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*Counsel for Official Committee of Unsecured  
Creditors of Arcapita Bank B.S.C.(c), et al.*

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

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	:	<b>Case No. 12-11076 (SHL)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
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**SECOND INTERIM APPLICATION OF MILBANK, TWEED, HADLEY &  
M<sup>c</sup>CLOY LLP FOR APPROVAL AND ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES INCURRED**

Name of applicant:	<u>Milbank, Tweed, Hadley &amp; M<sup>c</sup>Cloy LLP</u>
Authorized to provide professional services to:	<u>Official Committee of Unsecured Creditors</u>
Date of retention:	<u>Order entered on June 29, 2012, retaining Milbank nunc pro tunc to April 10, 2012</u>
Period for which compensation and reimbursement are sought:	<u>August 1, 2012 – October 31, 2012</u>
Amount of compensation requested:	<u>\$3,459,030.50</u> (100%)
Amount of expense reimbursement requested:	<u>\$93,952.41</u> (100%)

This is an:  X  interim \_\_\_\_\_ final application.

This is the second interim fee application filed by Milbank, Tweed, Hadley & McCloy LLP in these cases.

**SECOND INTERIM FEE APPLICATION OF MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP  
AS COUNSEL TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF ARCAPITA BANK B.S.C.(C), ET AL.  
(AUGUST 1, 2012 – OCTOBER 31, 2012)**

<b>Name</b>	<b>Position; Experience</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Compensation</b>
Dennis Dunne	Financial Restructuring Partner at Milbank for 14 years; admitted in 1991.	\$1,140 \$570*	155.20 4.50	\$176,928.00 \$2,565.00
Jane Morgan	Global Corporate Partner at Milbank for 1 year; admitted in 1997.	\$1,125	34.20	\$38,475.00
Andrew Leblanc	Litigation Partner at Milbank for 6 years; admitted in 1998.	\$1,030 \$515*	36.30 5.50	\$37,389.00 \$2,832.50
Albert Pisa	Alternative Investments Partner at Milbank for 8 years; admitted in 1997.	\$1,030	29.60	\$30,488.00
Abhilash Raval	Financial Restructuring Partner at Milbank for 5 years; admitted in 1997.	\$975	39.20	\$38,220.00
Evan Fleck	Financial Restructuring Partner at Milbank for 2 years; admitted in 2002.	\$900 \$450*	421.90 17.50	\$379,710.00 \$7,875.00
Thomas Canning	Litigation Partner at Milbank for 2 years; admitted in 2000.	\$875	3.40	\$2,975.00
Dennis O'Donnell	Financial Restructuring Of Counsel at Milbank for 5 years; admitted in 1992.	\$910	226.20	\$205,842.00
Lena Mandel	Senior Attorney at Milbank for 10 years; admitted in 1990.	\$795	58.60	\$46,587.00
Katherine Soanes	Global Corporate Associate at Milbank for 7 years; admitted in 1996.	\$750	4.50	\$3,375.00
Mark Withey	Global Corporate Associate at Milbank for 3 years; admitted in 2001.	\$750	41.80	\$31,350.00
Cindy Chen Delano	Financial Restructuring Associate at Milbank for 1 year; admitted in 2005.	\$735	126.30	\$92,830.50

<b>Name</b>	<b>Position; Experience</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Compensation</b>
Peter Newman	Financial Restructuring Associate at Milbank for 8 years; admitted in 2005.	\$735	483.30	\$355,225.50
Patrick Marecki	Litigation Associate at Milbank for 7 years; admitted in 2006.	\$720	135.60	\$97,632.00
Daniel Wayte	Global Corporate Associate at Milbank for 1 year; admitted in 2005.	\$720	8.10	\$5,832.00
Aluyah Imoisili	Litigation Associate at Milbank for 6 years; admitted in 2006.	\$695	26.70	\$18,556.50
Arif Mawany	Global Corporate Associate at Milbank for 2 years; admitted in 2006.	\$695	41.30	\$28,703.50
Douglas Kim	Global Project Finance Associate at Milbank for 5 years; admitted in 2008.	\$675	3.60	\$2,430.00
Melanie Ann McLaughlin	Financial Restructuring Associate at Milbank for 2 years; admitted in 2008.	\$675	184.70	\$124,672.50
Nicole Leyton Rosser	Tax Associate at Milbank for 5 years; admitted in 2008.	\$675	2.50	\$1,687.50
Gabriel Carnwath	Global Corporate Associate at Milbank for 1 year; admitted in 2009.	\$650	87.10	\$56,615.00
Andrew H. Everett II	Global Corporate Associate at Milbank for 4 years; admitted in 2009.	\$650	139.20	\$90,480.00
Christian Fahey	Global Corporate Associate at Milbank for 2 years; admitted in 2008.	\$650	4.50	\$2,925.00
Jared Joyce-Schleimer	Financial Restructuring Associate at Milbank for 4 years; admitted in 2009.	\$650	5.00	\$3,250.00
Nicholas Kamphaus	Financial Restructuring Associate at Milbank for 1 year; admitted in 2009.	\$650	269.50	\$175,175.00
Roger Lee	Financial Restructuring Associate at Milbank for 4 years; admitted in 2009.	\$650	219.10	\$142,415.00
Mark L. Rockefeller	Litigation Associate at Milbank for 1 year; admitted in 2012.	\$650	66.70	\$43,355.00

<b>Name</b>	<b>Position; Experience</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Compensation</b>
Anna Thomander	Financial Restructuring Associate at Milbank for 4 years; admitted in 2009.	\$650	252.90	\$164,385.00
Hailey De Kraker	Litigation Associate at Milbank for 1 year; admitted in 2010.	\$625	5.00	\$3,125.00
Bradley Friedman	Financial Restructuring Associate at Milbank for 3 years; admitted in 2010.	\$625	456.60	\$285,375.00
Eluard Alegre	Financial Restructuring Associate at Milbank for 2 years; admitted in 2011.	\$570	194.70	\$110,979.00
Greta Ulvad	Financial Restructuring Associate at Milbank for 1 year; admitted in 2011.	\$570	497.60	\$283,632.00
Jonathan Keen	Financial Restructuring Associate at Milbank for 1 year; admitted in 2011.	\$470	84.10	\$39,527.00
Jordan Lacy	Global Corporate Associate at Milbank for 1 year; admitted in 2012.	\$470	281.10	\$132,117.00
Andrew Tsang	Financial Restructuring Associate at Milbank for 1 year; admitted in 2012.	\$470	287.90	\$135,313.00
Charlotta Chung	Financial Restructuring Associate at Milbank; admission pending.	\$295	31.90	\$9,410.50
Monica Alston	Case Manager	\$260	3.30	\$858.00
Abayomi Ayandipo	Case Manager	\$260	2.50	\$650.00
Kim Strosser	Legal Assistant	\$290	3.90	\$1,131.00
Paul Butters	Legal Assistant	\$235	10.00	\$2,350.00
Leana Divine	Legal Assistant	\$235	2.80	\$658.00
Charmaine Thomas	Legal Assistant	\$210	81.90	\$17,199.00
Jacqueline Brewster	Legal Assistant	\$195	29.00	\$5,655.00
John Peter Kaytrosh	Legal Assistant	\$165	35.80	\$5,907.00
Rohan S. Kazi	Legal Assistant	\$165	77.00	\$12,705.00

Name	Position; Experience	Hourly Rate	Total Hours	Total Compensation
Edward Milner	Litigation Technology Specialist	\$275	4.30	\$1,182.50
Megan Scanlon	Litigation Technology Specialist	\$190	2.50	\$475.00
<b>Total</b>		<b>\$661.84 (blended rate)<sup>1</sup></b>	<b>5,226.40 hours</b>	<b>\$3,459,030.50</b>

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<sup>1</sup> The blended rate excluding paraprofessionals is \$685.10 per hour.

\* Non-working travel time is being billed at 50% of standard hourly rates.

**SECOND INTERIM FEE APPLICATION OF MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP  
AS COUNSEL TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF ARCAPITA BANK B.S.C.(C), ET AL.  
(AUGUST 1, 2012 – OCTOBER 31, 2012)**

<b>ACTIVITY</b>	<b>HOURS</b>	<b>FEES</b>
Adequate Protection Issues	1.00	\$650.00
Asset Sales	782.30	\$552,063.00
Automatic Stay	43.40	\$25,152.00
Bahrain Issues	21.40	\$18,661.00
Business Plan Review	40.10	\$34,812.00
Cash Management	136.20	\$93,794.50
Cayman Proceedings	79.20	\$61,902.50
Claims Analysis and Estimation	181.70	\$98,413.00
Committee Administration	291.50	\$189,790.50
Committee Meetings	268.40	\$191,370.50
Committee Retention Applications	56.90	\$41,620.00
Communication with Creditors & Website	145.80	\$81,262.00
Corporate Matters	10.90	\$6,929.00
Court Hearings	158.90	\$115,353.00
Debtor-in-Possession Meetings and Communications	102.20	\$84,889.00
Project Finance & Infrastructure	120.70	\$82,999.00
DIP Financing	411.00	\$308,408.00
Employee Issues	165.20	\$102,740.50
Exclusivity Issues	110.90	\$79,106.00
Exit Financing	4.10	\$4,167.50
Fee Applications - Other	71.30	\$41,209.50
File, Docket and Calendar Maintenance	144.80	\$43,029.00
Investments and Portfolio Companies	896.90	\$536,585.00
Insurance Matters	88.40	\$59,571.00
Intercompany Issues	31.60	\$22,348.00
Islamic Finance Issues	1.90	\$1,305.00
Litigation	5.30	\$4,065.00

<b>ACTIVITY</b>	<b>HOURS</b>	<b>FEES</b>
Milbank Fee Statements and Applications	211.30	\$128,703.00
Real Estate Matters	98.20	\$70,815.00
Regulatory Issues	.60	\$684.00
Reorganization Plan	31.20	\$27,803.50
Reporting Requirements	22.10	\$13,963.50
Retention of Professionals	30.30	\$19,009.50
Secured Creditor Issues	20.50	\$14,630.00
Substantive Consolidation	3.90	\$1,310.00
Travel	27.50	\$13,272.50
Voidable Transfers	408.80	\$286,644.00
<b>Total</b>	<b>5,226.40</b>	<b>\$3,459,030.50</b>

**SECOND INTERIM FEE APPLICATION OF MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP  
AS COUNSEL TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF ARCAPITA BANK B.S.C.(C), ET AL.  
(AUGUST 1, 2012 – OCTOBER 31, 2012)**

<b>DISBURSEMENTS</b>	<b>AMOUNT</b>
Airfreight	\$1,132.25
Cab Fares	\$8,135.54
Computer Database Research	\$45,686.62
Mail/Messenger	\$435.81
Meals	\$2,672.50
Photocopies/Printing	\$20,903.36
Telephone	\$2,943.02
Transcript	\$275.00
Travel	\$11,768.31
<b>TOTAL DISBURSEMENTS</b>	<b><u><u>\$93,952.41</u></u></b>



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

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>ARCAPITA BANK B.S.C.(c), et al.,<sup>2</sup></b>	:	<b>Case No. 12-11076 (SHL)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
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**SECOND INTERIM APPLICATION OF MILBANK, TWEED, HADLEY &  
M<sup>c</sup>CLOY LLP FOR APPROVAL AND ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES INCURRED**

TO THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE:

Milbank, Tweed, Hadley & M<sup>c</sup>Cloy LLP (“Milbank”), counsel to the Official  
Committee of Unsecured Creditors (the “Committee”) of Arcapita Bank B.S.C.(c) (“Arcapita”)  
and its affiliated debtors in possession in the above-captioned cases (collectively, the “Debtors”),  
hereby submits its application (the “Application”), pursuant to sections 330 and 331 of  
chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the

<sup>2</sup> The Debtors in these chapter 11 cases are Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, RailInvest Holdings Limited, and Falcon Gas Storage Company, Inc.

“Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, effective December 4, 2009 (together, the “Local Guidelines”), the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, effective January 30, 1996 (the “U.S. Trustee Guidelines,” and together with the Local Guidelines, the “Guidelines”), and the Order Granting Debtors’ Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Committee Members, dated May 18, 2012 (the “Interim Compensation Order”), for interim approval and allowance of (a) compensation for professional services rendered to the Committee from August 1, 2012 through and including October 31, 2012 (the “Second Interim Compensation Period”), and (b) reimbursement of expenses incurred in connection with such services; and in support thereof respectfully represents as follows:

**I.**  
**INTRODUCTION**

**A. Background**

1. Bankruptcy Filing. On March 19, 2012 (the “Petition Date”), Arcapita and five of its affiliates commenced the above-captioned chapter 11 cases in this Court. On April 30, 2012, Falcon Gas Storage Co., Inc. (“Falcon”) commenced its case under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes and are being jointly administered pursuant to Rule 1015(b) of the Bankruptcy Rules. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the chapter 11 cases.

2. Creditors' Committee. On April 5, 2012, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed the Committee.<sup>3</sup>

3. Jurisdiction. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the chapter 11 cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 330 and 331 of the Bankruptcy Code. Pursuant to the Local Guidelines, a certification regarding compliance with the Guidelines is attached hereto as Exhibit A.

**B. Retention of Milbank and Billing History**

4. Authorization for Milbank's Retention. On June 29, 2012, the Court issued the Order Under 11 U.S.C. § 1103 and Fed. R. Bankr. P. 2014 and 5002, Authorizing Retention and Employment of Milbank, Tweed, Hadley & M<sup>c</sup>Cloy LLP as Counsel to Official Committee of Unsecured Creditors of Arcapita Bank B.S.C.(c), et al., Effective as of April 10, 2012 [Docket No. 289] (the "Retention Order"), authorizing Milbank's retention as counsel for the Committee in these cases. The Retention Order authorized Milbank to receive compensation pursuant to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Guidelines, the Interim Compensation Order and the local rules and orders of this Court.

5. First Interim Compensation Period. On August 16, 2012, Milbank filed its First Interim Application of Milbank, Tweed, Hadley & M<sup>c</sup>Cloy LLP for Approval and Allowance of Compensation for Services Rendered and for Reimbursement of Expenses [Docket No. 420] (the "First Interim Fee Application"). In the First Interim Fee Application, Milbank

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<sup>3</sup> The Committee is currently comprised of the following entities: (i) Arcsukuk (2011-1) Limited c/o BNY Mellon Corporate Trustee Services Limited; (ii) Barclays Bank PLC; (iii) Central Bank of Bahrain; (iv) Commerzbank AG; (v) National Bank of Bahrain B.S.C.(c); and (vi) VR Global Partners, L.P.

requested interim approval and allowance of (a) compensation for professional services rendered during the period from April 11, 2012 through and including July 31, 2012 (the “First Interim Compensation Period”) in the amount of \$4,245,724.00, and (b) reimbursement of its actual and necessary expenses incurred in connection with such services, in the amount of \$100,691.80.

6. On September 24, 2012, the Court entered an order [Docket No. 503] granting the First Interim Fee Application and authorizing the Debtors to pay to Milbank \$4,220,724.00, which reflected (a) a voluntary reduction of \$25,000.00 by Milbank of the fees requested for the First Interim Compensation Period after discussions with the U.S. Trustee and (b) a 20% holdback (the “Holdback”) of the amount of fees sought in the First Interim Fee Application, in the amount of \$849,144.80. As a result, Milbank has received 80% of its fees and 100% of the expenses sought in the First Interim Fee Application. At the hearing on the First Interim Fee Application, the Court indicated that it would consider an application to release the Holdback in connection with the retained professionals’ next interim fee applications.

7. Second Interim Compensation Period. In accordance with the Interim Compensation Order, Milbank submitted the following monthly fee statements (each, a “Fee Statement”) seeking interim compensation and reimbursement of expenses during the Second Interim Compensation Period:

- (a) On October 9, 2012, Milbank filed and served on the Notice Parties (as defined in the Interim Compensation Order) its fifth fee statement for the period from August 1, 2012 through and including August 31, 2012 (the “Fifth Fee Statement”). The Fifth Fee Statement sought (i) allowance of \$1,219,486.00 as compensation for services rendered and (ii) reimbursement of \$17,492.14 in expenses. As of the date hereof, Milbank has received a total of \$993,080.94, which represents payment of (x) 80% of Milbank’s fees; and (y) 100% of the expenses incurred pursuant to the Fifth Fee Statement.
- (b) On October 22, 2012, Milbank filed and served on the Notice Parties its sixth fee statement for the period from September 1, 2012 through and including September 30, 2012 (the “Sixth Fee Statement”). The Sixth Fee Statement sought (i) allowance of \$981,351.50 as compensation for services rendered and

(ii) reimbursement of \$36,892.45 in expenses. As of the date hereof, Milbank has received a total of \$821,973.65, which represents payment of (x) 80% of Milbank's fees and (y) 100% of the expenses incurred pursuant to the Sixth Fee Statement.

- (c) On November 21, 2012, Milbank filed and served on the Notice Parties its seventh fee statement for the period from October 1, 2012 through and including October 31, 2012 (the "Seventh Fee Statement," and collectively with the Fifth Fee Statement and Sixth Fee Statement, the "Second Interim Period Fee Statements"). The Seventh Fee Statement sought (i) an allowance of \$1,258,193.00 as compensation for services rendered and (ii) the reimbursement of \$39,567.82 in expenses. As of the date hereof, Milbank has not received any payments in connection with the Seventh Fee Statement.

8. In accordance with the Interim Compensation Order and as reflected in the foregoing summary, in the Second Interim Period Fee Statements, Milbank has requested an aggregate amount of \$3,552,982.91, and has received \$1,815,054.59.

9. Attached hereto as Exhibit B is a summary of the amounts requested during the Second Interim Compensation Period and amounts (if any) that remain due and outstanding as of the date hereof.

10. Milbank has not entered into any agreement, express or implied, with any other party for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in these cases.

11. No promises have been received by Milbank or any member thereof as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code.

## **II. APPLICATION**

12. By this Application, Milbank seeks interim allowance of (a) compensation for professional services rendered by Milbank, as counsel for the Committee, during the Second

Interim Compensation Period, (b) reimbursement of expenses incurred by Milbank in connection with such services, and (c) authorization for the Debtors to release the Holdback.

13. Specifically, Milbank seeks approval of \$3,459,030.50 as compensation for legal services rendered on behalf of the Committee during the Second Interim Compensation Period and \$93,952.41 for reimbursement of expenses incurred in connection with the rendering of such services, for a total award of \$3,552,982.91.<sup>4</sup>

14. Pursuant to the Interim Compensation Order, Milbank has already received payment for the Second Interim Compensation Period in the total amount of \$1,815,054.59. Milbank seeks further payment of \$1,895,267.02 pursuant to this Application. This amount consists of (a) the \$849,144.80 Holdback plus (b) \$1,046,122.22, which represents the unpaid portion of 80% of Milbank's fees for legal services rendered and 100% of Milbank's expenses incurred during the Second Interim Compensation Period. The remaining 20% of Milbank's fees for legal services rendered during the Second Interim Compensation Period represents a holdback for which Milbank will seek payment in a subsequent interim or final application for compensation.

15. The fees sought by Milbank in this Application reflect an aggregate of 5,226.40 hours of attorney and paraprofessional time spent and recorded in performing services for the Committee during the Second Interim Compensation Period, at a blended average hourly rate of \$661.84 for both professionals and paraprofessionals. The blended hourly rate for professionals only is \$685.10.

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<sup>4</sup> The foregoing amounts reflect certain voluntary reductions of Milbank's fees. However, Milbank reserves the right to seek the allowance of all or a portion of such reduced fees at a later date.

16. Milbank rendered to the Committee all services for which compensation is sought solely in connection with these cases and in furtherance of the duties and functions of the Committee.

17. Milbank maintains computerized records of the time expended in the rendering of the professional services required by the Committee. These records are maintained in the ordinary course of Milbank's practice. For the convenience of the Court and parties in interest, a billing summary for services rendered during the Second Interim Compensation Period is attached as part of the cover sheet to this Application, setting forth the name of each attorney and paraprofessional for whose work on these cases compensation is sought, each attorney's year of bar admission, the aggregate amount of time expended by each such attorney or paraprofessional, the hourly billing rate for each such attorney or paraprofessional at Milbank's current billing rates, and an indication of the individual amounts requested as part of the total amount of compensation requested. In addition, set forth in the billing summary is additional information indicating whether each attorney is a partner, of counsel, senior attorney or associate, the number of years each attorney has held their current position and each attorney's area of concentration. The compensation requested by Milbank is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under the Bankruptcy Code.

18. Milbank also maintains computerized records of all expenses incurred in connection with the performance of professional services. A billing summary for expenses incurred during the Second Interim Compensation Period is attached as part of the cover sheet to this Application, setting forth the amounts for which reimbursement is sought by type of expense.

**III.**  
**SUMMARY OF PROFESSIONAL SERVICES RENDERED**

19. To provide an orderly summary of the services rendered on behalf of the Committee by Milbank, and in accordance with the U.S. Trustee Guidelines, Milbank has established the following separate project billing categories in connection with these cases:

00100	Adequate Protection Issues
00200	Asset Sales
00300	Automatic Stay Enforcement & Litigation
00400	Bahrain Issues
00500	Business Plan Review and Analysis
00600	Cash Management
00700	Cayman Proceedings Issues
00800	Claims Analysis and Estimation
00900	Committee Administration
01000	Committee Meetings
01100	Committee Retention Applications
01200	Communication with Creditors & Website
01300	Corporate Matters
01400	Court Hearings
01500	Debtor-in-Possession Meetings and Communications
01600	Project Finance and Infrastructure
01700	DIP Financing
01800	Disclosure Statement
01900	Employee Issues
02000	Environmental Issues
02100	Estimation Issues
02200	Exclusivity Issues
02300	Executory Contracts
02400	Exit Financing
02500	Fee Applications - Other
02600	File, Docket & Calendar Maintenance
02700	Investments and Portfolio Companies
02800	Insurance Matters
02900	Intellectual Property Issues
03000	Intercompany Issues
03100	Islamic Finance Issues
03200	Litigation
03300	Milbank Fee Statements and Applications
03400	Other Foreign Proceedings Issues
03500	Other International Matters
03600	Private Equity Issues
03700	Real Estate Matters
03800	Reclamation Issues



03900	Regulatory Issues
04000	Reorganization Plan
04100	Reporting Requirements
04200	Retention of Professionals
04300	Rule 2004 Examinations
04400	SEC Investigations and Securities Litigation
04500	Secured Creditor Issues
04600	Substantive Consolidation
04700	Tax Issues
04800	Travel Time
04900	Utilities Matters
05000	Vendor/Customer Issues
05100	Voidable Transfers and Other Potential Claims

20. The following summary is intended only to highlight key services rendered by Milbank in certain project billing categories where Milbank has expended a considerable number of hours on behalf of the Committee and is not meant to be a detailed description of all of the work performed. Detailed descriptions of the day-to-day services provided by Milbank and the time expended performing such services in each project billing category were attached to and filed as exhibits to the Second Interim Period Fee Statements. Such detailed descriptions show that Milbank was heavily involved in the performance of services for the Committee on a daily basis, including night and weekend work, often under extreme time constraints to meet the needs of the Committee in these cases.

**A. Asset Sales**

21. **EuroLog IPO**. During the Second Interim Compensation Period, Milbank continued to work closely with the other professional advisors to diligence, analyze and test the structure and terms of the Debtors' proposal to monetize three groups of portfolio companies (all owned by subsidiaries of the Debtors) which own, develop and/or operate a range of European real estate assets, together with the associated group management company (the "IPO Assets"). The proposed IPO would have resulted in the IPO Assets being transferred to a

newly incorporated company that would offer its shares for sale to institutional investors in an initial public offering (the “EuroLog IPO”). Due to an unfavorable macro-economic climate, the disappointing results of the EuroLog marketing process, and, ultimately, the recommendation of the underwriting banks, the Debtors decided on October 31, 2012, not to proceed with the EuroLog IPO.

22. The objective of the diligence and discussions undertaken by Milbank was to ensure that the EuroLog IPO would maximize recoveries for the Debtors’ unsecured creditors. Pursuant to this Court’s September 10, 2012 order [Docket No. 465], the Committee, Standard Chartered Bank (“SCB”) and the Joint Provisional Liquidators of AIHL (the “JPLs”) were each given consent rights with respect to the form and substance of the documents for the EuroLog IPO including an underwriting agreement, a master transfer agreement governing the transfer of the IPO Assets to the listing vehicle, a trade mark license agreement and a relationship agreement (the “IPO Documentation”).

23. As part of the diligence process, Milbank reviewed and analyzed all of the materials made available to it in relation to the structure of the EuroLog IPO transaction proposed by the Debtors and the IPO Assets. Milbank also analyzed additional information and documentation to enable it to complete this diligence, as well as to clarify key elements of the proposed transaction, including the flow of funds upon consummation of the transaction.

24. As part of its due diligence, Milbank worked with the other advisors to develop a strategy to optimize the amount of cash proceeds to the Debtors’ estates by reducing the amount of external debt paydown and the amount of proceeds to be left on the balance sheet of the listing vehicle allocated to future acquisition and development costs. The Debtors were able to negotiate significant modifications to the deal terms consistent with the Committee

advisors' proposal, which would have resulted in significant additional recoveries of approximately \$10 million to the Debtors' estates had the EuroLog IPO been successfully consummated.

25. Milbank also negotiated a favorable interim settlement with the Debtors in relation to the payment of professional fees incurred by Linklaters LLP as the English law advisors to the listing vehicle in connection with the EuroLog IPO. The settlement was confirmed in an order entered by the Court on August 28, 2012 [Docket No. 445].

26. In addition, Milbank, at the direction of the Committee, conferred with SCB's legal advisors, as well as the Debtors and the JPLs and their respective advisors, to negotiate and agree upon a settlement with SCB in relation to a number of outstanding issues in the chapter 11 cases more generally, including (a) how SCB's claims and security would be treated in the chapter 11 cases; (b) the provision to SCB of adequate protection for its secured claims; and (c) the reimbursement to SCB of certain fees and expenses, as a necessary pre-condition to SCB providing its consent to the proposed EuroLog IPO.

27. Following the launch of the "Intention to Float" announcement made to the market on October 8, 2012, commencing the marketing process for the EuroLog IPO through to the date on which the EuroLog IPO was withdrawn, Milbank continued to monitor the progress of the EuroLog IPO process and was kept updated by the Debtors including through regular telephonic meetings with the Debtors and their advisors. Throughout the Second Interim Compensation Period, Milbank regularly updated the Committee as to the material terms of the proposed EuroLog IPO and the status and timing of the processes through electronic mail and telephonic meetings.

**B. Automatic Stay Enforcement & Litigation**

28. During the Second Interim Compensation Period, Milbank attorneys researched and analyzed issues arising in connection with the extension of the automatic stay to non-Debtors.

**C. Bahrain Issues**

29. During the Second Interim Compensation Period, Milbank, along with the Committee's Bahraini counsel, Hassan Radhi & Associates ("Hassan Radhi"), assessed the impact, direct or indirect, of the civil and corporate law of the Kingdom of Bahrain on the issues arising in the chapter 11 cases.

**D. Business Plan Review and Analysis**

30. During the Second Interim Compensation Period, Milbank reviewed and analyzed the Debtors' business plan predicated on a significant injection of new equity (the "New Money Plan"). Following extensive review of the New Money Plan, Milbank met with the Debtors and their professional advisors in London on September 12 and 13, 2012, at which the Debtors set forth the rationale for the New Money Plan and discussed in greater detail the proposed implementation of that Plan. Subsequently, the Debtors informed the Committee and its advisors that they were unable to obtain any equity commitments by the agreed milestone date (November 1, 2012) which the Debtors and the Committee had agreed would be a prerequisite for further consideration of the New Money Plan.

**E. Cash Management**

31. During the Second Interim Compensation Period, Milbank continued to negotiate with the Debtors a series of consensual interim cash management orders setting forth a vetting process for proposed transfers of cash by any of the Debtors to other Debtor and non-

Debtor entities, which process included the Debtors' submission of periodic budgets and the funding of portfolio investments on an as-needed basis. Milbank additionally continued to negotiate with the Debtors regarding implementation of a more formal, long term "protocol" to govern transfers of cash and dispositions of assets. Finally, Milbank, along with the Committee's other professionals, has taken a central role in reviewing the Debtors' proposed budgets and negotiating modifications with the Debtors in certain instances to ensure that the interests of the Debtors' unsecured creditors are protected.

**F. Cayman Proceedings Issues**

32. During the Second Interim Compensation Period, Milbank attorneys spent considerable time addressing the limited number of issues that arose in the liquidation proceedings of AIHL in the Cayman Islands (the "Cayman Liquidation"). Working together with the Committee's local Cayman counsel, Walkers Global ("Walkers"), Milbank provided guidance to the Committee with respect to a number of legal matters.

33. Milbank also kept the Committee apprised of developments in the Cayman Liquidation through communication with the Debtors' counsel and the JPLs of AIHL and their counsel, as well as review of interim reports published by the JPLs. Finally, during the Second Interim Compensation Period, Milbank participated in negotiations with both the Debtors and the JPLs regarding a proposed settlement of various issues between Arcapita and AIHL and the cross-border protocol that was ultimately approved both by this Court and by the court presiding over the Cayman Liquidation.

**G. Claims Analysis and Estimation**

34. During the Second Interim Compensation Period, Milbank attorneys communicated with the Committee and other unsecured creditors regarding this Court's order

establishing a bar date by which proofs of claim must be filed (the “Bar Date Order”) [Docket No. 308]. As a result of Milbank’s involvement, the Bar Date Order was modified in a number of respects to make it more protective of the rights of unsecured creditors. Additionally, Milbank attorneys analyzed the merits of various claims and causes of action.

**H. Committee Administration**

35. During the Second Interim Compensation Period, Milbank prepared the documents necessary for the efficient administration of the Committee’s affairs, including memoranda analyzing matters requiring the Committee’s attention. Milbank also drafted and executed a common interest agreement with the Debtors to facilitate the sharing of confidential information.

36. Milbank also implemented a protocol for the allocation of the numerous tasks involved in ensuring that the Committee is kept apprised of all aspects of these cases in a timely manner without duplication of effort. This protocol includes (a) meetings among Milbank’s team members and between Milbank and other Committee professionals, and (b) the maintenance of rolling task lists, calendar notifications and project calendars on a daily basis. Additionally, Milbank has established a system whereby (x) all substantive court filings are reviewed, on a real-time basis, to provide the Committee with a comprehensive summary and analysis of each material document filed in these cases, and (y) news articles regarding these cases are reviewed and summarized for the Committee, as needed.

37. Milbank has also communicated frequently with the Debtors in order to obtain the information required to enable the Committee to independently assess the soundness of the Debtors’ various business decisions. Milbank’s efforts in establishing the Committee’s administration in an efficient manner has ensured that the Committee will have the logistical

tools necessary to effectively carry out its fiduciary responsibilities to the unsecured creditors of each of the Debtors.

**I. Committee Meetings**

38. The Committee continued to hold weekly telephonic meetings during the Second Interim Compensation Period. Prior to each such meeting, Milbank (in consultation with the Committee's financial advisors) prepared an agenda for discussion. Milbank also prepared and distributed for the Committee's prior review various related materials prepared by the Committee's professionals. During each Committee meeting, Milbank discussed with the Committee all significant case developments that had occurred since the previous meeting and assisted the Committee in formulating a position with respect to each matter. Milbank and the Committee's financial advisors also prepared agendas and materials for weekly telephonic meetings with Barclays Bank PLC, the chair of the Committee, to discuss case developments and Committee administration.

39. Through telephonic Committee meetings and numerous other communications with the Committee's members, Milbank has assisted the Committee in (a) fulfilling its obligations to the unsecured creditors of each of the Debtors' estates and (b) making informed decisions regarding the numerous issues that have arisen in the chapter 11 cases.

40. In accordance with the Committee's by-laws, Milbank recorded minutes during each of the Committee meetings conducted during the Second Interim Compensation Period. The Committee meeting minutes identify the Committee members (and their counsel) in attendance at the particular meeting, describe agenda items discussed and the related Committee

resolutions, and set forth the results of all votes taken by the Committee members with respect to particular issues, if any.

**J. Committee Retention Applications**

41. Throughout the Second Interim Compensation Period, Milbank continued to search on a periodic basis its client database to determine whether it has relationship with parties that have appeared in these cases. Upon discovery of relationships that had not been disclosed with the Court, Milbank prepared and filed a supplemental declaration to its retention application disclosing such relationships and describing the internal procedures that were implemented to ensure that no confidential information acquired in the Committee engagement would be shared with existing clients or used in connection with the existing client engagements.

42. Also during the Second Interim Compensation Period, Milbank attorneys drafted and filed a supplemental retention application for Houlihan Lokey Capital, Inc. ("Houlihan"), the Committee's financial advisor and investment banker. Because the Committee and Houlihan were still in negotiations with respect to the structure and amount of Houlihan's deferred fee at the time of Houlihan's initial retention application (the "Interim Application"), the Interim Application sought approval only of a monthly fee. On the Committee's behalf, Milbank negotiated with Houlihan and the Debtors over the final terms of the deferred fee and when agreement was reached on these terms, it filed the supplemental retention application that sought approval thereof.

**K. Communications with Creditors & Website**

43. During the Second Interim Compensation Period, and in accordance with the Court-approved information-sharing protocol (the "Creditor Information Protocol"), the Committee was required to (x) provide creditors with access to information and (y) solicit and



receive comments from creditors. Pursuant to the Creditor Information Protocol, Milbank has established and is maintaining a website (the “Committee Website”) to help the Committee to communicate with creditors. Milbank attorneys have drafted the content populating the Committee Website, including, among many other things, (a) general information about the Debtors’ chapter 11 cases, including adversary proceedings, (b) highlights of significant events in the chapter 11 cases, (c) summaries of important documents and filings; and (d) answers to frequently asked questions.

44. Additionally, during the Second Interim Compensation Period, many creditors lodged inquiries with Milbank regarding the chapter 11 cases via telephone and by e-mail. In accordance with the Creditor Information Protocol, Milbank attorneys responded to all such inquiries. Moreover, Milbank attorneys held in-person meetings with certain creditors holding significant claims against the Debtors.

45. During the Second Interim Compensation Period, Milbank also attended and prepared a summary for the Committee of a meeting of the Debtors’ creditors convened by the U.S. Trustee pursuant to section 341 of the Bankruptcy Code, at which the Debtors and their advisors were present.

**L. Court Hearings**

46. During the Second Interim Compensation Period, Milbank attorneys prepared for and appeared at a number of court hearings, including the regularly scheduled omnibus hearings and various special hearings and case conferences. To prepare for each hearing, among other things, Milbank attorneys reviewed and analyzed pleadings and related documents and correspondence, conducted factual and legal research, discussed various issues with the Committee’s financial advisors and the Debtors’ advisors, prepared memoranda for the

Committee summarizing the matters to be heard at each hearing, identifying the issues raised and providing recommendations as to the Committee's response to each such matter and, in certain instances, prepared responsive pleadings, exhibits, argument and cross-examination outlines. Following each hearing, Milbank promptly advised the Committee of the pertinent rulings.

**M. Debtor-in-Possession Meetings and Communications**

47. Throughout the Second Interim Compensation Period, Milbank attorneys were in frequent communications with the Debtors' advisors, including through numerous conference calls. Milbank regularly reviewed with the Debtors matters that affected the Committee's constituency. Milbank also drafted and sent the Debtors' advisors various correspondence detailing outstanding diligence requests and the need for the improved sharing of information to enable the Committee to better evaluate case issues.

48. Milbank, together with the Debtors' advisors, also coordinated an in-person meeting in London between the Debtors, the Committee, the JPLs and their respective professionals, that was held over a two-day period. During the meeting, the parties discussed case strategy, including the Debtors' future business plan and plan of reorganization, the Debtors' efforts to raise new equity capital and other issues of significant concern to the Debtors and their unsecured creditors.

**N. Project Finance & Infrastructure**

49. During the Second Interim Compensation Period, Milbank attorneys reviewed and analyzed certain of the Debtors' infrastructure-related projects and investments, including available documentation relating to, among other things, debt and organization structures, credit facilities, shareholder rights and obligations, client services and licensing agreements.

50. Additionally, Milbank attorneys analyzed and summarized the Debtors' funding requests for infrastructure-related projects and investments and advised the Committee on the related legal issues, including with respect to potential liabilities in the event of non-funding. Where necessary, Milbank attorneys drafted additional diligence requests to enable the Committee to better evaluate the merits of various deal funding requests.

51. The Committee's dispute with the Debtors regarding funding for the AGUD I district cooling plant occurred during the Second Interim Compensation Period. After participating in the negotiation of the resolution of this dispute, Milbank attorneys researched, drafted and filed a statement and reservation of rights with respect to the Debtors' motion to fund the non-Debtor AGUD I district cooling plant.

**O. DIP Financing**

52. After it became clear that the Debtors' liquidity was diminishing at a rate that required postpetition financing, Milbank attorneys, along with the Committee's financial advisors, engaged in numerous discussions and negotiations with the Debtors' counsel and financial advisors, as well as potential lenders and their advisors, with respect to the Debtors' efforts to obtain debtor-in-possession financing ("DIP Financing").

53. During the Second Interim Compensation Period, Milbank reviewed, analyzed and commented on the Debtors' motion (the "DIP Expense Reimbursement Motion") to authorize the Debtors to reimburse up to \$500,000 of the actual and reasonable expenses incurred by the selected potential DIP Financing lender in connection with the negotiation and documentation of the prospective DIP Financing. Milbank successfully negotiated with the Debtors and the prospective lender for modifications to the form of order and the right to review and object to any request for expense reimbursement.

54. Also during the Second Interim Compensation Period, in connection with the Debtors' motion (the "DIP Commitment Letter Motion") for authority to enter into a DIP commitment letter with Silver Point Finance, LLC, Milbank reviewed, analyzed and advised the Committee with respect to the deficiencies of the Debtors' proposal. In addition, Milbank prepared and argued an objection to the DIP Commitment Letter Motion, which objected to the requested relief on the basis that, among other things, the proposed commitment letter (a) purported to impose significant obligations on the Debtors while the lender would remain uncommitted to provide financing; (b) included an inappropriately drafted "fiduciary out" that would function as a *de facto* barrier to entry for other potential lenders; and (c) contained an overly broad material adverse effect clause. Following argument and the Court's adjournment of the matter based on the same concerns that had been raised by the Committee, Milbank and the Committee's financial advisor commented on multiple revised iterations of the original commitment letter and fee letter in an attempt to resolve those concerns. Through various negotiations and communications, Milbank and the Committee's financial advisor were integral to the process of soliciting proposals from other lenders, in order to offer pricing competition and favorable substantive changes over the original commitment letter.

55. In addition, during the Second Interim Compensation Period, Milbank reviewed, analyzed and advised the Committee with respect to the Debtors' supplement to the DIP Commitment Letter Motion (the "DIP Supplement"), which sought approval of a commitment letter with Fortress Credit Corp. ("Fortress"). Based on deficiencies in the size and pricing of the Fortress commitment, as proposed in the DIP Supplement, Milbank and the Committee's financial advisors continued negotiations with the Debtors, Fortress and other lenders in an effort to obtain a superior DIP proposal. Following negotiations at the courthouse

immediately prior to the hearing on the DIP Supplement, Milbank and counsel for the Debtors and Fortress reached an agreement on DIP Financing that resolved the Committee's concerns -- a result which the Court, the Debtors, and the Committee believed to be in the best interest of the Debtors' estates.

56. Throughout the Second Interim Compensation Period, Milbank regularly updated the Committee with memoranda regarding the status of the DIP Financing process and developments with respect to the various DIP proposals. Finally, also throughout the Second Interim Compensation Period, Milbank attorneys attended multiple court hearings and telephonic chamber conferences regarding the foregoing matters.

**P. Employee Issues**

57. During the Second Interim Compensation Period, Milbank attorneys reviewed and analyzed the Debtors' request for approval of a separation agreement (the "Separation Agreement") with one of Arcapita's former employees. Milbank attorneys summarized the effects of, and Milbank's recommendations with respect to, the Separation Agreement in a memorandum that was circulated to the Committee.

58. Also during the Second Interim Compensation Period, Milbank attorneys reviewed and analyzed the Debtors' motion (the "Senior Management Motion") to allow six members of senior management to participate in a "Settlement" to avoid certain liabilities to the Debtors in return for various concessions from those employees and the achievement of various milestones.

59. Milbank researched and advised the Committee with respect to several issues raised by the Senior Management Motion, including the enforceability of the rights proposed to be waived by the parties to the Settlement, as well as the viability of various

alternative solutions. In consultation with the Committee and the Committee's financial advisors, Milbank negotiated with the Debtors regarding the relief sought in the Senior Management Motion, at the same time researching and drafting an objection to the Senior Management Motion as well as preparing for litigation over the Senior Management Motion. Eventually, the Debtors agreed to defer consideration of the Senior Management Motion.

60. During the Second Interim Compensation Period, Milbank attorneys also investigated the merits of certain claims against Arcapita that are held by various terminated employees of Arcapita Limited. These investigations are still ongoing.

**Q. Exclusivity Issues**

61. Milbank researched, analyzed and advised the Committee with respect to the relief sought in the Debtors' second motion for an extension of the exclusive periods for the filing of, and solicitation of acceptances for, their chapter 11 plan(s) [Docket No. 509] (the "Second Exclusivity Motion"). Milbank prepared a draft objection to the Second Exclusivity Motion that was focused, primarily, on the Debtors' consistent failure to meet various milestones put in place in connection with the Debtors first request for an extension of their exclusive periods.

62. As the deadline for filing the objection approached, Milbank, at the direction of the Committee, engaged the Debtors' professionals in negotiations to reach a compromise on the extent of the relief requested in the Second Exclusivity Motion. A compromise with the Debtors was reached, whereby the Committee agreed to not object to the Second Exclusivity Motion on the conditions explained in detail in the order entered on October 12, 2012 [Docket No. 568] and the Committee's statement [Docket No. 536] (the "Committee's Statement"). In connection with the compromise, Milbank prepared the Committee's Statement,

which memorialized the Committee's perspective on progress to date in the chapter 11 cases and the benefits of the exclusivity compromise.

**R. Fee Applications - Other**

63. During the Second Interim Compensation Period, Milbank professionals coordinated the filing and service of monthly fee statements for the Committee's financial advisors. Milbank also reviewed the monthly fee statements of the Debtors' professionals for, among other purposes, compliance with the Interim Compensation Order and the Guidelines.

64. Also during the Second Interim Compensation Period, Milbank attorneys assisted in the preparation and filing of interim fee applications for certain of the Committee's foreign professionals, including Hassan Radhi, its Bahraini counsel, and Walkers, its Cayman counsel.

**S. File, Docket & Calendar Maintenance**

65. During the Second Interim Compensation Period, Milbank paraprofessionals maintained internal filing, record-keeping, docket-monitoring and calendaring systems in order to organize and keep track of the documents filed in these cases and the Cayman Liquidation, ongoing projects and upcoming deadlines. Milbank attorneys also monitored the docket on a real-time basis, calendared critical dates and summarized and circulated substantive pleadings to the Arcapita team. These summaries enabled Milbank to stay abreast of developments in these cases, and facilitated the assignment of projects.

**T. Investments and Portfolio Companies**

66. During the Second Interim Compensation Period, Milbank attorneys reviewed, analyzed, and summarized documents relating to the Debtors' various investments and portfolio companies, including structure and investment charts, loan documents, credit

agreements, shareholder agreements, and intercreditor agreements. Milbank attorneys also monitored the Debtors' electronic dataroom for additional diligence with respect to such investments and portfolio companies.

67. Milbank advised the Committee with respect to legal issues arising from the funding or sale of certain of the Debtors' investments and portfolio companies, as well as potential liabilities in the event of non-funding.

**U. Insurance Matters**

68. Pursuant to the Court's order entered on May 15, 2012 (the "Insurance Order"), the Debtors were required to give the Committee ten days' notice of the Debtors' intent to renew any existing insurance policies or obtain a new insurance policy, and the Debtors could not purchase a renewal policy or a new policy without court approval if the Committee objected within the ten-day period. In accordance with the Insurance Order, during the Second Interim Compensation Period, Milbank reviewed, analyzed, and summarized the Debtors' proposed extension of their Professional Directors & Officers liability insurance coverage for the 2012-2013 policy year. Specifically, Milbank, in conjunction with the Committee's financial advisors, engaged in discussions with counsel for the Debtors, evaluated the legal and financial aspects of the Debtors' proposal, and advised the Committee of its recommendation not to object to the Debtors' proposal.

**V. Intercompany Issues**

69. During the Second Interim Compensation Period, Milbank investigated matters related to intercompany claims among Arcapita Bank and its affiliates. Specifically, Milbank analyzed the treatment of the intercompany claims between Arcapita Bank and (a) AIHL; (b) Arcapita LT Holdings Limited; and (c) various other non-debtor affiliates. In



connection therewith, Milbank had numerous discussions with the Committee's financial advisors regarding the treatment of intercompany claims, in general and with respect to a potential plan of reorganization, and the potential impact of distributions in the AIHL proceedings and the chapter 11 cases.

70. Furthermore, during the Second Interim Compensation Period, Milbank analyzed potential opportunities for the Debtors to enhance recoveries to U.S. creditors through actions in the chapter 11 cases. In particular, Milbank researched and analyzed the treatment of significant cross-border intercompany claims. Milbank also investigated certain intercompany issues raised by a potential standalone plan.

**W. Milbank Fee Statements and Applications**

71. During the Second Interim Compensation Period, Milbank professionals and paraprofessionals carefully reviewed draft fee statements to redact privileged, confidential and other non-public information. Milbank also served its fee statements as required by the Interim Compensation Order.

72. Also during the Second Interim Compensation Period, Milbank professionals and paraprofessionals drafted and filed the First Interim Fee Application, and began to prepare this Application, compiling time entries entered by Milbank attorneys and paraprofessionals by project billing categories and summarizing the work performed in each category.

**X. Plan of Reorganization**

73. During the Second Interim Compensation Period, Milbank attorneys communicated with the other Committee advisors and the Debtors, and prepared materials regarding the terms of a potential plan of reorganization. Milbank provided regular updates to

the Committee with respect to the status of these discussions, as well as with respect to the Debtors' efforts to raise new equity capital.

**Y. Real Estate Matters**

74. During the Second Interim Compensation Period, Milbank worked closely with the Committee's other professional advisors to analyze potential strategies with respect to the structure and terms of the Debtors' real estate investments. Milbank regularly updated the Committee as to the status of the foregoing through electronic mail and telephonic meetings.

75. In particular, during the Second Interim Compensation Period, Milbank attorneys, on behalf of the Committee, continued their comprehensive review of the sale-leaseback transactions entered into by the Debtors with respect to real property in Lusail City, Qatar and Arcapita's headquarters building in Bahrain, including a review and analysis of the transaction documents and numerous legal issues arising therefrom. With the assistance of the Committee's financial advisors, Milbank prepared for the Committee detailed analyses of many of the foregoing issues.

**Z. Reporting Requirements**

76. During the Second Interim Compensation Period, Milbank advised the Committee members with respect to their obligations to disclose certain information pursuant to Bankruptcy Rule 2019. Milbank attorneys continued to collect this information from each Committee member and worked closely with them to ensure that their responses were in compliance with Bankruptcy Rule 2019.

**AA. Retention of Professionals**

77. During the Second Interim Compensation Period, Milbank attorneys reviewed, analyzed and discussed with the Debtors and the Committee's financial advisors

certain engagement letters seeking to expand the services provided by KPMG LLP, the Debtors' tax advisor, to include the provision of certain tax services to Chicago Condo Funding Corporation, an indirect subsidiary of Arcapita. Milbank also reviewed and discussed with the Debtors' advisors various supplemental lists of ordinary course professionals retained by the Debtors that were filed with the Court.

**BB. Secured Creditor Issues**

78. During the Second Interim Compensation Period, Milbank continued to advise the Committee on issues related to SCB, a prepetition secured lender under two of the Debtors' *murabaha* facilities. In order to obtain SCB's consent to the EuroLog IPO, the Debtors, Committee, and the JPLs negotiated a settlement stipulation regarding SCB's claims and certain related issues. As part of the negotiation process, Milbank reviewed and assessed the terms of the stipulation and related term sheet. Ultimately, the Committee agreed to a settlement that was subsequently approved by the Court, allowing the EuroLog IPO to proceed.

**CC. Voidable Transfers and Other Potential Claims**

79. During the Second Interim Compensation Period, Milbank devoted substantial time to researching and evaluating potential claims on behalf of the Debtors' estates, including avoidance action claims. Due to the short timeline proposed for the filing of a plan, avoidance actions have been addressed in the chapter 11 cases on an expedited basis, and, due to this time limitation, Milbank has been the driving force behind considerable diligence in connection with potential avoidance actions.

80. In particular, Milbank began working with the Committee's financial advisors to, among other objectives, (a) identify and analyze categories of pre- and postpetition transfers potentially subject to avoidance and recovery; (b) analyze the prepetition financial

condition of the Debtors to determine whether the Debtors were insolvent and/or undercapitalized during any period for purposes of pursuing preference and constructive fraudulent transfer claims; (c) investigate and analyze in greater depth particular transfers identified as potential avoidance targets; (d) analyze potential legal issues that might arise in connection with the pursuit of any avoidance actions; and (e) develop potential litigation strategies. This process began with a in-depth analysis by Milbank and the Committee's financial advisors of the certain of the Debtors schedules of assets and liabilities and statements of financial affairs (collectively, the "SOFAs").

81. Milbank analyzed various categories of potentially voidable transfers based on information provided by the Debtors' advisors and contained in the SOFAs, including payments to insiders and vendors, and transfers made in connection with investors and investment companies. Milbank corresponded extensively with the Committee's financial advisors, as well as with counsel and financial advisors to the Debtors, to discuss various types of prepetition transfers made by the Debtors, the prepetition financial condition of the Debtors, and various issues relating to the pursuit of avoidance actions by the Debtors.

82. Milbank began to engage in extensive research with respect to factual and legal issues with respect to potential avoidance actions and presentations to the Committee in connection therewith. In particular, Milbank researched and analyzed, among other things, issues such as the general mechanics and legal bases of avoidance actions, potential recoveries resulting from avoidance actions, legal defenses to the avoidance actions identified to date, the collateral legal risks of pursuing certain avoidance actions, and other legal issues that might arise in connection with particular categories of prepetition transfers.

**IV.**  
**ALLOWANCE OF COMPENSATION**

83. The professional services rendered by Milbank have required a high degree of professional competence and expertise to address, with skill and dispatch, the numerous issues requiring evaluation and action by the Committee. The services rendered to the Committee were performed efficiently, effectively and economically, and the results obtained to date have benefited the unsecured creditors of each of the Debtors' estates.

84. The allowance of interim compensation for services rendered and reimbursement of expenses in chapter 11 cases is expressly provided for in section 331 of the Bankruptcy Code:

Any professional person . . . may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . as is provided under section 330 of this title.

85. With respect to the level of compensation, section 330(a)(1)(A) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person "reasonable compensation for actual, necessary services rendered[.]" Section 330(a)(3), in turn, provides that:

In determining the amount of reasonable compensation to be awarded to . . . [a] professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time which the service was rendered toward the completion of, a case under this title;

- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and expertise in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

86. The Congressional policy expressed above provides for adequate compensation in order to continue to attract competent professionals to bankruptcy cases. In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 20 (Bankr. S.D.N.Y. 1991) (“Congress’ objective on requiring that the market, not the Court, establish attorneys’ rates was to ensure that bankruptcy cases were staffed by appropriate legal specialists.”); In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 850 (3d Cir. 1994) (“Congress rather clearly intended to provide sufficient economic incentive to lure competent bankruptcy specialists to practice in the bankruptcy courts.”) (citation and internal quotation marks omitted).

87. In assessing the “reasonableness” of the fees requested, courts have looked to a number of factors, including those first enumerated by the Fifth Circuit in In re First Colonial Corp. of America, 544 F.2d 1291, 1298-99 (5th Cir. 1977) and thereafter adopted by most courts.<sup>5</sup> See In re Nine Assocs., Inc., 76 B.R. 943, 945 (S.D.N.Y. 1987) (adopting First Colonial/Johnson analysis); In re Cuisine Magazine, Inc., 61 B.R. 210, 212–13 (Bankr. S.D.N.Y. 1986) (same); see generally 3 Collier on Bankruptcy ¶ 330.03[9] (enumerating First Colonial and

Johnson as the “leading cases to be considered in determining a reasonable allowance of compensation”). Milbank respectfully submits that the consideration of these so-called Johnson factors should result in this Court’s allowance of the full compensation requested.

- (A) The Time and Labor Required. The professional services rendered by Milbank on behalf of the Committee have required the continuous expenditure of substantial time and effort, under time pressures that sometimes required the performance of services late into the evening and, on a number of occasions, over weekends and holidays. The services rendered required a high degree of professional competence and expertise in order to be administered with skill and dispatch.
- (B) The Novelty and Difficulty of Questions. Novel and complex issues have arisen, and will continue to arise, in the course of the chapter 11 cases. In these cases, as in many others in which the firm is involved, Milbank’s effective advocacy and creative approach to problem-solving have helped to clarify and resolve difficult issues and will continue to prove beneficial.
- (C) The Skill Requisite to Perform the Legal Services Properly. Milbank believes that its recognized expertise in the area of financial restructuring, its ability to draw from highly-experienced professionals in other areas of its practice such as employment, asset divestiture, litigation, tax, intellectual property and finance and its practical approach to the resolution of issues help maximize the distributions to the unsecured creditors of each of the Debtors.
- (D) The Preclusion of Other Employment by Applicant Due to Acceptance of the Case. Due to the size of Milbank’s financial restructuring department and the firm as a whole, Milbank’s representation of the Committee has not precluded the acceptance of new clients. However, the number of matters needing attention on a continuous basis has required numerous Milbank attorneys, across multiple practice groups, to commit significant portions of their time to the chapter 11 cases.
- (E) The Customary Fee. The compensation sought herein is based upon Milbank’s normal hourly rates for services of this kind. Milbank respectfully submits that the compensation sought herein is not unusual given the magnitude of the chapter 11 cases and the time dedicated to the representation of the Committee. Such

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<sup>5</sup> The factors embraced by the Fifth Circuit in First Colonial were first adopted by the Fifth Circuit’s decision in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), except that First Colonial also included the “spirit of economy” as a factor expressly rejected by Congress in enacting section 330 of the Bankruptcy Code. Stroock & Stroock & Lavan v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.), 127 F.3d 1398, 1403 (11th Cir. 1997). A majority of the First Colonial factors are now codified in section 330(a)(3). 3 COLLIER ON BANKRUPTCY ¶ 330.03[9] (Lawrence P. King et al., eds., 16th ed. 2011).

compensation is commensurate with fees Milbank has been awarded in other cases, as well as with fees charged by other attorneys of comparable experience.

- (F) Whether the Fee Is Fixed or Contingent. Milbank charges customary hourly rates, as adjusted annually, for the time expended by its attorneys and paraprofessionals in representing the Committee, and Milbank's fee is not outcome dependent.
- (G) Time Limitations Imposed by Client or Other Circumstances. As stated above, Milbank has been required to attend to various issues as they have arisen in the chapter 11 cases. Often, Milbank has had to perform these services under significant time constraints requiring attorneys and paraprofessionals assigned to the chapter 11 cases to work evenings and on weekends.
- (H) The Amount Involved and Results Obtained. The Committee represents the interests of unsecured creditors of each of the Debtors that, in the aggregate, hold unsecured claims estimated to be valued in at least the hundreds of millions of dollars. The Committee's participation, with Milbank's counsel and guidance, has greatly contributed to the efficient administration and prospects for reorganization of the chapter 11 cases.
- (I) The Experience, Reputation and Ability of the Attorneys. Milbank has a sophisticated and nationally recognized corporate reorganization and financial restructuring practice, and Milbank attorneys involved in this representation have played a major role in numerous complex restructurings including, for example, the chapter 11 cases of Lehman Brothers Holdings Inc., Eastman Kodak Company, The Great Atlantic & Pacific Tea Company, Inc., Nortel Networks Inc., Capmark Financial Group Inc., Hayes Lemmerz International, Inc., DBSD North America, Inc., Refco, Inc., Enron Corp., TOUSA, Inc., Vicorp, Interstate Bakeries Corp., Winn-Dixie Stores, Inc., Fruit of the Loom Inc., Adelphia Communications Corp., RCN Corp., US Airways Group, Inc., Global Crossing Ltd., Fleming Companies, Inc., and Dairy Mart Convenience Stores, Inc. Milbank's experience enables it to perform the services described herein competently and expeditiously.
- (J) The "Undesirability" of the Case. The chapter 11 cases are not undesirable but, as already indicated, require a significant commitment of time from many Milbank attorneys.
- (K) Nature and Length of Professional Relationship. Milbank was selected as the Committee's counsel shortly after the Committee's formation, on April 10, 2012, and was retained *nunc pro tunc* to that date pursuant to an order of the Court dated June 29, 2012. Milbank has been rendering services continuously to the Committee since the Committee was formed, and Milbank has rendered such services in a necessary and appropriate manner.



88. The total time spent by Milbank attorneys and paraprofessionals during the Second Interim Compensation Period was 5,226.40 hours and has a fair market value of \$3,459,030.50. Milbank submits that, as demonstrated by this Application and supporting exhibits, its services were rendered economically and without unnecessary duplication of efforts. In addition, the work involved, and thus the time expended, was carefully assigned in consideration of the experience and expertise required for each particular task.

**V.**  
**EXPENSES**

89. Milbank has incurred a total of \$93,952.41 in expenses in connection with representing the Committee during the Second Interim Compensation Period. Milbank records all expenses incurred in connection with its performance of professional services. Detailed descriptions of these expenses were attached and filed as exhibits to the Second Interim Period Fee Statements.

90. Throughout the Second Interim Compensation Period, Milbank has been keenly aware of cost considerations and has tried to minimize the expenses charged to the Debtors' estates.

91. Milbank's policy is to charge its clients in all areas of practice for expenses, other than fixed and routine overhead expenses, incurred in connection with representing its clients. The expenses charged to Milbank's clients include, among other things, telephone toll and other charges, regular mail and express mail charges, special or hand delivery charges, photocopying charges, out-of-town travel expenses, local transportation expenses, expenses for working meals, computerized research charges and transcription costs.

92. Milbank charges the Committee for these expenses at rates consistent with those charged to Milbank's other bankruptcy clients, which rates are equal to or less than the

rates charged by Milbank to its non-bankruptcy clients. Milbank seeks reimbursement from the Debtors at the following rates for the following expenses: (a) ten cents (\$0.10) per page for photocopying; (b) ten cents (\$0.10) per page for black and white printing; and (c) one dollar and twenty-five cents (\$1.25) per page for color printing.

93. In accordance with section 330 of the Bankruptcy Code and the Guidelines, Milbank seeks reimbursement only for the actual cost of such expenses to Milbank.<sup>6</sup>

94. In providing or obtaining from third parties services which are reimbursable by clients, Milbank does not include in such reimbursable amount any costs of investment, equipment or capital outlay.

95. Milbank regularly charges its non-bankruptcy clients for ordinary business hourly fees and expenses for secretarial, library, word processing and other staff services because such items are not included in the firm's overhead for the purpose of setting billing rates. However, Milbank is not seeking reimbursement of hourly fees of its secretarial services.

## **VI.** **NOTICE**

96. No trustee or examiner has been appointed in the chapter 11 cases. Pursuant to the Interim Compensation Order, notice of this Application has been served upon: (a) Arcapita Bank B.S.C.(c), Arcapita Building, Bahrain Bay, P.O. Box 1406, Manama, Kingdom of Bahrain (Attn: Henry Thompson); (b) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq., and Matthew K. Kelsey, Esq.); and (c) the Office of the United States Trustee for the Southern

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<sup>6</sup> The cost of expenses Milbank is seeking reflects any discounted rates based on volume or other discounts which Milbank anticipates receiving from certain outside vendors; however, Milbank does not perform a retrospective reconciliation of any "year-end" adjustments (positive or negative) to the actual discounted cost of such expenses.

District of New York, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.). Milbank submits that, in light of the relief requested herein, no other or further notice need be provided.

**VII.**  
**CONCLUSION**

WHEREFORE, Milbank respectfully requests that the Court enter an order conforming to the amounts set forth in fee schedule attached hereto as Exhibit B: (a) allowing Milbank (i) interim compensation for professional services rendered as counsel for the Committee during the Second Interim Compensation Period in the amount of \$3,459,030.50; and (ii) reimbursement of expenses incurred in connection with rendering such services in the aggregate amount of \$93,952.41, for a total award of \$3,552,982.91; (b) authorizing and directing the Debtors to pay (to the extent not previously paid in accordance with the Interim Compensation Order) to Milbank \$1,895,267.02, which is an amount equal to (i) the \$849,144.80 Holdback, plus (ii) \$1,046,122.22, which represents the unpaid portion of 80% of Milbank's fees for legal services rendered and 100% of Milbank's expenses incurred during the Second Interim Compensation Period; and (c) granting such further relief as is just.

Dated: New York, New York  
November 27, 2012

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

By: /s/ Dennis F. Dunne  
Dennis F. Dunne  
Abhilash M. Raval  
Evan R. Fleck  
1 Chase Manhattan Plaza  
New York, New York 10005  
Telephone: (212) 530-5000  
Counsel for Official Committee of Unsecured  
Creditors of Arcapita Bank B.S.C.(c), et al.

**Exhibit A**

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

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: **Chapter 11**  
: **Case No. 12-11076 (SHL)**  
: **(Jointly Administered)**  
: **Debtors.**  
: **(Jointly Administered)**  
----- x

**CERTIFICATION UNDER GUIDELINES FOR FEES AND DISBURSEMENTS  
FOR PROFESSIONALS IN RESPECT OF SECOND APPLICATION OF MILBANK,  
TWEED, HADLEY & M<sup>c</sup>CLOY LLP, COUNSEL TO OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS, FOR INTERIM ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED AND FOR  
REIMBURSEMENT OF EXPENSES DURING PERIOD FROM  
AUGUST 1, 2012 THROUGH AND INCLUDING OCTOBER 31, 2012**

Pursuant to the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, effective December 4, 2009 (together, the “Local Guidelines”), and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, adopted on January 30, 1996 (the “U.S. Trustee Guidelines” and, together with the Local Guidelines, the “Guidelines”), the undersigned, a member of the firm Milbank, Tweed, Hadley & M<sup>c</sup>Cloy LLP (“Milbank”), counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession in the above-captioned cases (collectively, the “Debtors”)<sup>1</sup>, hereby certifies with respect to Milbank’s second application for allowance of compensation for services rendered and for reimbursement of expenses, dated

<sup>1</sup> The Debtors in these chapter 11 cases are Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, RailInvest Holdings Limited, and Falcon Gas Storage Company, Inc. The location of the Debtors’ corporate headquarters is Arcapita Building, Bahrain Bay, P.O. Box 1406, Manama, Kingdom of Bahrain.

November 27, 2012 (the “Application”), for the period of August 1, 2012 through and including October 31, 2012 (the “Second Interim Compensation Period”) as follows:

1. I am the professional designated by Milbank in respect of compliance with the Guidelines.

2. I make this certification in support of the Application, for interim compensation and reimbursement of expenses for the Second Interim Compensation Period, in accordance with the Local Guidelines.

3. In respect of section A.1 of the Local Guidelines, I certify that:

a. I have read the Application.

b. To the best of my knowledge, information and belief formed after reasonable inquiry, the fees and disbursements sought fall within the Guidelines.

c. Except to the extent that fees or disbursements are prohibited by the Guidelines, the fees and disbursements sought are billed at rates in accordance with practices customarily employed by Milbank and generally accepted by Milbank’s clients.

d. In providing a reimbursable service, Milbank does not make a profit on that service, whether the service is performed by Milbank in-house or through a third party.<sup>2</sup>

4. With respect to section A.2 of the Local Guidelines, I certify that Milbank has previously provided monthly statements of Milbank’s fees and disbursements in accordance with section A.2 of the Local Guidelines by filing and serving monthly statements in accordance with the Interim Compensation Order (as defined in the Application), except that completing reasonable and necessary internal accounting and review procedures have at times precluded filing fee statements within the time periods specified in the Local Guidelines.

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<sup>2</sup> The cost of expenses Milbank is seeking reflects any discounted rates based on volume or other discounts which Milbank anticipates receiving from certain outside vendors; however, Milbank does not perform a

5. With respect to section A.3 of the Local Guidelines, I certify that: (a) the Debtors; (b) the chair of the Committee; and (c) the Office of the United States Trustee for the Southern District of New York will be provided with a copy of the Application concurrently with the filing thereof and will have at least 14 days to review such Application prior to any objection deadline with respect thereto.

Dated: New York, New York  
November 27, 2012

By: /s/ Dennis F. Dunne  
Dennis F. Dunne

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retrospective reconciliation of any “year-end” adjustments (positive or negative) to the actual discounted cost of such expenses.

**Exhibit B**



CASE NO.: 12-11076 (SHL) (Jointly Administered)  
CASE NAME: IN RE ARCAPITA BANK B.S.C.(C), et al.

**Second Interim Compensation Period**  
**August 1, 2012 – October 31, 2012**

<b>Date/Document Number of Statement</b>	<b>A. Fees for Which Approval Is Sought</b>	<b>B. Amount of Fees for Which Monthly Payment Was Sought (80%)</b>	<b>C. Fees Paid to Date</b>	<b>D. Expenses Requested To Be Approved and Paid</b>	<b>E. Expenses Paid to Date</b>	<b>F. Amounts Payable Pursuant to Interim Compensation Order Yet Unpaid (i.e., (B+D) – (C+E))</b>
10/9/12 Docket No. 557	\$1,219,486.00	\$975,588.80	\$975,588.80	\$17,492.14	\$17,492.14	\$0.00
10/22/12 Docket No. 593	\$981,351.50	\$785,081.20	\$785,081.20	\$36,892.45	\$36,892.45	\$0.00
11/21/12 Docket No. 655	\$1,258,193.00	\$1,006,554.40	\$0.00	\$39,567.82	\$0.00	\$1,046,122.22