay. Trey Wood, Your Honor, good
8 morning. And with me is Stephen Crain, one of my partners.

9 THE COURT: All right.

10 MR. WOOD: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. ZDUNKEWICZ: And, Your Honor, David
13 Zdunkewicz, with Andrews Kurth. I am also representing the
14 Hopper parties, also involved in the Tide matter.

15 THE COURT: All right. Thank you.

16 Proceed.

17 MR. MILLET: Thank you, Your Honor.

18 It's been almost five weeks since we were last
19 here before the Court, and so as we have done before, I
20 wanted to provide the Court with a few general comments as
21 to what's been going on in the last five weeks.

22 And in -- in general, we've been doing the same
23 thing we've been doing. We've been maintaining our
24 operations. We've been engaging in extensive communications
25 with both the JPLs, the joint provisional liquidators in the

1 Cayman Islands, as well as the committee, and we're
2 orchestrating a massive flow of information between the
3 parties. We've been dealing with our budget issues and deal
4 fundings and, primarily, the evaluations of the business
5 plans.

6 To provide a little more detail on that, we have
7 greatly resolved our -- some retention issues we had to deal
8 with over the last five weeks and -- which caused an
9 enormous amount of time. But with Mr. Fleck's assistance,
10 we've now resolved those on a consensual basis. So I'm
11 pleased to say that the Rothschild and KPMG retention
12 matters are behind us.

13 THE COURT: That's good to hear.

14 MR. MILLET: The -- another point that we've been
15 spending a great deal of time on is the KPMG reports to get
16 those in shape with respect to the valuation over the
17 various properties owned by the debtor and operated by the
18 debtor. The first wave of reports are -- are finally out
19 and the rest will be following immediately. That took a
20 great deal of time to get through such things as third party
21 NDA releases, and never has so much time been spent on
22 perfecting hold harmless letters as has been spent on this
23 particular occasions.

24 THE COURT: You -- you would probably be
25 surprised.

1 MR. MILLET: Probably. But this would rank up
2 there. I would put it in the running.

3 We also had some difficulties in obtaining
4 participation or cooperation from entities in which the
5 debtor owns a minority interest, but seeks to provide a
6 great deal of information regarding that company, and the
7 majority is reticent about providing information. But we've
8 worked through those issues.

9 We have finally been able to go back to the
10 committee with a proposed deal funding protocol, which I
11 just recently sent to -- to Mr. Fleck. We were going to
12 have further discussions with respect to that. We have had
13 the benefit now of operating for some time and working with
14 each other with respect to deal fundings. So to some extent
15 we didn't have to do this blind. We were able to do it with
16 a certain amount of history behind us and it is, in some
17 respects, to memorialize the history we've had together thus
18 far. It seems to be working to try to smooth out some of
19 the areas where, possibly, it's been a little bit rough.
20 But, otherwise, to get down in writing something that will
21 memorialize what we've been doing.

22 With respect to the JPL, we've had extensive
23 communications with the JPL regarding a number of issues,
24 including meetings in London with them. We have received a
25 proposed Cayman protocol as well which is more of the nature

1 of over-arching commandments than specific detailed elements
2 to follow in funding. We have provided a copy of that to
3 the committee, and Mr. Fleck and I are going to be
4 discussing that tomorrow as well to get his views on that
5 protocol.

6 We have reached the parameters of a settlement
7 agreement with the JPL on a number of open issues which we
8 think will simplify our workings with the Cayman courts, and
9 that is also before the committee and we're getting their
10 input with respect to that particular settlement. It's of
11 the nature of a -- a term sheet or settlement principle.
12 It's not what I would call the done deal by any means until
13 we get all parties on board.

14 We're working hard to coordinate what we're doing
15 with the Cayman court and understand exactly how the Cayman
16 process works, and specifically enforcing whatever happens
17 up here in the Cayman proceedings to ensure that we don't
18 have to do things twice, in essence, or have the possibility
19 of inconsistent results. We have meetings next week
20 scheduled with Cayman counsel and the JPLs and their counsel
21 to try to work out exactly what Cayman law provides, how it
22 works and how we can provide some certainty so that we are
23 going to have one set of results in this case overall.

24 With respect to that, there is one important
25 development the Court should be aware of. Last time we were

1 here we mentioned that the JPL had made a motion before the
2 Cayman court for the appointment of a Cayman creditors'
3 committee and that at that point we were -- the debtor was
4 taking, in essence, no position, but we were certainly not
5 supporting it. We explained some of the issues that we saw
6 with it occurring, but, nevertheless, did not resist it.

7 Despite our non-opposition, the Cayman court
8 denied that motion finding that there was no apparent reason
9 for a Cayman committee at this point; that it was
10 duplicative and that everything seemed to be going just
11 fine, especially with Mr. Fleck and his representation of
12 the committee doing its job and no need for a duplicative
13 committee in the Caymans. We were, of course, pleased to
14 see that and I trust Mr. Fleck was as well.

15 We have been having quite a few discussions lately
16 with Standard Chartered Bank. They're our \$97 million secured
17 creditor, in fact, our only secured creditor and we've been
18 trying to understand their position with respect to adequate
19 protection. We don't really think that they're necessarily
20 in jeopardy right now, but have been trying to work through
21 some issues that they may have to see that -- what we can do
22 to satisfy them on a number of points.

23 I'll get to that in a moment because we thought a
24 -- a motion was going to be before the Court in August, but
25 it appears that it won't be at this point.

1 We've reached an agreement as to a standstill
2 agreement as to our headquarters lease, which was basically
3 a rent abatement agreement during the pendency of the case
4 to allow us to resolve some issues with respect to the
5 structure of that lease. That will help us preserve cash.
6 We've been working extremely hard with Rothschild who's been
7 very busy with the business plan, looking at alternatives,
8 looking at the waterfalls with respect to helping money
9 flow, and looking at change of control analysis and how that
10 will impact valuations to the goal -- to the goal of
11 providing a plan of reorganization within the time that
12 we're working on here with the Court.

13 We've also been out seeking new equity raise and
14 we've been -- been very well received and we're very pleased
15 to -- to see the possibility of -- of a potential new equity
16 coming in that would be part of a plan. The Eurolog (sic)
17 IPO, which will also be talked about a little bit more
18 today, has resurfaced. This was an initial public offering
19 of real properties in Europe that are used, basically, for
20 storage. The value of the total property package is about
21 \$750 million Euros or \$1.1 billion, and we were hoping to
22 roll those up into an entity that will then be able to go
23 public.

24 A&M has studied this extensively. We have
25 provided extensive presentations to the committee and to the

1 JPLs and we believe that this is the best way to try to
2 monetize these assets for the benefit of the estates.

3 This is something that started long pre-petition.
4 And because of mainly the conditions in Europe and because
5 of Arab Spring it sort of got derailed for some time. The
6 feeling is now that there may be a proper market coming this
7 fall and that this may be a good time to go back out, and
8 we're in the process of trying to get these assets ready to
9 take advantage of this resurging market and try to realize
10 the benefit of those assets. That will be the subject of
11 the motion coming before the Court shortly.

12 Finally, we've been out talking to DIP financing
13 providers and are exploring that very heavily. And I expect
14 that we'll probably be bringing a DIP financing motion
15 before the Court in either probably more October a time
16 frame at this point, but we'll see how -- how that
17 progresses.

18 With respect to our budget to date, we continue to
19 be very careful about our spending. Our cash position on
20 June 16 was \$87.4 million. Our cash position on July 21 is
21 \$88.2 million. Part of that includes \$3 million that is
22 dedicated for the payment of the JPL's proceedings, the
23 provision liquidation. So of the 88.2, 85.2 million is
24 what's available to the debtor. That is higher than, of
25 course, we anticipated in our budget, but in part that's due

1 to a receipt of \$10.5 million that was held in an escrow by
2 King and Spalding as related -- as to another matter
3 prepetition that was then released to the debtor and put in
4 the JPM account, a JPMorgan account.

5 Also, disbursements tend to be a little lighter as
6 -- because there's been less deal-funding, and there's also
7 been slower payment of professional fees. Some of that is a
8 timing issue, but professional fees have still been less
9 than budgeted overall. So our cash position continues to be
10 at least on track, if not ahead of track.

11 Net flow, cash flow from filing through 7/21 is
12 \$30 million, better than the sum of the budgets which have
13 been filed. So we're -- we're still doing better than we
14 had anticipated.

15 Looking forward now toward the future and moving a
16 little closer to what we're doing here today, we have a cash
17 management budget, cash management motion before the Court
18 to approve another budget. With respect to this budget, I
19 believe we have agreement as to all terms with the exception
20 of one line item. That one line item relates to \$2.3
21 million in fees due to Linklaters for their work on the IPO,
22 which we just discussed.

23 And the reason I bring it up now is I wanted to
24 talk a little bit about the August 16 hearing, which is
25 coming up in a couple of weeks, obviously. We had

1 anticipated having a motion hearing on that date as to
2 Standard Charter Bank with respect to their adequate
3 protection matters. That will not be heard on that date.
4 We are still working on that and that will be heard, if at
5 all, at some future date. So that is off for the 16th.

6 We do have -- so that is -- these are the -- sort
7 of the take them out and put them in we're doing now. The
8 put them in is, you -- the Court may recall that we obtained
9 permission in May to make a \$35 million payment on the
10 Lusail transaction as part of a payment due needed to
11 maintain the rights of the debtor with respect to that
12 property.

13 There is a follow on payment that was anticipated
14 as part of that of \$10 million, which is, in effect, a rent
15 payment, although not called rent under a Shariah-compliant
16 type of transaction. It nevertheless is -- is of that
17 nature. The committee and the JPL have reached agreement
18 with respect to that payment. We have an agreed form of
19 order that we would like to present to the Court, but in
20 keeping with the rules we would need to do it by motion. We
21 would request, with the Court's permission, that we have it
22 set for August 16. We would be able to file the motion by
23 Friday of this week. Again, it's an agreed to matter with
24 respect to the JPL and the committee. We don't anticipate
25 any material objection. We don't anticipate any objections,

1 but, certainly, we don't foresee --

2 THE COURT: That's fine to do it --

3 MR. MILLET: -- considerable objections. Okay.

4 THE COURT: -- on August 16th.

5 MR. MILLET: Very well. Thank you, Your Honor.

6 Fourth, with respect to the August 16th, we
7 already have on file the motion to have this Court approve
8 proceeding with the Eurolog IPO. So we would refer to it as
9 the Eurolog IPO, and to authorize to coming to proceed with
10 that IPO subject to certain future conditions and approvals
11 by the JPL as the committee and what will likely be Standard
12 Charter Bank as well.

13 As I mentioned before, we believe that we've
14 convinced everyone that, assuming the market is right and
15 assuming the pricing is right, which in the world of
16 securities is something that is a -- a dartboard transaction
17 that occurs at midnight after a dead chicken is laid or
18 whatever they do if they've got pricing. You have to sort
19 of be ready to go. And so we're trying to use this motion
20 to be ready to go. If we wait until the end, we can't get
21 Court approval and we would miss pricing. So that's sort of
22 the reason of bringing this early on.

23 Anyway, that's for hearing on the 16th and the
24 Court can consider that at that time.

25 THE COURT: Do you anticipate objections to that

1 motion --

2 MR. MILLET: At this point --

3 THE COURT: -- based on your conversations thus
4 far.

5 MR. MILLET: -- from what we've been told, no, we
6 don't. As always, we can be surprised. We -- you know, but
7 -- but, no. At this point we don't. We think that everyone
8 is on board with that. We -- we are talking to Standard
9 Charter Bank about it to get them comfortable with it. We
10 think we will be able to do that. It's possible they may
11 have a limited objection. We think that we can make them
12 comfortable, but they may wish to be heard on that at that
13 time.

14 But that matter has already been filed, is already
15 set for hearing on that day.

16 And then, finally, we get back to the point I
17 mentioned a moment ago. We have this budget dispute as to
18 one line item, which is as to \$2.3 million to pay Linklaters
19 who's been acting as IPO counsel to non-debtor P3, the
20 entity that will be involved in the IPO. The amount in the
21 budget for August represents approximately 2. -- pardon me --
22 - approximately 50 percent of what they are currently owed.
23 So they are working, in essence, up to this point.

24 We're getting to a very crucial point in this --
25 in this IPO transaction. We're going to need to be able to

1 go out and price this in the September/October time frame,
2 and we have to be ready at that time. Although the
3 committee has not filed a formal objection, we've been told
4 at least they object to that point.

5 The point is, is we need to resolve this
6 particular objection right away. If it -- if it can't be
7 resolved in some other way today, then we would like to have
8 it heard on the 16th so we can get it resolved because
9 Linklaters will otherwise be putting pencils down. The mere
10 delay will be the same effect as denying the motion and
11 denying the IPO motion, which is to be heard that same day.
12 Therefore, all the facts as to the IPO will be before the
13 Court on that day.

14 We would pose that if there is an objection that
15 -- that gets passed today, that we have it heard on the
16 16th; that the committee file whatever it wishes to in the
17 form of an objection by the 7th, and that we, the debtors,
18 file our reply by the 14th. And if that pleases the Court,
19 that then would hopefully give enough time before a hearing
20 on the 16th to resolve that item.

21 THE COURT: All right. Taking up that one issue
22 now, does anyone have any objection to proceeding in that
23 fashion as to that issue?

24 MR. FLECK: Your Honor, good morning again. Evan
25 Fleck, Milbank, on behalf of the committee.

1 Mr. Millet went through a very comprehensive list
2 of updates and we're -- we'll treat that as -- as you have
3 in the past, Your Honor; a status update for the Court's
4 benefit and the Court hasn't looked to the committee to
5 respond to each item as to where we stand and we try to
6 resolve those things. On --

7 THE COURT: No. No. That's -- that's correct.

8 MR. FLECK: With respect to this deal-funding
9 item, first, I would like to note for the Court just as a --
10 as a reminder, I know the Court is aware that the committee
11 and the debtors have, in all instances, endeavored to reach
12 consensual resolutions to avoid Court intervention and I --
13 I appreciate the fact that we're not airing today the
14 substantive arguments on the merits of whether the fees
15 requested for a non-debtor, for Linklaters, should be paid
16 and try to keep it to the discreet issue of how to proceed
17 to the extent we're not able to reach an agreement. And we
18 have tried to so far, but we'll continue in our efforts to
19 do so.

20 The committee has no objection to having the
21 matter heard expeditiously on the 16th. We're surprised
22 that Linklaters which is a retained professional in some
23 respects before this Court would stop its work on the IPO in
24 the face of the current context. But we -- we heard that
25 and -- and if that's the reason -- if that's one of the

1 reasons why we should move forward in an expeditious
2 fashion, we certainly have no objection to that.

3 In terms of the process, though, Your Honor, we're
4 just hearing what the debtors' view is with respect to the
5 schedule and how to move forward on that. Our view is that
6 the debtors are making a request for a non-ordinary course
7 payment for a use of estate resources.

8 The -- there is no motion on file. We do not have
9 the -- although I'm told that it was just sent to -- sent to
10 me during this hearing, we don't have the Linklaters'
11 engagement letter. We don't have any of their time entries.
12 This is very much a new matter and the debtors should make
13 their case before the Court for a -- for a use of estate
14 resources pursuant presumably to 363 of the Bankruptcy Code
15 and file a motion. We would be happy to respond to that
16 motion, obviously, on an expedited basis to meet the Court's
17 needs in terms of hearing the matter and having the
18 information before the Court before the hearing.

19 So our proposal would be that the debtors make a
20 motion, put their case before the Court, presumably, if
21 we're on the schedule for the 16th, that they could do that
22 by next week, next Monday. The committee would respond the
23 following Monday or even if -- if -- at the Court's pleasure
24 the committee would respond even next Friday with an
25 opportunity for the debtors to file reply papers.

1 Again, we hope that this could be avoided and we
2 will continue in our efforts to reach a consensual
3 resolution. But if they do wish to have approval for this
4 expenditure, it's our view that the debtors should make a
5 motion. There is no motion on file. The only motion, this
6 comes under the broad umbrella of the cash management motion
7 from the first day sweep of papers, which clearly does not
8 speak to any matter with respect to Linklaters or IPO fees
9 for the non-debtor.

10 THE COURT: All right.

11 MR. MILLET: First, Your Honor, I would like to
12 thank Mr. Fleck for agreeing that we can do this on the
13 16th. That's number one.

14 THE COURT: All right.

15 MR. MILLET: Number two, procedure, we don't see
16 this as something outside of the ordinary course of business
17 at all. This is exactly what Arcapita has been doing for
18 its entire history.

19 THE COURT: What -- let me cut you off there.

20 MR. MILLET: Sure.

21 THE COURT: I don't want to have to get into sort
22 of it's outside of the ordinary course, it's inside the
23 ordinary course. The obvious fact is that you want to do
24 this. They may want to object. I don't think I have
25 anything in front of me yet that addresses this particular

1 issue, although, arguably, you might -- it might be
2 shoehorned under some existing things, but I don't -- I
3 don't think we need to get into how to characterize that.

4 MR. MILLET: Very well.

5 THE COURT: And so I do think the bottom line,
6 you're going to want to get something in front of me, so I
7 think I'll leave it to the two of you in the first instance
8 to work out an appropriate schedule to do that. I'm
9 amenable -- I would just like to get the reply, if it's on
10 for the 16th, so that I -- end with me getting the reply by
11 5:00 on the 14th. That's really the only bottom line --

12 MR. MILLET: Very well. Then we'll --

13 THE COURT: -- that I'm worried about.

14 MR. MILLET: -- work it out, Your Honor.

15 THE COURT: But I -- I would figure that -- that
16 any opposition could probably be on the 10th and if you
17 wanted to file sort of like an opening -- it could be short
18 in connection with other things that --

19 MR. MILLET: Correct, Your Honor.

20 THE COURT: -- have been filed. But that
21 suggestion that perhaps the 6th seemed -- seemed to be
22 somewhat sensible. But I'll leave it to you all in the
23 first instance to --

24 MR. MILLET: And we'll do that. That's --

25 THE COURT: -- chat.

1 MR. MILLET: -- that's fine, Your Honor. And
2 we'll --

3 THE COURT: All right.

4 MR. MILLET: -- keep it under 150 pages each for
5 the --

6 THE COURT: All right.

7 (Laughter)

8 THE COURT: That's fine. That's not true of
9 everything, I guess, so.

10 MR. MILLET: No. That's fine, Your Honor. We'll
11 work that out with Mr. Fleck. I'm sure we can do that.

12 THE COURT: All right.

13 MR. MILLET: Okay. So that takes care of what we
14 have coming up on the 16th, then, and gets us to today.

15 As is our custom, too, if it pleases the Court, we
16 would actually request that we take a matter out of order
17 from what was on the agenda.

18 THE COURT: Certainly.

19 MR. MILLET: And partly because that will allow me
20 to sit down and Ms. Weiss to stand up, her time here to do
21 things. What we would request --

22 THE COURT: I see somebody rising who has risen a
23 few times, so I'm not -- I'm not sure --

24 MS. HERTHER-SPIRO: Before we move forward,
25 Nichole Herther-Spiro from Dechert for Standard Charter. If

1 I could just respond --

2 MR. MILLET: Oh, sure.

3 MS. HERTHER-SPIRO: -- to some things that you
4 raised.

5 I'm sorry. I wasn't planning to speak today,
6 obviously --

7 THE COURT: If you would just slide that
8 microphone over. You're perfectly fine where you are.

9 MS. HERTHER-SPIRO: Yeah. Nicole Herther-Spiro of
10 Dechert, LLP for Standard Charter Bank. And I wasn't
11 planning to speak, but I did hear the debtors say a few
12 things about Standard Charter that I think we need to just
13 raise before --

14 THE COURT: All right. Well, I will say I -- I
15 don't think I'm being asked to decide anything today on
16 Standard Charter. So I -- all your rights are preserved to
17 make whatever arguments that you want to make to -- in the
18 event that I need to decide something on the 16th.

19 But that said, there are occasions when somebody
20 absolutely, positively needs to say something, so if this is
21 one of those, fire away.

22 MS. HERTHER-SPIRO: Thank you, Your Honor.

23 First, we are still in negotiations with the
24 debtors about adequate protection and they've said that they
25 don't intend to be putting something before the Court soon.

1 And, you know, I just wanted to make the Court aware that if
2 they are putting things before the Court, we will be hear
3 before the Court on Standard Charter's motion. And, also,
4 that we do have certain issues with the IPO motion.
5 Hopefully, they will all be resolved, but if not, we would
6 have to file an objection there as well.

7 THE COURT: All right.

8 MS. HERTHER-SPIRO: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. MILLET: Very well, Your Honor. I -- I
11 thought I reflected that, but if I didn't I apologize.

12 The first group of matters we would like to take
13 up today would all relate to the Falcon case itself. The
14 first one, which hopefully is a simple one, is item number 3
15 on the agenda. That's the 9019 motion to have the
16 settlement approved as to the insurance payment with respect
17 to the damaged Falcon aircraft.

18 We have not received any opposition on that
19 matter. This is something that has been negotiated over
20 some time by outside counsel for Falcon and the insurance
21 carrier for the FBO that damaged the aircraft. And we
22 believe that this would provide an expeditious resolution to
23 bring a little money into the Falcon estate.

24 THE COURT: All right. Anyone want to be heard in
25 connection with the 9019 motion authorizing the settlement

1 with Enterprise Jet Center, Inc.?

2 MR. FLECK: Your Honor, Evan Fleck on behalf of
3 the committee.

4 The committee and its advisors have reviewed the
5 motion and supporting data, have had discussions with the
6 estate and are supportive of the approval of the settlement.

7 THE COURT: All right. Anyone else?

8 All right. Hearing no objection and based on the
9 record that's been presented to me in the motion, I will
10 grant the motion under 9019.

11 MR. MILLET: Thank you, Your Honor.

12 The next matter is actually the motion of Tide for
13 relief from stay as to the pending litigation between Falcon
14 and Tide.

15 THE COURT: All right.

16 MR. MILLET: It's their motion. I assume they
17 will speak first.

18 THE COURT: All right.

19 MR. WOOD: Thank you, Your Honor. Trey Wood on
20 behalf of Tide.

21 THE COURT: Yes.

22 MR. WOOD: I do have some exhibits in support of
23 our motion that I have passed to the objecting parties that
24 I wanted to present to the Court.

25 THE COURT: All right. Different than what I

1 already have?

2 MR. WOOD: Organized better, hopefully, and there
3 may be just a few that may have not been reviewed --
4 referred to, like schedules of statements of financial
5 affairs, things -- everything the Court --

6 THE COURT: All right.

7 MR. WOOD: I think most of them --

8 THE COURT: Well, why don't you give it to me and
9 I'll sort it out as we go through. But, obviously, I've
10 only looked at what I've -- what I had to date, which
11 includes Tide's reply which was filed last night. So I -- I
12 can't promise that I've looked at everything in that binder
13 if it's not something that's been filed. But --

14 MR. WOOD: I have two copies.

15 THE COURT: Sure.

16 MR. WOOD: May I approach?

17 THE COURT: Yes. Thank you.

18 Just give me a second to take a look at this.

19 Well, the first thing I see is a witness and
20 exhibit list. Is there an intent to call witnesses --

21 MR. WOOD: No witnesses, Your Honor.

22 THE COURT: All right. So I'm just going to cross
23 the word "witness" off that particular exhibit, then. Then
24 I guess the second thing is the certificate of service. The
25 third is the complaint in the Southern District, and I

1 believe that's somewhere attached as an -- as an exhibit to
2 one of the papers --

3 MR. WOOD: That's correct.

4 THE COURT: -- that I've seen as well as the next
5 one, which is the answer of the defendants, Falcon Gas
6 Storage Company and various Arcapita entities.

7 I don't know that I've seen what's tabbed exhibit
8 4, which is the answer of plaintiff's, Tide, presumably to
9 the counterclaim of Falcon. But that's in the Southern
10 District District Court case as well as tab 5, which is the
11 motion to intervene filed by the Hopper parties, which has
12 been referred to, but I haven't seen the actual motion, but
13 I don't think I need to; as well as the tab 6, which is the
14 motion -- memorandum of law in support of the motion to
15 intervene. That's followed by the two decisions issued by
16 Judge Wood, which I have read, that were attached as
17 exhibits to papers I've seen already. That's 7 and 8 here.

18 Tab 9 is the complaint in the adversary proceeding
19 brought by the Hopper claimants against Falcon Gas Storage
20 Company, Inc.

21 Tab 10 is the answer to that.

22 Tab 11 is the schedule of assets and liabilities
23 for Arcapita.

24 Tab 12 is the statement of financial affairs.

25 Tab 13 is periodic report regarding value of

1 operations and profitability of Falcon in this case.

2 And then we deal with the monthly operating report
3 for Falcon, and then, finally, a letter is exhibit 15.

4 So I just -- since it's not on the record
5 anywhere, I just wanted to briefly go through it so I have a
6 sense of what's in there.

7 MR. WOOD: Thank you, Your Honor.

8 May I proceed?

9 THE COURT: Certainly. Let -- let me -- there's
10 some very interesting stay questions here and we all like
11 interesting issues. And I don't -- I'm not going to cut
12 anybody off from making whatever arguments they want to
13 make.

14 I did note that all parties used the word
15 "mediation" somewhere in their pleadings. And it did occur
16 to me that when people are fighting about pretty much
17 everything, but seem to agree on one thing, that it's
18 probably wise to -- to go there first.

19 And so with that in mind, I'll throw this out to
20 all parties. Does it make sense to lift the stay to allow
21 mediation to proceed in the District Court. My
22 understanding is every District Court action has a
23 magistrate assigned to it. I don't want to tell the
24 District Court how to -- how to do anything, certainly, so
25 that's not my intent. But it seems to be fairly low-hanging

1 fruit to do what district judges often do, which is refer
2 this to a magistrate for a settlement discussions or
3 mediation.

4 Certainly, again, I don't want to tell the
5 District Court or a magistrate judge how to conduct their
6 affairs. Certainly, this Court has other mediation
7 possibilities. But if that's the one thing that the parties
8 agree upon in a complex litigation, it strikes me as perhaps
9 wisest to pursue the common ground first before we spend a
10 lot of time fighting about the more esoteric issues relating
11 to natural gas transactions.

12 MR. WOOD: Yes, Your Honor. And on behalf of
13 Tide, I don't think we have any objection to that. Our only
14 concern is that the Hopper adversary. We don' want to be
15 prejudiced with the Hopper adversary going forward in this
16 Court while we're stayed in front of Judge Wood because we
17 believe it presents identical issues that Judge Wood has
18 already ruled on.

19 THE COURT: Well, again, I'll hear from everybody
20 before the morning and the afternoon is out, but my
21 understanding is that the Hopper claimants have a claim to
22 money in the escrow, much like the parties that are fighting
23 -- currently fighting as formal parties in the District
24 Court. They filed a motion to intervene. It's all part and
25 parcel of -- of -- if not the same, then related matters

1 where it would make sense to go forward with -- with that
2 part if -- if everything else was stayed and the parties
3 agreed that mediation made sense.

4 MR. WOOD: Yeah. We have no objection to that,
5 Your Honor.

6 THE COURT: All right.

7 Let me just hear from all parties on that first.
8 Again, there's some very interesting stay issues here and
9 I'm happy to chat about them, but --

10 MR. ZDUNKEWICZ: Your Honor, again, David
11 Zdunkewicz with Andrews Kurth for the Hopper parties.

12 We have no issue with mediation, I guess, so long
13 as we get to be there. As Your Honor may be aware, we filed
14 a motion to intervene in the District Court case. Tide
15 opposed that. So -- and the case has been before the Court
16 without a ruling since we filed and, of course, now the case
17 is stayed.

18 THE COURT: Well, it looks like --

19 MR. ZDUNKEWICZ: So we would --

20 THE COURT: -- Judge Wood is -- is making her way
21 through the things that have been filed. I saw that the
22 other -- the second decision she issued was from May of
23 2012, so she probably simply hasn't gotten to it yet. So --
24 and, again, she'll do whatever she thinks is appropriate or
25 she may be waiting to find out what's going on in the

1 bankruptcy in light of the fact that there is a bankruptcy.

2 MR. ZDUNKEWICZ: Well, that court -- that case was
3 stayed by agreement by the parties. So if she's looking at
4 her docket she'll see a stay kind of agreement there.

5 THE COURT: Right. All right.

6 MR. ZDUNKEWICZ: But -- but we would like to be a
7 part of any mediation in that case.

8 THE COURT: Well, I didn't hear anybody --

9 MR. ZDUNKEWICZ: Okay.

10 THE COURT: -- object to that. So --

11 MR. WOOD: Correct, Your Honor. We have no --
12 Trey Wood on behalf of Tide. We have no objection to that,
13 Your Honor.

14 And, second of all, just so the record is clear,
15 we've agreed to withdraw our opposition to -- to allow them
16 to intervene and we will support that.

17 THE COURT: All right.

18 MR. ZDUNKEWICZ: Fair enough.

19 THE COURT: All right.

20 MR. MILLET: Obviously, Your Honor, we're in
21 violent agreement about mediation. The only point I would
22 make is we would request that it be administered by this
23 Court because there are important core bankruptcy issues
24 that we think need to be addressed and we would like to have
25 someone who is familiar with the bankruptcy concepts who

1 could sit as the mediator.

2 And so if this Court has the ability to administer
3 the mediation, we think it would be better -- it would be
4 better able to get someone who understands those issues.

5 THE COURT: Well, I would just note I only have
6 the power of persuasion when it comes to mediation. I know
7 that occasionally I see things where -- where courts will
8 order folks to mediation. But as the old saying goes, you
9 can lead a horse to order, but you can't make it drink.

10 So I'm agnostic as to the vehicle for allowing
11 parties to talk. There are times when one forum versus
12 another makes a difference. I mentioned the District Court
13 having a magistrate judge assigned to it because I often --
14 there are times when parties will say that it would be
15 helpful to have somebody who has a robe to mediate because
16 it -- it -- in that particular circumstance it's beneficial.
17 There are other times when the parties say, no. We can find
18 our own mediator and we'll use the mediation program of the
19 District Court, the Bankruptcy Court who want a judge -- it
20 all depends on what fits the case and that's a function of
21 the lawyers and the clients.

22 So I'm not going to prejudge that. I just wanted
23 to see if we could, as you say, there seems to be violent
24 agreement about the appropriateness of mediation, which
25 seems to allow us to put a pin on the more interesting

1 esoteric intellectual issues relating to the nature of this
2 escrow fund and whether it's a -- there's some lien in some
3 capacity or whether it's simply going to be used to satisfy
4 claims that are allowed or lawsuits that are -- that --
5 where a judgment's entered.

6 So what I would do in the first instance rather
7 than by asking parties what they prefer and put an
8 adversarial point on that, ask you to first chat and maybe
9 we can take a little break and you can let me know what your
10 inclination is or if you, at that point, want to seek some
11 guidance as to -- to what to do.

12 Relatedly (sic), the question is whether, if the
13 parties all agree that that makes sense, it would seem to me
14 that in deciding the merits of the stay relief requested
15 here, that that would wait for any mediation. Therefore, we
16 could put a pin in that as well. So I -- I'm guessing that
17 it makes sense to take a short break for the parties to chat
18 about whether -- what mediation would look like and, two,
19 just if you can let me know if all parties agree that it
20 makes sense to put a pin in the motion and adjourn it out
21 until -- until that mediation, wherever it is and whatever
22 form it takes, actually occurs.

23 MR. MILLET: We're happy to do that, Your Honor,
24 or -- or if the Court would like to finish the other matters
25 so those not interested in that could leave and then we'll

1 do it at the end.

2 THE COURT: Certainly. Why don't --

3 MR. MILLET: Whatever pleases the Court.

4 THE COURT: -- why don't the parties who are
5 interested in that muse for a little bit. I don't think the
6 rest of the calendar is all that lengthy, so I think we can
7 get through that --

8 MR. MILLET: Okay.

9 THE COURT: Folks who are not interested in the
10 rest of the calendar can chat in the hallway, certainly, in
11 the -- while we get through the rest of the matters on for
12 today.

13 MR. MILLET: The next matter would be the pretrial
14 conference or status conference as to the Hopper litigation
15 and that's related. Of course, Mr. Zdunkewicz can speak,
16 but I assume that we would, in some respects, put that off
17 to a new future date while we did what --

18 THE COURT: Yes. I --

19 MR. MILLET: -- we're doing here.

20 THE COURT: I think that that makes sense.

21 MR. MILLET: Yeah.

22 MR. ZDUNKEWICZ: Exactly, Your Honor. That's --
23 that's fine.

24 THE COURT: All right. Thank you.

25 And what we'll do is we can use various omnibus

1 dates in this case, just control dates to sort of touch base
2 so no one loses track of anything and where the motion
3 would stand and where the adversary would stand.

4 So the next one is August 16th. It's probably too
5 early to actually touch base again, but I think all of you
6 can be in communication. You can put it on the agenda as
7 appropriate and, perhaps, the next time would be some time
8 in September.

9 MR. MILLET: With the Court's permission, I'll
10 speak to Mr. Zdunkewicz during the break and we'll propose a
11 date to the Court?

12 THE COURT: All right.

13 MR. MILLET: Very well.

14 THE COURT: That's fine. But, again, it's really
15 for, I think, just so people have comfort that I'm in the
16 loop and everyone's in the loop, and then we can just
17 periodically touch base.

18 MR. MILLET: The next matter, Your Honor, is the
19 uncontested remainder of the cash management motion, so
20 everything but the piece that we've set to the 16th. And
21 I'll cede the podium to Ms. Weiss who will address that as
22 well as the employment of Ernst and Young.

23 MS. WEISS: Good morning, Your Honor. I'm Janet
24 Weiss for the debtors, Arcapita.

25 Mr. Millet, I think, explained the only point of

1 controversy in the budget. Everything else has been fully
2 vetted with the committee. There's been information shared
3 with both the committee, with SCB, including the form of
4 order. As Mr. Millet discussed, we're hoping at some point
5 in the future there may be a broader protocol so we don't
6 have to be before Your Honor every month on this. But
7 things seem to be going well as it is. And so we're up to
8 the seventh interim order.

9 What we're going to do is we have a budget. We
10 filed a budget with the 2.3 million in it. We'll get a
11 revised budget, take that amount out, and then we'll attach
12 that to the proposed order. And I think every -- there was
13 nothing else that's contested in the motion.

14 THE COURT: All right. So I assume the order,
15 basically, is the budget with everything but this one
16 contested item, which may or may not be added in the future
17 depending on how things work themselves out.

18 MS. WEISS: Yes. That's right, Your Honor.

19 THE COURT: All right. Thank you.

20 Anyone want to be head as to this particular
21 issue?

22 All right. Consistent with your representation
23 and prior discussions we've had about the budget, and the
24 first, second, third, fourth, fifth and sixth interim orders
25 that have been entered I am happy to enter a seventh interim

1 order.

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

3 THE COURT: Thank you.

4 MS. WEISS: The next matter is item number 1 on
5 the agenda, and it's the Ernst and Young retention.

6 As you may recall, Your Honor, Ernst and Young was
7 retained for limited engagements pursuant to a July 11th
8 order. How Ernst and Young performs work for the debtors,
9 and this is historically as well, is each engagement is
10 pursuant to a separate engagement letter, and then is
11 attached with a fixed fee.

12 And so in the first order, in the first motion,
13 there were a couple of different engagements on that,
14 including to employee stock, employee incentives and a few
15 other matters. There are a few more issues that Ernst and
16 Young is going to be performing audits. They're in the
17 motion, but they were late mostly to the annual and
18 quarterly reports and audits, and certain audits that are
19 needed to comply with regulatory obligations.

20 The total amount of compensation for all of this
21 together is a little under \$800,000, U.S. dollars, plus
22 expenses. And we haven't had any objections to the motion.

23 THE COURT: All right. Anyone want to be heard in
24 connection with debtors' application regarding this --
25 expanding the scope of retention for Ernst and Young?

1 All right. I'm happy to approve the application.

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

3 MR. MILLET: The final matter is actually the
4 committee's motion to employ Epiq.

5 MR. FLECK: It's still morning. Good morning once
6 again, Your Honor. Evan Fleck --

7 THE COURT: Good morning.

8 MR. FLECK: -- on behalf of the committee.

9 Hopefully, this is a short agenda item, but it is
10 some good publicity for one of the charges of the committee,
11 which is to keep unsecured creditors abreast of developments
12 in the case. So this is agenda item number 2, docket number
13 318 is the application of the official committee to retain
14 Epiq for purposes of -- as the information agent for the
15 committee.

16 In -- in common terms, Epiq is going to be what
17 we've referred to as the webmaster for the committee.
18 They're going to host the committee's website. We've
19 negotiated a favorable engagement letter with Epiq. The
20 debtors -- the estates will pay for these services. The
21 debtors have been fully in the loop and are comfortable with
22 the application and the order, as is the Office of the
23 United States Trustee.

24 We -- as -- as we do in other cases work with Epiq
25 to host a website that provides updates with respect to the

1 cases, what's going on in the docket. There are links to
2 the debtors' site, also upcoming and important dates in --
3 in the case, the 341 meeting, the bar date, and we will also
4 be providing summary reports of what takes place during the
5 pendency of the cases.

6 And as I said, Your Honor, the fees that will be
7 incurred are -- I think I can be comfortable saying de
8 minimis. They are \$200 a month with certain additional fees
9 for hourly hosting of the website.

10 If I could, Your Honor, put a plug in for the
11 website. It's www.arcapitacommittee.com because I think it
12 is helpful for creditors to have this as a way, not only to
13 get the information that I mentioned, but they can also get
14 information for the committee members. The six members of
15 the creditors' committee are available to their
16 constituency, and the website gives information also with
17 respect to the advisors to the committee.

18 And with all that we would respectfully request
19 that the Court approve the application.

20 THE COURT: Anyone want to be heard in connection
21 with the application of the committee?

22 All right. I am happy to approve the application.
23 And transparency is obviously key to everything we do here,
24 so -- so thank you.

25 MR. FLECK: Thank you, Your Honor.

1 THE COURT: All right.

2 MR. MILLET: I understand the committee will be
3 selling advertising on the website --

4 (Laughter)

5 MR. MILLET: -- and they're going to --

6 MR. FLECK: Whatever it takes.

7 MR. MILLET: -- see if they can offset some costs.

8 THE COURT: I -- I wasn't going to go there.

9 MR. MILLET: Sorry. Too easy. Sorry.

10 THE COURT: All right. So what I would like the
11 parties to do is to chat briefly and I think the things to
12 talk about are what mediation would look like, what the time
13 frame would be, which factors into this -- this motion.
14 And, again, I -- I've read all the papers and we could have
15 a very interesting discussion about sort of the nature of
16 this escrow and -- and, also, various other interesting
17 conversations about how those escrow funds would play into
18 the reorganization, if at all, of -- of -- of the one debtor
19 that's entitled -- might be entitled to receive those
20 monies. But those -- those may be more appropriate for
21 another day.

22 So let's take a ten-minute or so break and then we
23 can come back and chat about what the parties would like to
24 do.

25 MR. MILLET: Very well, Your Honor.

1 THE COURT: Thank you.

2 MR. MILLET: Thank you.

3 (Recess taken at 11:52 a.m.)

4 THE COURT: Please be seated.

5 After your discussions what can you tell me?

6 MR. MILLET: Again, I think we have violent
7 agreement, Your Honor. The parties conferred out in the
8 hall and we have agreed that among ourselves we would like
9 to go to mediation. We'll administer it ourselves. We
10 would simply request the Court to set a -- either an adjourn
11 date on the motion or some sort of return date so that we
12 could come back to court and report the status. Therefore,
13 if we've had an impasse or a problem we can address it then.

14 Given the schedules of the parties and what we
15 have to do, we would request the October omnibus date at
16 this point of October 2, with respect to the motion for
17 relief from stay, if you will, and the mediation hopefully
18 will happen before then.

19 I know that Mr. Zdunkewicz has a conflict that day
20 on his matter, the Hopper matter. So perhaps we could put
21 the pretrial conference on that off to the next matter since
22 he would be unable to be here on October 2nd.

23 THE COURT: All right. Are you talking about the
24 October 2nd date as a status date or to hear the motion?

25 MR. MILLET: A status -- a status date, Your

1 Honor.

2 THE COURT: All right. So that's helpful to know.

3 All right. Well, I appreciate the parties having
4 productive conversations and I hope that goes well for
5 future conversations that you'll have. If there is anything
6 that I can do to as your mediation process, just please
7 reach out and let me know. I'm happy to assist in any way I
8 can.

9 In the meantime, is there any -- it doesn't sound
10 like there's a need, but let me ask you if there's any need
11 to enter any order in connection with any of this?

12 MR. MILLET: I was just about to ask that, Your
13 Honor. If we need -- except for a scheduling order, if it's
14 required, otherwise we'll simply take the date that was --

15 THE COURT: All right.

16 MR. MILLET: -- held by the -- by the status
17 conference.

18 THE COURT: Well, I'll --

19 MR. MILLET: What would the Court prefer?

20 THE COURT: -- I'll leave that to the parties.

21 MR. MILLET: Okay.

22 THE COURT: Chat. If you think that it gives
23 anyone any comfort or assists the process in any way to have
24 an order that I think would look like a scheduling order,
25 I'm happy to have you put together a stipulation and then so

1 order it if I think it's appropriate, and I likely would.
2 But it doesn't sound like that necessarily required here.
3 So if I don't see one, I won't be surprised.

4 MR. MILLET: Very well, Your Honor.

5 MR. WOOD: Your Honor, Trey Wood on behalf of
6 Tide. I think we already waived the 30-day requirement for
7 a hearing because we filed our motion more than 30 days.
8 But just --

9 THE COURT: Right.

10 MR. WOOD: -- for the record --

11 THE COURT: All right.

12 MR. WOOD: -- we continue to waive that, just to
13 give the parties comfort.

14 THE COURT: All right. Thank you very much. I
15 appreciate that.

16 All right. Anything else we should do in
17 connection --

18 MR. MILLET: With that, Your Honor, I believe we
19 have covered everything today, unless someone else has
20 something they wish to cover.

21 THE COURT: All right. Well, thank you very much.

22 MR. MILLET: We'll see you on the 16th.

23 THE COURT: All right.

24 MR. MILLET: Thank you, Your Honor.

25 THE COURT: Thank you.

1 (Whereupon these proceedings were concluded at 12:16
2 p.m.)
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| 7 | (I) Continue Existing Cash Management | | |
| 8 | System, Bank Accounts and Business Forms | | |
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| 10 | Intercompany Transactions; and | | |
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| 12 | Comply with the Requirements of Section | | |
| 13 | 345(b) of the Bankruptcy Code. | -- | -- |
| 14 | | | |
| 15 | Application to Employ Epiq Bankruptcy | | |
| 16 | Solutions, LLC as Information | | |
| 17 | Agent/Application of Official Committee | | |
| 18 | of Unsecured Creditors of Arcapita Bank | | |
| 19 | B.S.C. (C) , et al. , for Entry of an Order | | |
| 20 | Authorizing the Employment and Retention of | | |
| 21 | Epiq Bankruptcy Solutions, LLC as the | | |
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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri L Breach

Digitally signed by Sherri L Breach
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Date: August 3, 2012