

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case Nos. 12-11076-shl

4 Adv. Case No. 12-01662-shl

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6 In the Matter of:

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

9

10 Debtors.

11 - - - - - x

12 HOPPER,

13 Plaintiff,

14 v.

15 FALCON GAS STORAGE COMPANY, INC.,

16 Defendant.

17 - - - - - x

18 U.S. Bankruptcy Court

19 One Bowling Green

20 New York, New York

21

22 December 18, 2012

23 11:17 AM

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1 B E F O R E :
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1 Hearing re: Adversary proceeding: 12-01662-shl - Pre-Trial
2 Conference

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4 Hearing re: Doc. #675 (MOURANT OZANNES) Second Application
5 for Interim Professional Compensation of Mourant Ozannes as
6 Special Cayman Islands Counsel for the Debtors for Allowance
7 of Interim Compensation for Services Rendered and for
8 Reimbursement of Actual and Necessary Expenses Incurred from
9 August 1, 2012 through October 31, 2012 for Mourant Ozannes

10
11 Hearing re: Doc. #663 (KING & SPALDING) Second Application
12 for Interim Professional Compensation and Expenses Incurred
13 During the Period August 1, 2012 Through and Including
14 October 31, 2012. Filed by King & Spalding LLP and King &
15 Spalding International LLP

16
17 Hearing re: Doc. #671 (ROTHSCHILD INC.) Second Application
18 for Interim Professional Compensation - Second Interim
19 Application of Rothschild Inc. and N M Rothschild & Sons
20 Limited as Financial Advisor and Investment Banker to the
21 Debtors for Allowance and Payment of Compensation for
22 Professional Services Rendered and Reimbursement of Actual
23 and Necessary Expenses Incurred from September 1, 2012
24 through October 31, 2012

25

1 Hearing re: Doc. #672 (ALVAREZ MARSAL) Second Application
2 for Interim Professional Compensation - Second Application
3 of Alvarez & Marsal North America, LLC, as Financial Advisor
4 to Arcapita Bank B.S.C.(c), et al. for Interim Approval and
5 Allowance of Compensation for Services Rendered and
6 Reimbursement of Expenses Incurred During Period From
7 August 1, 2012 Through and Including October 31, 2012 for
8 Alvarez and Marsal North America, LLC

9
10 Hearing re: Doc #649 (KPMG LLP US) Second Application for
11 Interim Professional Compensation - Second Fee Application
12 for KPMG LLP (US) as Tax Consultants to the Debtors and
13 Debtors in Possession, for Interim Allowance and
14 Compensation for Professional Services Rendered and
15 Reimbursement of Actual and Necessary Expenses Incurred from
16 August 1, 2012 through October 31, 2012

17
18 Hearing re: Doc. #664 (KPMG LLP Valuation) Second
19 Application for Interim Professional Compensation - Second
20 Fee Application for KPMG LLP) as Valuation Advisor to the
21 Debtors, for Allowance and Compensation for Professional
22 Services Rendered and Reimbursement of Actual and Necessary
23 Expenses Incurred from July 1, 2012 through October 31, 2012
24 for KPMG LLP

25

1 Hearing re: Doc. #651 (LINKLATERS LLP) Second Application
2 for Interim Professional Compensation - Second Application
3 of Linklaters LLP, as Special Counsel for the Debtors and
4 Debtors in Possession, for Interim Allowance and
5 Compensation for Professional Services Rendered and
6 Reimbursement of Actual and Necessary Expenses Incurred from
7 July 1, 2012 through October 31, 2012

8
9 Hearing re: Doc. #638 (ERNST & YOUNG) Application for
10 Interim Professional Compensation / First Interim
11 Application of Ernst & Young for Compensation and
12 Reimbursement of Expenses as Auditor to the Debtors ad
13 Debtors-In-Possession for the Period from March 19, 2012
14 through October 31, 2012

15
16 Hearing re: Doc. #647 (TROWES & HAMLINS) Second Application
17 for Interim Professional Compensation - Second Fee
18 Application of Trowers & Hamlins as Attorneys for the
19 Debtors and Debtors in Possession for Interim Allowance and
20 Compensation for Services Rendered and Reimbursement of
21 Actual and Necessary Expenses Incurred from August 1, 2012
22 through October 31, 2012

23
24 Hearing re: Doc. #673 (FTI) Second Application for Interim
25 Professional Compensation of FTI Consulting, Inc. for

1 Allowance of Compensation and for Reimbursement of Expenses
2 for Services Rendered in the Case for the Period August 1,
3 2012 through October 31, 2012 for FTI Consulting, Inc.,
4 Other Professional, period: 8/1/2012 to 10/31/2012, fee:
5 \$670,272.00, expenses: \$14,230.76

6
7 Hearing re: Doc. #674 (HASSAN RADHI) Second Application for
8 Interim Professional Compensation of Hassan Radhi &
9 Associates, Bahraini Counsel to Official Committee of
10 Unsecured Creditors, for Interim Approval and Allowance of
11 Compensation for Services Rendered During Period From
12 August 1, 2012 Through and Including October 31, 2012 for
13 Hassan Radhi & Associates, Creditor Comm. Aty, period:
14 8/1/2012 to 10/31/2012, fee: \$6,032.00, expenses: \$0.00

15
16 Hearing re: Doc. #662 (WALKERS) Second Application for
17 Interim Professional Compensation of Walkers, Cayman Islands
18 Counsel to Official Committee of Unsecured Creditors, for
19 Interim Approval and Allowance of Compensation for Services
20 Rendered and for Reimbursement of Expenses Incurred During
21 Period From August 1, 2012 Through and Including October 31,
22 2012 for Walkers, Creditor Comm. Aty, period: 8/1/2012 to
23 10/31/2012, fee: \$54,915.00, expenses: \$192.72

24
25 Hearing re: Doc. #666 (MILBANK) Second Application for

1 Interim Professional Compensation of Milbank, Tweed, Hadley
2 & McCloy LLP for Approval and Allowance of Compensation for
3 Services Rendered and for Reimbursement of Expenses Incurred
4 During Period From August 1, 2012 Through and Including
5 October 31, 2012 for Milbank, Tweed, Hadley & McCloy LLP,
6 Creditor Comm. Aty, period: 8/1/2012 to 10/31/2012, fee:
7 \$3,459,030.50, expenses: \$93,952.41
8
9 Hearing re: Doc. #667 (HOULIHAN) Second Application for
10 Interim Professional Compensation of Houlihan Lokey Capital,
11 Inc., Financial Advisor and Investment Banker to the
12 Official Committee of Unsecured Creditors, for Interim
13 Allowance of Compensation for Professional Services Rendered
14 and for Reimbursement of Actual and Necessary Expenses
15 Incurred From August 1, 2012 Through October 31, 2012 for
16 Houlihan Lokey Capital, Inc., Consultant,, period: 8/1/2012
17 to 10/31/2012, fee: \$600,000.00, expenses: \$46,100.68
18
19 Hearing re: Doc. #660 (GIBSON DUNN & CRUTCHER) Second
20 Application for Interim Professional Compensation / Second
21 Application of Gibson, Dunn & Crutcher LLP as Attorneys for
22 the Debtors and Debtors in Possession for Allowance of
23 Interim Compensation for Services Rendered and for
24 Reimbursement of Actual and Necessary Expenses Incurred from
25 August 1, 2012 through October 31, 2012 for Gibson, Dunn &

1 Crutcher, LLP, Debtor's Attorney, period: 8/1/2012 to
2 10/31/2012, fee: \$5,470,743.75, expenses: \$163,710.19

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4 Hearing re: Doc. #279 (Status Conference) Motion For Relief
5 From Stay Re: Tide Natural Gas I, LP and Tide Natural Gas
6 Storage II, LP

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8 Hearing re: Doc. #701 Motion To Extend Exclusivity Period

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10 Hearing re: Doc. #12 Motion to Authorize -- Debtors' Motion
11 for Interim and Final Orders (A) Authorizing Debtors to (I)
12 Continue Existing Cash Management System, Bank Accounts, and
13 Business Forms and (II) Continue Ordinary Course
14 Intercompany Transactions; and (B) Granting an Extension of
15 Time to Comply with the Requirements of Section 345(b) of
16 the Bankruptcy Code

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18 Hearing re: Doc. #525 Motion to Dismiss Case filed by Hani
19 Alsohaibi

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21 Hearing re: Doc. #684 Motion to Authorize / Motion for an
22 Order Authorizing the Debtors to Grant Approvals and
23 Consents In Connection with Sale by Non-Debtor Subsidiary

24

25 Hearing re: Doc. #690 (FINAL) Motion to Authorize /

1 Debtors' Motion for the Entry of Interim and Final Orders
2 Pursuant to 11 U.S.C. §§ 105, 362, 363(b)(1), 363(m),
3 364(c)(1), 364(c)(2), 364(c)(3), and 364(e) and Bankruptcy
4 Rules 4001 and 6004 (I) Authorizing Debtors (A) to Enter
5 into and Perform Under DIP Agreement, and (B) to Obtain
6 credit on a Secured Superpriority Basis, (II) Scheduling
7 Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)
8 and (III) Granting Related Relief

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Transcribed by: Dawn South and Sheila Orms

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5 New York, NY 10166-0193

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8 CRAIG H. MILLET, ESQ.

9 EMAD H. KHALIL, ESQ.

10 JOSH WEISSER, ESQ.

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15 New York, NY 10005-1413

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17 BY: EVAN R. FLECK, ESQ.

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19 UNITED STATES DEPARTMENT OF JUSTICE

20 Attorney for the United States Trustee

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24 BY: RICHARD MORRISSEY, ESQ.

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9 Attorney for PNG UK

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13 BY: ROBIN SPIGEL, ESQ.

14

15 ALSO PRESENT TELEPHONICALLY:

16 JALIL AL-ARADI

17 MARK BARRY

18 SIMON DICKSON

19 BARNABY GOWRIE

20 PAUL FERNANDEZ

21 JOHN MAKUCH

22 AARON ROSEN

23 OLIVER SIGALOW

24 DANIEL M. SIMON

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning, please be seated.

We're here for Arcapita B.S.C.

MR. ROSENTHAL: Good morning, Your Honor, Michael Rosenthal on behalf of debtors. And joining me today are my partners, Craig Millet and Emad Kahlil.

THE COURT: Good morning.

MR. FLECK: Good morning, Your Honor, Evan Fleck with Milbank, Tweed, Hadley & McCloy on behalf of the official committee.

THE COURT: All right.

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

THE COURT: Good morning.

MR. GREER: Good morning, Your Honor, Brian Greer of Dechert LLP for Standard Chartered Bank.

MR. PANAGAKIS: George Panagakis of Skadden, Arps on behalf of Fortress.

THE COURT: All right, anyone else who expects to speak after this morning's hearing?

MR. ZDUNKEWICZ: Your Honor, good morning, David Zdunkewicz with Andrews Kurth for the Hopper Parties.

MR. HOLLANDER: Good morning, Your Honor, Evan Hollander, Arnold & Porter for HCN UK.

1 MS. FELDSHER: Good morning, Your Honor, Jennifer
2 Feldsher of Bracewell & Giuliani, with me in the courtroom
3 is Marvin Lange for Tide Natural Gas Storage.

4 THE COURT: All right. All right, good morning to
5 you all.

6 So I noticed since the first agenda to the amended
7 agenda we seemed to have picked up quite a bit of weight,
8 so --

9 MR. ROSENTHAL: It did, Your Honor.

10 THE COURT: -- we'll --

11 MR. ROSENTHAL: This is -- it's a fairly -- it's a
12 fairly full agenda.

13 Can I just give you a little update on a couple
14 matters?

15 THE COURT: Certainly. That'd be helpful.

16 MR. ROSENTHAL: I'll try not to take too long
17 because I know it's a long agenda.

18 First with respect to plan discussions I want the
19 Court to know that the plan meets and negotiations are in
20 full swing. We engaged in three days of meetings this --
21 the week before last in London regarding the plan at which,
22 you know, the JPLs were in attendance, the advisors for the
23 committee. The committee actually had a meeting at that
24 point. And the advisors for the ad hoc committee.

25 We also understand that the committee members

1 themselves are intensive internal negotiations. As you know
2 the committee consists of some creditors who hold claims
3 against AIHL and bank and then some creditors who only hold
4 claims against the bank. So there are part -- some of the
5 issues that are being resolved here are inter-estate --
6 inter-estate issue and those discussions are going forward.
7 Mr. -- Mr. Fleck I'm sure will tell you a little more about
8 that.

9 The JPLs are participating in all of these
10 discussions. The ad hoc members have now signed non-
11 disclosure agreements and are -- and have become restricted
12 so that they also can participate in these discussions.

13 We have a plan of disclosure statement ready to
14 go, but as we told you in the chamber's conference, while
15 it's not essential to our filing of these documents that we
16 have the committee and the JPL or the ad hoc on board, we do
17 think it would be productive to get as much input as
18 possible before we file these documents, and that's why we
19 requested a slight extension.

20 Discussions are ongoing to coordinate the U.S.
21 proceedings with the Cayman proceedings. And in that regard
22 the Court will soon see an application by the debtors to
23 engage Tony Zacaroli (ph), a well-respected UK QC, queen's
24 counsel, who will help us with matters in the Cayman
25 proceedings.

1 And finally with respect to the plan, even with
2 the delay we'll discuss with you today, Your Honor, we still
3 expect to emerge some time at the end of the first quarter.
4 We're hopeful that we can meet that deadline.

5 You may know that Mr. Dunn and I traveled to
6 Bahrain last for meetings with the governor of the Central
7 Bank of Bahrain. So discussions with that body are
8 proceeding.

9 As you know we're here today presenting the DIP.
10 That has occupied a tremendous amount of time and we're
11 happy to be about to present it on an uncontested basis for
12 final hearing today.

13 From a cash flow perspective with the interim, and
14 assuming that the Court approves the final DIP order, the
15 debtors have sufficiently liquidity we believe to operate
16 theirs business on an uninterrupted basis and pay all
17 administrative claims that arise, you know, until we emerge.

18 I have given you reports at various times about,
19 you know, cash flow variances and how we are fairing to date
20 from the beginning of the case to date with respect to your
21 budget. We are -- we have a favorable variance of
22 \$47.5 million.

23 With respect to cash as of December 8th without
24 taking into consideration any DIP proceeds we had a cash
25 balance of \$14.3 million, and after taking into

1 consideration the DIP our availability from the \$125 million
2 final DIP we will have \$135.6 million in availability.

3 Your Honor, I'd like to reorganize a little bit
4 the agenda.

5 THE COURT: All right.

6 MR. ROSENTHAL: First I'd like to take up the DIP
7 financing, then I'd like to take up the exclusivity
8 extension, and finally the cash management matters.

9 The -- for your reference the DIP motion is matter
10 19 on the docket -- on the agenda.

11 Do you have any questions by the way about the
12 update?

13 THE COURT: I don't. I have some various things
14 we can talk about when we get into the meat of various
15 things, but not as to the update. That's helpful.

16 Well, I guess take that back, I did have one
17 question when you mentioned meeting with the Central Bank of
18 Bahrain. I know there were certain funds that you've been
19 trying to recapture there and I didn't know if there was any
20 progress made on those efforts or what the debtors see as
21 the next step.

22 MR. ROSENTHAL: We have not made any progress,
23 Your Honor, with the exception of we did receive an offer to
24 return. There were some excess funds that one of the
25 placement banks is holdings, about \$1.8 million I think over

1 the amount of any claim setoff. We've respectfully rejected
2 that offer because it was -- it was provided to us on the
3 condition that we essentially waive any claims.

4 So -- but at the same time we have been in
5 discussions with the committee, Mr. Millet, and Mr. Fleck
6 have talked about what actions we should be taking on an
7 ongoing basis to continue to pursue those -- to continue to
8 pursue those funds.

9 THE COURT: All right, thank you.

10 MR. ROSENTHAL: Your Honor, the most significant
11 event that we've been working on other than the plan during
12 the past several months is the closing of the DIP.

13 As you know we came before you on December 7th and
14 you approved the DIP on an interim basis and authorized us
15 to borrow up the \$25 million. We have borrowed that money
16 as of late last week. It took a little while to get all of
17 the documents in order and the t's crossed and the i's
18 dotted, but we now have -- have done that.

19 The pleadings authorize us to borrow up to
20 \$150 million. One hundred and twenty-five million of that
21 would be approved at the hearing today. The other
22 \$25 million is subject to some further diligence by
23 Fortress. And if we request Fortress to do that
24 confirmatory diligence and it comes back satisfactorily then
25 we would be authorized to borrow that additional 25-. It's

1 my understanding that we are going to ask Fortress to do
2 that -- beginning that confirmatory diligence.

3 So while we're requesting approval for the entire
4 150- the -- at the present time only 125- will be available
5 under that DIP facility.

6 THE COURT: And do you expect to need the full
7 amount, including the 25-?

8 MR. ROSENTHAL: We -- potentially during the last
9 -- during February and March.

10 Your Honor, before the hearing on the 7th near
11 final versions of the documents were submitted to the Court
12 there have been some changes since the documents that were
13 submitted to the Court. We filed -- we filed final versions
14 of those documents with the Court I think earlier -- either
15 earlier this week or late last week, and we filed a
16 supplement yesterday to the DIP motion that contained the
17 final documents with black lines to the original documents.

18 And I'd like to walk you through some of the
19 changes, but before I do I want to remind you that the DIP
20 motion is supported by two declarations from John Makuch of
21 Alvarez & Marsal concerning the debtors expenditures to date
22 and their need for additional liquidity, which is resolved
23 by the DIP financing, and Homer Parkhill of Rothschild who
24 described the solicitation process leading up to choosing
25 Fortress as the DIP provider.

1 I believe these individuals are on CourtCall if
2 the Court has any questions for them and I would ask the
3 Court to admit those declarations into evidence.

4 THE COURT: All right. Anyone have any objection
5 to admitting those declarations?

6 I hear no objections, I will -- I will admit those
7 declarations and certainly have become personally familiar
8 with some of the ins and outs of how we ended up here on the
9 question of financing.

10 (Debtors' Exhibits admitted)

11 MR. ROSENTHAL: Thank you, Your Honor.

12 All right. So I don't purport to be a sharia
13 expert, Your Honor, which is why my partner Emad Khalil is
14 here in case we have any sharia-related questions.

15 THE COURT: All right, fair enough.

16 MR. ROSENTHAL: Hopefully we will not.

17 But this was as you know a very unique DIP. It's
18 the first only as I understand it sharia compliant DIP
19 financing that has ever been done in connection with a
20 bankruptcy case. At the same time it is very much a -- at
21 base a traditional financing where we are obtaining, you
22 know, right now 125- up to \$150 million of financing.

23 The changes that were effected between the time of
24 the interim order and today relate to the following.

25 One is the identity of the agent. Fortress asked

1 us to insert an affiliate of Fortress as the agent, CF -- CF
2 Ark (ph) LLC, which we have agreed to. CF Ark LLC is also a
3 participant under the DIP agreement. Fortress has agreed
4 that they would, you know, backstop the provision of the
5 initial \$125 million. That was a concern of ours with the
6 substitution of the agent, but they have agreed that they
7 would do that. So we are assured we're going to get the
8 money.

9 Secondly an issue arose about some syndication
10 company interests in US Investments -- US Portfolio Company
11 Investments. For tax reasons those interests are held in
12 entities called Program Voting Companies, and it's a very
13 complicated structure. The interests are available to be
14 pledged to secure the obligation to Fortress by these P&V --
15 program voting company entities; however, that is not
16 exactly what Fortress had bargained for. Fortress had
17 bargained for a direct pledge of these interests to secure
18 the loan.

19 Now we believe that we will be in a position
20 actually to transfer those interests to AIHL and directly
21 pledge them. In the meantime we are going to pledge the --
22 essentially a secured receivable from the P&Vs to Fortress.
23 In the event that within 30 days we cannot actually transfer
24 the shares in the syndication companies back and pledge them
25 directly we've agreed to pay Fortress a fee of \$250,000.

1 Now that's an additional fee that arose because
2 Fortress was getting less than what they think they
3 bargained for.

4 Again, I'm hopeful that we're able to avoid that
5 fee by transferring these interests -- these interests back.
6 And we've been in discussions with the committee and the JPL
7 about that transfer.

8 THE COURT: All right. Are there any known
9 impediments or is this just an issue you're still working on
10 figuring out what can be done and how it can be done?

11 MR. ROSENTHAL: The only known impediment is the
12 extent to which the obligations that are owed by these P&Vs
13 for the shares should be eliminated entirely when the shares
14 are returned or should only be eliminated in part.

15 These were -- these were single purpose entities
16 set up to acquire these shares. The concept was that when
17 the shares were sold to third-party investors the money
18 would come in to the P&Vs, the money would then immediately
19 be turned over to AIHL from which the shares were purchased.

20 So now we have a pool -- a limited pool of shares.
21 Many of these shares have already been returned to AIHL. We
22 have a limited pool of shares and we have -- we continue to
23 have the obligation to pay for those shares.

24 So the issue will be -- the issue we're talking
25 about is to make sure we can return the shares to AIHL and

1 take care of the obligations related to that.

2 THE COURT: All right.

3 MR. ROSENTHAL: As far as we know there are not --
4 there are few, if any, additional assets in those entities.
5 So I'm hopeful we can work this out.

6 We -- we made a change with respect to
7 intercompany indebtedness. One of the -- one of our second
8 tier Hong Kong entities -- actually our only Hong Kong
9 incorporated entity is slated to be dissolved. It's not a
10 debtor. It's slated to be dissolved. And one of the issues
11 that it has is it owes an intercompany amount to the
12 debtors. We have -- Fortress has agreed to waive any
13 default regarding cancellation of that intercompany
14 indebtedness.

15 We've made a couple changes just for transparency
16 in connection with the fees. We haven't changed the fees,
17 we've just incorporated the fees into the actual DIP
18 agreement rather than having a separate DIP letter. The
19 fees are the same except for the addition of this contingent
20 fee related to the -- to the P&V transaction.

21 We've had discussions with Fortress about what
22 accounts would be control accounts. Arcapita, Inc. is a
23 non-debtor U.S. affiliate that as you know has entered into
24 management agreements with certain of the portfolio
25 companies. From time to time it maintains funds in its

1 account and we've agreed with Fortress that -- and Fortress
2 has agreed with us -- that to the extent that funds in that
3 account do not exceed a million and a half dollars we do not
4 need to provide account control agreements with respect to
5 that account. To the extent that they do exceed that amount
6 we will have to provide an account control agreement.

7 There has been a slight change with respect to --
8 but not substantive -- with respect to who receives notice
9 of an event of default. It's now going to be provided to
10 the JPLs and to Standard Chartered Bank. I think that was
11 just an oversight. I don't see that as material.

12 And some changes to the investment agent agreement
13 related to the -- related to the fact that the agent is now
14 CF Ark LLC rather than -- rather than Fortress and relates
15 to CF Ark's ability to engage in the commodity transactions
16 that are the backbone of the murabaha.

17 Okay. So, Your Honor, we have submitted to you I
18 believe a revised -- a final order that is a black line from
19 what we -- from the interim order. May I approach --

20 THE COURT: Yes, please.

21 MR. ROSENTHAL: -- so I know you have the latest?

22 THE COURT: Thank you very much.

23 MR. ROSENTHAL: So I have to admit that this was
24 going on real-time while we were doing some other things,
25 but I have looked through this.

1 Changes to the first page are just nothing prior
2 to date hereof. There were no amendments today.

3 You'll see second page we've just -- we have now
4 have CF Ark acting as investment agent. Some clarifying
5 wording there.

6 Again on page 3 just some clarifying wording and a
7 clause making sure that although -- avoidance actions are
8 not subject to the collateral 549 action. The 549
9 recoveries would be part of the collateral package, post-
10 petition unauthorized transfer.

11 Page 4, this is just to conform that this is a
12 final order not an interim order.

13 Page 5, again, just to reflect that this is the
14 final agreement.

15 Page 6 a lot of the same. First paragraph deals
16 with final not interim. Third paragraph deals with -- deals
17 with notices. I don't believe these are substantive
18 changes.

19 As you page through, Your Honor, page 8, again,
20 just clarifying, not substantive.

21 Page 9 just reflects the fact that the interim was
22 a 25- and the final is up to 150 million.

23 Same with page 10.

24 Page 11 you'll see the reference to profit amount
25 C, that's the conditional fee, the \$250,000 potential

1 conditional fee -- contingent fee.

2 Just clarifying --

3 THE COURT: And that's a set amount, in other
4 words it's not up to --

5 MR. ROSENTHAL: No.

6 THE COURT: -- it's not a formula, it's a set
7 amount.

8 MR. ROSENTHAL: It's a set amount. It's designed,
9 Your Honor, to encourage everybody to work very hard to try
10 to get that transaction done.

11 Again clarifying on page 13. I don't think these
12 are substantive.

13 Clarifying on 14 that reasonable fees and expenses
14 include legal fees of the JPLs.

15 Page 15 just a typo corrected.

16 Page 17 implementing the definition of avoidance
17 actions, which are from the prior page.

18 13 (sic) just providing that this has to work with
19 the SEB facility.

20 Again clarifying on page 20 about the rights of
21 the -- of the agent to set off apply amounts in the event of
22 a default. Clarifying that Falcon is not subjecting to that
23 setoff right.

24 21 -- at the top of the 21 you'll see the
25 reference to 14.2(c), that's the provision that provides

1 that the -- that Fortress needs to provide us with seven-
2 days prior notice before taking actions represent to a fault
3 and entitling the debtors or the committee to come seek
4 relief from this Court in the interim.

5 22 is clarifying.

6 23 again is just -- is just clarify what was
7 intended by the parties about the lien and security
8 interests.

9 Clarifying on 24, 25, 26.

10 And I believe that's it.

11 The last -- the last two -- the last -- obviously
12 paragraphs 21 is unnecessary because that related to
13 scheduling of the final order.

14 Then the final thing that we got when we were just
15 walking over here that is not in this, which I don't -- we
16 don't have any problem with this -- that if you look at
17 paragraph 8(d) on page -- 8(d) of the black line.

18 THE COURT: I think it's page 12.

19 MR. ROSENTHAL: On page 12. So you'll see the
20 debtors shall promptly provide the committee counsel a copy
21 of any duly completed transaction request. After committee
22 counsel the JPLs would like inserted -- and we have no
23 objection -- a reference that not only would committee
24 counsel be provided with a copy of this request but so would
25 the JPLs and their counsel. So they've inserted the joint

1 provisional liquidators and counsel of the joint provisional
2 liquidators both in that sentence and in the next sentence.

3 THE COURT: All right.

4 MR. ROSENTHAL: Your Honor, I -- I hope by now
5 it's clear the importance of this DIP facility to be
6 approved on a final basis for the -- for the benefit of the
7 debtors and the other constituencies in this case, and I
8 would ask that the DIP be approved on a final basis.

9 THE COURT: All right. Is there anyone who would
10 like to be heard on the approval -- request to approve the
11 DIP on a final basis?

12 MR. FLECK: Once again, Your Honor, Evan Fleck on
13 behalf of the official committee of unsecured creditors.

14 I wanted to get up and say we had no objection, we
15 have small objection, I hope we can -- I hope it won't gum
16 up the works. I'm sure Your Honor can deal with it quickly.

17 But let me step back and say that the committee
18 has been -- I believe Your Honor is aware, the committee has
19 been keenly focused on this DIP, the need for the DIP, the
20 process that brought us here in terms of the lender that was
21 ultimately selected and making sure that we had a
22 competitive process, and with the assistance of the Court we
23 accomplished that and the committee is very pleased that the
24 process was -- evolved in such a way that we brought
25 competition to this complicated situation where -- where it

1 took some extra work and hand holding to bring lenders to
2 the table and work with them to be comfortable with the
3 asset base. So that's a positive.

4 We also recognize that in light of the
5 complexities of the case that this is -- including the fact
6 that the DIP is sharia compliant -- that it is more
7 expensive in terms of the interest rate and fees that are
8 associated with that and we're comfortable with the
9 arrangement that has been instruct and we're supportive.

10 Part of the reason for the competitive process was
11 to obviously try to reduce costs, and through the process of
12 the negotiation, even between the interim hearing and this
13 hearing, there's been a bit of erosion on the benefits that
14 we think we brought to the process. We think in the
15 committees' view that that's normal. It's unfortunate. One
16 issue is a potential erosion, and Mr. Rosenthal mentioned
17 that, that's with respect to the P&Vs.

18 Our hope, and I know it's the debtors' belief that
19 they will be able to effect that transfer so that there's
20 not a \$250,000 fee that would be -- the reason we got
21 comfortable with it is because -- well, first of all the
22 lender was entitled to this collateral and at that point in
23 time there certainly was not another lender to turn to, we
24 were very far along in the process, and -- but more
25 importantly the debtor believes that they will be able to do

1 what is necessary to avoid -- avoid incurring that fee. And
2 we'll work with them together with our Cayman -- respective
3 Cayman counsel to try to accomplish that.

4 There's another issue that's an interstate issue
5 with respect to consideration that doesn't involve --
6 doesn't involve the lender that we're hoping -- I expect
7 that we'll -- we're certainly going to make best efforts to
8 resolve among the estate fiduciaries and other parties in
9 interest, and if not then, you know, we can come back to
10 Your Honor on that point.

11 The other value erosion point is just a business
12 negotiation with respect to when funds are going to be drawn
13 down. It was the committees' hope that funds would be drawn
14 down as needed and that that would allow for reduced fees to
15 be earned on the amounts, and through the course of
16 negotiation between the debtor and Fortress as a result of
17 some of the covenants that are in the documents, the
18 decision has been made to draw down funds earlier.

19 So there's a fee that gets incurred and we've --
20 we believe that on the whole this is still a favorable
21 financing arrangement. And I put that in the category of
22 one of those things that we lost a little bit of what we
23 gained in terms of bringing Fortress to the table and having
24 a competitive process, but on the whole, taking all of the
25 factors into the consideration the committee is supportive

1 of this financing arrangement.

2 Which brings me to our objection, which I think
3 it's fair to call limited objection, but it comes in the
4 nature of the committees' obligations to provide oversight
5 in the case. And we had requested that the committee be
6 given an opportunity to review fees that are incurred by the
7 -- by the investment agent and security agent consistent
8 with the manner that the committee performed the same
9 function when we had -- when Your Honor approved the relief
10 with respect to Silver Point's expense reimbursement, and I
11 think that the parties would agree that we dispatched those
12 duties quickly and appropriately and saw no issues with
13 Silver Point's fees after we conducted that review. We had
14 asked to have that same review period of three business days
15 here and it's been rejected. And that is our sole
16 objection.

17 We would like paragraph 8(b) -- I believe it's
18 8(b) -- page 12 of the black line at the top to be modified
19 to include a three-business day notice period so that the
20 committee can review the fees.

21 Now, I'm not proposing to change the standard, but
22 that it be the reasonable fees, costs, and expenses of the
23 professionals retained by the investment agent and the
24 security agent subject to the same process that we had or
25 the committee will have a three-business day review period.

1 The default would be that the fees would be paid unless the
2 committee raises an objection in which case ultimately that
3 issue could be decided by Your Honor.

4 THE COURT: All right. Let me -- before we get to
5 that let me ask if there's any other party who wants to be
6 heard on the request to make the DIP final?

7 MR. MORRISSEY: Your Honor, once again for the
8 record Richard Morrissey for the U.S. Trustee.

9 I'd like to make two points, and I think they're
10 both positive in terms of the relief that's being sought
11 here today.

12 First, Mr. Rosenthal mentioned that this is a
13 unique kind of a transaction because it's a sharia compliant
14 financing. He also said that it has many of the traditional
15 characteristics of DIP financing here. And the -- the
16 document that is before the Court right now is not one that
17 creates an exception to the rules that govern DIP financing
18 in this court. The debtor -- the parties I should say are
19 complying with the local rules in terms of carve outs and
20 other issues.

21 So although the financing itself without interest
22 and other aspects of sharia compliant financing that is a
23 little different. But procedurally in terms of the local
24 rules the debtors do not seek the Court's blessing for any
25 kind of a departure from the traditional rules of this

1 Court.

2 As to the merits of the financing and the need for
3 it altogether. Your Honor, there's an old adage that time
4 is money. In this case I think we can flip that around and
5 say money is time, because the debtor needs more time to
6 file a plan, there's going to be an exclusivity motion that
7 will be heard momentarily, and I don't think there's anyone
8 in this courtroom who does not want the debtor to have this
9 financing and who would disagree that the debtor needs it,
10 and it was negotiated obviously in good faith among several
11 parties, and the U.S. Trustee certainly has no objection.

12 THE COURT: All right. Thank you.

13 Anyone else wish to be heard? All right.

14 MR. FLECK: Actually, if I may, Your Honor. I
15 have some positive developments.

16 I was listen to go Mr. Morrissey of course, but I
17 was also speaking to my colleague and counsel to the lender.
18 And we now have an agreement that the paragraph -- I guess
19 unless the debtors have any issue with it --

20 UNIDENTIFIED SPEAKER: No (indiscernible -
21 00:32:19).

22 MR. FLECK: Oh, okay.

23 THE COURT: All right.

24 MR. FLECK: So we should all communicate we have
25 an agreement that we'll modify the language accordingly.

1 THE COURT: All right. Well then there is no
2 objection to the request to make the DIP final, and I
3 appreciate your discussions. A lot of business gets done in
4 this courtroom.

5 All right, any other final notes before -- in
6 relation to the request to make the DIP final?

7 MR. ROSENTHAL: No, Your Honor.

8 THE COURT: All right. I am very happy to approve
9 the request to make the DIP final pursuant to Sections 362,
10 363(b)(1) and (m) and 364(c).

11 A lot has gone into this both because of the
12 unique nature of the financing as well as the effort to
13 maximize value to the estate under very unusual
14 circumstances, including not only the unique aspects of the
15 financing but also the unique aspects of the collateral
16 package. So I think the end results is a testament to the
17 fine work of the people involved and reasonableness
18 prevailing.

19 So I appreciate everyone's efforts and I'm happy
20 to approve the request to make this final.

21 MR. ROSENTHAL: Thank you very much, Your Honor.
22 We will -- we will revise the order to include this latest
23 agreement --

24 THE COURT: All right, thank you.

25 MR. ROSENTHAL: -- with respect to the three days

1 and submit it in a disk in chambers.

2 The next matter I'd like to take up, Your Honor,
3 is the exclusivity motion, which is matter 21 on the docket.

4 Your Honor, when I came in here today I had had
5 some -- some prior discussions with -- with the committee
6 counsel about -- about this motion. And as you know we
7 talked to the Court in a chamber's conference. At that time
8 we reported that the committee and the debtors have agreed
9 that an extension of exclusivity for one week -- one
10 additional week until the 22nd would allow the parties to
11 continue further productive discussions regarding the
12 settlement of intercreditor issues. We then submitted our
13 motion for that extension along, with a request for a bridge
14 order, which the Court entered extending the exclusivity
15 filing -- plan filing period until today.

16 When I walked in Mr. Fleck advised me that
17 consistent with the discussions we've also been having over
18 the last couple of days that his committee is having
19 productive internal discussions regarding the issues, but he
20 does not think that -- that we -- he will be in a position
21 to have meaningful input by this Saturday, and is amenable
22 to a further extension through January 5th, which is an
23 additional two weeks beyond the 22nd.

24 The debtors have no objection to that if the Court
25 is inclined to grant that.

1 THE COURT: Well, the problem is I don't have that
2 noticed for today, I just have the extension through
3 Saturday, so we'll have to figure out how to -- how to
4 address that. But I know there's an objection to -- to that
5 request, which we should probably deal with first before we
6 deal with anything beyond it.

7 So let's get through Saturday and see where we
8 stand.

9 I certainly understand where you're coming from,
10 you're trying to keep the case on a short leash but with the
11 idea that communications and discussions are helpful to
12 hopefully arrive at something that's consensual rather to
13 spend additional time and estate money fighting some things
14 out that can be resolved if there's time for those
15 discussions. So I think I understand where you're coming
16 from.

17 Anything else that you want to say about
18 exclusivity?

19 MR. ROSENTHAL: Yes, Your Honor. I mean we
20 believe that the -- as the Court was saying -- we believe
21 that the additional time provided by this extension will
22 enable us to make further progress toward filing a plan that
23 can be supported by all constituencies.

24 I mean I want to -- the committee filed a pleading
25 in support and as I mentioned we are working with the

1 committee, the JPLs, and the ad hocs on this. But so
2 there's no mistake, the exclusivity extension we're seeking
3 is not conditioned in any way, shape, or manner on the
4 debtors' filing of a fully consensual plan. We hope we get
5 there, but if we don't we intend to file a plan that
6 incorporates the debtors' view of a reasonable
7 reorganization for these debtors and one that incorporates
8 compromises and settlements that all constituencies could
9 work with.

10 THE COURT: All right.

11 MR. ROSENTHAL: So --

12 THE COURT: Well, what can you tell me about the
13 one objection that I do have, which is from the Hopper
14 Parties?

15 MR. ROSENTHAL: Your Honor, we believe -- we
16 believe -- this is an objection from the Hopper Parties. We
17 believe this objection should be overruled.

18 You know, Your Honor, any plan we file now for
19 Falcon we think would require us to expend significant
20 resources that are unnecessary to be spent.

21 The Falcon issues are bound up in the joint plan
22 that we would be filing for all of these debtors. There are
23 administrative --

24 THE COURT: All right. Can you explain that a
25 little bit?

1 MR. ROSENTHAL: There are administrative -- there
2 are administrative -- there are joint -- first there are
3 joint claims against all debtors, including Falcon that
4 would be -- that would be the subject of resolution pursuant
5 to the joint plan, there are other -- there are
6 administrative claims related to the Falcon estate. In fact
7 the Tide parties have objected to the fee applications to
8 the extent that they require payment, even for expenses
9 related to Falcon from the cash available at falcon.

10 So all of those allocation administrative expense,
11 allocation, for example, issues are all tied up in
12 resolution of the -- are all tied up in the joint plan.

13 THE COURT: Can you give me some sense of the
14 universe of claims both the number and amount that are joint
15 against all debtors?

16 MR. ROSENTHAL: That are what, I'm sorry, Your
17 Honor?

18 THE COURT: That are joint. In other words you're
19 saying that there are claims that have to be addressed in
20 the context of the plan.

21 MR. ROSENTHAL: I believe there are \$27 million
22 until joint claims against all of the debtors, including the
23 Falcons -- including Falcon, and we have approximately
24 \$800,000 of other claims in administrative expenses that
25 have to be allocated among the estates.

1 As you know the -- there was a mediation and there
2 are continued expenses related -- that related to the
3 mediation. There are issues related to -- to subordination
4 of Falcon's claims.

5 And I think the most important thing, Your Honor,
6 is that a delay in filing the Falcon plan for this short
7 period and incorporating it in the joint plan is not going
8 to prejudice any Falcon creditor for this reason. The
9 principal asset of the Falcon estate is a \$70 million escrow
10 and the issue of who actually owns that escrow. Is it
11 property of the estate or is it not property of the estate?

12 We have filed a motion that's scheduled for
13 January 16th to allow us to raise issues related to the
14 ownership of that asset. Until the court -- either this
15 Court or the court hearing the Hopper adversary -- the Tide
16 adversary determines the ownership of that asset there will
17 be, other than a little bit of cash, there will be no
18 meaningful funds to distribute from the estate.

19 And so a -- delaying the filing of the Falcon plan
20 and continuing to combine it with the joint plan just does
21 not -- isn't in the best interest of the all the estates and
22 does not impair, hinder, harm the Falcon creditors because
23 their case won't get concluded any quicker in any event.

24 THE COURT: All right.

25 All right, I understand there's one objection to

1 the pending request to extend exclusivity from the Hopper
2 Parties so let me hear from those folks first.

3 MR. ZDUNKEWICZ: Good morning, Your Honor, again
4 David Zdunkewicz with Andrews Kurth for the Hopper Parties.

5 Your Honor, four days is only four days, we get
6 that. As the Court is aware these things often get
7 extended, and just I think in the last two minutes we heard
8 about now it may be the end of January now that we're
9 ultimately going seek an extension.

10 First we don't necessarily agree. We don't agree
11 that you've got this huge overlap of creditors. I don't
12 believe there are an overlap of creditors.

13 THE COURT: But believe is really not the
14 appropriate word in this circumstance. There either are or
15 there aren't, and if there are claims there are claims. So
16 believe is -- I have lots of beliefs of things. I believe
17 that my Mets some day will be better. I may be --

18 MR. ZDUNKEWICZ: I understand.

19 THE COURT: -- be incorrect about that, but it's a
20 subjective statement that maybe wishful thinking or may turn
21 out to be correct.

22 The claims that exist is not a matter of belief,
23 there's a claims register, we can quantify that.

24 So -- so what factually can you tell me, because
25 I'm not interested in anybody's belief on that particular

1 subject.

2 MR. ZDUNKEWICZ: I understand. The burden is on
3 them though to get relief from the order, I believe, Your
4 Honor, and they have to show good cause to do that.

5 THE COURT: Well, I understand that, but the --
6 there are lots of orders in this Court that are a result of
7 parties working together, and so there are times when a
8 Court has -- the Court always has an interest in equity in
9 its own orders, but there are times when a Court has --
10 that's a bit of a sliding scale.

11 So if the parties say this is what we'd like to
12 do, we have a proposed order, we've explained why we would
13 like this or where we are and it's the result of these
14 discussions and negotiations then it's one kind of order
15 versus I've made a ruling and here's another very different
16 kind of order.

17 So I understand you have an interest in getting
18 your issues resolved. I guess I have really a couple of
19 points that I'd like you to address.

20 One is the parties went through mediation, it
21 doesn't work. That happens all the time so that's fine.
22 But I certainly don't want to penalize a party by giving
23 that a shot, and mediation takes a certain amount of time
24 sort of off the table and it's sort interrupts it is
25 ordinary course of how things get teed up, and I think

1 without that we certainly would have addressed here, and I
2 think we're getting ready to address the motion to lift the
3 stay as well as sort of the other motion, which is really on
4 the same issue as to what court should decide the money and
5 whose it is and some of the other collateral issues, which I
6 confess I'm not completely read up now but will be by the
7 time we discuss it in January.

8 So between those two things and the fact that I'm
9 having trouble seeing a harm to your clients if that issue
10 is really the driver of the case.

11 So what I'm trying to do is really sort of come up
12 with a plan today that works going forward for this
13 particular estate, the Falcon estate, and I would think it
14 involves teeing up and getting a decision on where the
15 ultimate merits should be decided and getting those teed up
16 as quickly as possible.

17 MR. ZDUNKEWICZ: Your Honor, we completely agree
18 with that concept exactly.

19 Our concern -- again, no one until today we didn't
20 think it was going to be a January date, we thought
21 December 2nd was the date and my clients wanted the Court to
22 be aware that we are very concerned that at the end of the
23 day there's going to be this huge money grab. There's
24 \$70 million in this account, so --

25 THE COURT: Well, I don't know that there'll be a

1 money grab, there'll going to be some court that's going to
2 adjudicate it.

3 MR. ZDUNKEWICZ: Well --

4 THE COURT: And so I think there'll be no money
5 grab until some court says it's okay. It's my understanding
6 that a money grab, given that there's jurisdiction here and
7 there's jurisdiction in the District Court, I think you've
8 got plenty of court involvement so I don't think there's
9 sort of an iffy situation about what may happen to the money
10 unless there's relief.

11 MR. ZDUNKEWICZ: We're just concerned about the
12 administrative expense issue. I mean the longer Falcon
13 stays in bankruptcy the longer the admin expenses are going
14 to be. That's --

15 THE COURT: Well, that's a fair point.

16 MR. ZDUNKEWICZ: And that's what we're concerned
17 about.

18 THE COURT: What I'd like to suggest, and if you
19 want to take a break and talk to your client, is that we
20 don't get overly hung up on exclusivity, because I don't
21 know that it benefits anyone, because I think they're -- in
22 this case they're somewhat dual tracks because of the way
23 the Falcon estate is situated, but that everyone has an
24 understanding that the issues about getting this \$70 million
25 escrow are going to be teed up whether it's here in the

1 District Court very quickly. I understand if I remember
2 right it was January 16th is the date for the debtors'
3 motion and I would imagine that your motion for relief from
4 stay would be carried to that date.

5 MR. ZDUNKEWICZ: It's not my motion, it's Tide's
6 motion.

7 THE COURT: Tide -- I'm sorry, Tide's motion.
8 Such that that issue can be teed up, resolved, and if I
9 decided I decide it and if the District Court decides it the
10 District Court decides it, and I know some of that hinges
11 upon how much familiarity the District Court has. I mean
12 normally you take this from square one. So we'll see what's
13 what. But if that is something that's teed up and decided
14 in short order in January that that really is the concern
15 that your clients have.

16 MR. ZDUNKEWICZ: That's right.

17 THE COURT: All right. Does that work for you?
18 And if that's your -- my understanding of the schedule is
19 your client -- I mean I can overrule your client's objection
20 to exclusivity, but I think we're going to have another
21 request for an extension of exclusivity sort of formally
22 until January 5th, so I'm really trying to get this sort of
23 be a global understanding so we don't all have to run back
24 here in a few days perhaps over Christmas and have
25 interesting discussions while we explain to spouses and

1 significant others and children why we're on the phone
2 talking about this issue.

3 So -- so what I'd like to do is if you want to
4 have a moment to chat with your client or the debtors or the
5 committee I'm happy to give that opportunity if that would
6 be productive you think.

7 MR. ZDUNKEWICZ: Your Honor, in light of -- in
8 light of your discussion I don't think we need a break. I
9 mean our points are the same whether you go to the 22nd or
10 to the 5th or --

11 THE COURT: All right.

12 MR. ZDUNKEWICZ: -- whatever the date is in June.

13 THE COURT: All right. All right.

14 Well then here's what I'm going do. I don't think
15 I properly have a motion in front of me to go to the 5th. I
16 think that that can be remedied with -- by filing a motion
17 requesting a bridge order and getting it on the calendar.
18 But I did -- because of the holidays and the fact that I do
19 not -- if the Almighty is kind -- plan to be here next week,
20 that I would much rather air these issues so that no one
21 feels like their rights haven't been respected and given a
22 chance to chat about not only the current extension but what
23 is clear is coming is the next extension.

24 But I understand you to say that your arguments
25 are the same. And either again I understand where you're

1 coming from and bankruptcy is expense, but I think given the
2 circumstances I don't think that it's wise to harm the
3 overall case and I don't think it'll result in a disruption
4 to your client.

5 So we try to keep the line moving fairly quickly
6 here in Bankruptcy Court, so I think we'll have a discussion
7 about the Tide Motion the debtors' motion in mid January.

8 MR. ZDUNKEWICZ: Thank you, Your Honor.

9 THE COURT: Thank you. Anyone else want to be
10 heard on exclusivity?

11 MR. FLECK: Yes, Your Honor, if I may, Evan Fleck
12 again for the committee.

13 I just wanted to provide on the committees' behalf
14 the Court with a little bit more context for the process in
15 which the committee is engaged right now. What
16 Mr. Rosenthal said is accurate but it might be helpful to
17 hear from committee counsel.

18 We had a meeting this morning of the committee.
19 As Mr. Rosenthal said, just in advance of that meeting that
20 we had in London on December 6th the -- collectively the
21 financial advisors to the various parties in interest, the
22 debtors, the committee, and the JPLs had come to some sort
23 of -- some agreements with respect to the financial modeling
24 -- it's not completed -- but it was in a position then to
25 start to present to the principals.

1 And we do have a unique situation here, because
2 thankfully as a result of the work of the Office of the
3 United States Trustee we have a committee here that is first
4 of all extremely engaged, and the composition of the
5 committee, they're all fiduciaries obviously, but they come
6 to the case from different sides of the aisle with respect
7 -- in terms of the -- where they sit in terms of their
8 claims. And that has proved to be an extremely helpful
9 dynamic that we don't see in every case.

10 So the committee has taken the information that
11 became available in connection with those London meetings
12 that we had planned and had a robust dialogue to try to --
13 not consider issues that were put in front of them by other
14 parties, but to actually work through the various
15 intercreditor allocation issues and governance issues that
16 obviously must be dealt with and the committees' advisors
17 have put before the committee and we're testing different
18 analyses and case law. So I think robust is the right word
19 for it.

20 The committee wanted to make clear from -- to the
21 Court and to the parties in interest that it appreciates the
22 fact that time is of the essence, we must move as quickly as
23 possible, we wanted also to be respectful of Your Honor's
24 time so that we didn't leave today asking for an extension
25 for Saturday --

1 THE COURT: No, I also appreciate the heads up,
2 but it allows me to sort of figure out the calendar and deal
3 with scheduling, which I know is -- can be a bit
4 challenging. So that's fine. And that's fine. I
5 appreciate the sense of nature in this sort of back and
6 forth here where you're trying to get the time you need but
7 you also want to keep things on a short leash because you
8 have to and because the case needs to move forward. So I
9 don't have a problem with that at all.

10 MR. FLECK: Okay.

11 THE COURT: So let me -- let me ask if anybody
12 else wants to be heard.

13 MR. FLECK: If I may.

14 THE COURT: Oh, certainly.

15 MR. FLECK: One more point. Maybe it's two. Two,
16 Your Honor.

17 The first is that the committee will meet pretty
18 much every day until we get -- until we get to a position on
19 this, so I just wanted Your Honor to be aware of that.

20 And the second point is just that while there is
21 no formal agreement with the debtors, there's no agreement
22 at all, and we said this in our pleadings that they're going
23 drop in what the committee decides with respect to
24 intercreditor allocation, it is certainly our hope that --
25 and expectation that what the committee determines with

1 respect to intercreditor allocation and governance issues
2 that we think are at the core of creditor interests and we
3 expect to work with the ad hoc group on that and speak with
4 the JPL, we hope to be in a position to come together and
5 coalesce around that proposal. Obviously the debtors can
6 file the plan that they think is most appropriate, and if it
7 deviates from what we think is appropriate then parties have
8 their rights.

9 THE COURT: Well, I think everyone regardless of
10 what the exact terms of the plan are expects that the
11 committees' allocations and suggestions of allocations will
12 substantially move the ball forward and then what happens
13 after that happens, but that it will be very useful to have.

14 MR. FLECK: Thank you, Your Honor.

15 THE COURT: All right, thank you.

16 Anyone else want to be heard on exclusivity?

17 MR. GREER: Good morning, Your Honor, Brian Greer
18 of Dechert LLP for Standard Chartered Bank.

19 There's been a lot of talk about discussions on
20 the plan term between the committee and the other
21 constituents. Negotiations have start with Standard
22 Chartered Bank as well but there's been no agreement yet and
23 I don't want my silence here today to be a waiver of any
24 rights in connection with the plan and we're prepared to
25 defend our rights if there is, you know, no deal in place.

1 THE COURT: All right, thank you.

2 Anyone else?

3 All right. Well, here's what I'm going to do.
4 I'm going to overrule the objection to the extension of
5 exclusivity to this Saturday. I -- as I said I understand
6 where the creditor is coming from, but I think that I'm
7 satisfied given the proffer that was made to me by debtors'
8 counsel as well as the facts and circumstances in the case
9 that it is appropriate to extend exclusivity. I think the
10 time has been meaningfully spent as committee counsel has
11 explained. And so the issues identified as the basis for
12 the objection I'm going overrule.

13 In light of what I've heard this morning and what
14 I also heard not only from the debtors, from committee
15 counsel, but also from the party objecting to the current
16 request for an extension of exclusivity, it sound like the
17 objections to any further extension would be the same.

18 So given that I think most of the parties in
19 interest are present here I do think I need to motion, but I
20 think it can be done on presentment for Friday. And what I
21 would suggest is that if there are any objections that we
22 will -- the notice will say that we will actually have a
23 hearing on Friday if the parties can do that as of say
24 4 o'clock. I have three -- two mega cases and now three on
25 for Friday. I can't promise that 4 o'clock is going to

1 work, but I think it should.

2 So -- so if there are no objections as of noon
3 then I think I'll be in a position to sign the requested
4 extension of exclusivity, but if there are then we can get
5 together at 4 o'clock and address the matters before the
6 holidays. Any problem with that approach?

7 MR. ROSENTHAL: None whatsoever, Your Honor.

8 THE COURT: All right. And again, so that the
9 party objecting today knows, I've certainly heard the
10 objection that was made, and so while you may feel a need to
11 object I think you can inform your client that -- to the
12 extent it's the same objection obviously I've already heard
13 it -- so it's sort of the technically speaking law of the
14 case, so I don't know if that's all there is to be said that
15 I will change my mind. So anyhow I think we can probably
16 resolve it that way. Thank you.

17 MR. ROSENTHAL: Thank you very much, Your Honor.

18 THE COURT: So I would ask if you can get that in.
19 I imagine that would be an exceedingly short pleading.

20 MR. ROSENTHAL: We will --

21 THE COURT: Get that in as soon as possible.

22 MR. ROSENTHAL: We will file it this afternoon.

23 THE COURT: All right, thank you.

24 MR. ROSENTHAL: The next matter, Your Honor, that
25 I want to take up -- I'd like to take up is the interim cash

1 management motion which is item 22.

2 We continue to -- I hate to apologize -- but we
3 continue to have these interim cash management motions.
4 This is the eleventh. We're trying to set the record
5 perhaps. But I think -- I don't know whether it was
6 Mr. Morrissey or whether I was just dreaming if, but if it's
7 -- you know, if it's not broken, you know, why fix it?

8 So this seems to be working. The current budget
9 covered by this next interim cash management order is
10 December 16th through January 19th. We've continued to keep
11 the committee and the JPLs advised about the budget and in
12 discussions with them on all of these matters.

13 There are no objections to the budget and the
14 funding requests that are set forth therein and we would ask
15 that this be entered as a further interim order.

16 THE COURT: All right. Anyone wish to be heard on
17 the request for an eleventh interim order regarding cash
18 management?

19 MR. MORRISSEY: Your Honor, again for the
20 record Richard Morrissey for the U.S. Trustee.

21 THE COURT: Are you responsible for the phrase if
22 it's not broken don't fix it?

23 MR. MORRISSEY: I -- I don't believe I am, but --

24 THE COURT: All right. Well, I would take credit
25 whenever you get that opportunity.

1 (Laughter)

2 THE COURT: But what can you tell me?

3 MR. MORRISSEY: What I can tell Your Honor is
4 although this is the eleventh such motion it doesn't mean
5 that the facts haven't changed since the first such motion.

6 My understanding, Your Honor, Mr. Rosenthal can
7 come up with a lot more specifics than I can, is that when
8 we began the process there was a great deal of money abroad,
9 and there still is some money abroad, including the money
10 that's locked up in Bahrain to which Your Honor referred
11 earlier. But there's a great deal of money I believe that's
12 been transferred state side since the beginning, and that
13 was our concern from the beginning. And as long as that
14 progress continues to be made the U.S. Trustee certainly has
15 no objection.

16 THE COURT: All right. Anyone else?

17 MR. FLECK: Your Honor, Evan Fleck on behalf of
18 the creditors' committee.

19 The committee and its advisors have reviewed the
20 budget and there's been a healthy dialogue with the debtors
21 advisors and we're comfortable with budget as proposed.

22 THE COURT: All right, thank you.

23 All right, anyone else?

24 All right, I'm happy to approve the eleventh
25 interim order -- requested order on cash management. The

1 whole point of these sorts of motions is that they work for
2 the estate and all interested parties, and this does not
3 appear to be broken so we will not fix it.

4 MR. ROSENTHAL: Thank you, Your Honor. Now I'll
5 turn it over to my colleague, Craig Millet for the fun
6 portion of the hearing.

7 THE COURT: All right.

8 MR. MILLET: For the record, Your Honor, Craig
9 Millet on behalf of the Arcapita debtors.

10 With the requirement that this can be fun, I'll
11 see what I can do, but I don't have much to work with.

12 THE COURT: All right. Well, I won't hold you to
13 that.

14 MR. MILLET: Your Honor, we have a handful of
15 items. If it please the Court, I thought we might take up
16 the Sunrise sale transaction which is agenda item 18 first.

17 THE COURT: All right.

18 MR. MILLET: Your Honor, this is a proposed sale
19 of a joint venture interest basically downstream from any
20 debtor. In essence, the buyer wanted to have a comfort
21 order here because it is somewhat unclear exactly of what
22 interest the debtor holds, because this company, Arcapita,
23 is in the business of buying and selling portfolio companies
24 through structured sales and such. And so therefore, just
25 to make sure to the extent that there is any application of

1 the Bankruptcy Code to the sale, we wanted to bring this
2 before the Court and all parties in interest, which we've
3 done.

4 Of course, we've had no objection of any kind to
5 this. I think that everyone has seen that this is a good
6 deal. And with respect to the money that will flow to the
7 estate will pay off certain debts of the non-debtor entities
8 below, and then finally provide for a flow of approximately
9 \$30 million to the debtor. Subject to, and I want to make
10 clear so that nobody has a problem, of course, to any order
11 that's already been entered by the Court, so the proceeds
12 will be treated as it provides in the DIP order, with
13 respect to the treatment of proceeds. And also, will be
14 provided -- will be treated as it provides in the SCB
15 settlement order that the Court approved some time ago, but
16 this will result in an approximately \$14 and a half million
17 super priority administrative claim. Pursuant to that order
18 and the treatment of how proceeds would come up through the
19 chain to ALTHO.

20 THE COURT: All right.

21 MR. MILLET: But nevertheless, Your Honor, I don't
22 know if the Court wants to hear a lot of detail about this
23 since we have --

24 THE COURT: No, I read the -- it's a very short
25 motion and I read it sort of between the lines as being in

1 the nature of comfort on a transaction that was -- it's
2 unclear as whether it was needed or not, but wisely in an
3 abundance of caution to seek that kind of relief. So I
4 think my -- I don't have any questions.

5 MR. MILLET: Very well.

6 THE COURT: Anyone wish to be heard on this
7 motion?

8 (No response)

9 THE COURT: All right. Hearing no responses and
10 not seeing any objections, I will grant the motion for an
11 order authorizing the debtors to grant approvals and
12 consents in connection with the sale by a non-debtor
13 subsidiary.

14 MR. MILLET: One item, Your Honor, we do have sort
15 of a fast closing on this as one of the terms of the sale to
16 provide for closing by the 20th. And so we would request if
17 we could get the order entered quickly.

18 THE COURT: Okay. I imagine at the end of this
19 I'll get a whole stack of things, and we'll put that towards
20 the top.

21 MR. MILLET: Thank you, Your Honor. The next item
22 I thought we might take up would be the motion to dismiss
23 filed by Hani also Hobby, which is agenda item number 20.

24 THE COURT: All right.

25 MR. MILLET: I wanted to make one -- the Court

1 aware of one thing, I was approached before the hearing
2 today by an attorney who informed me that they do not
3 represent, with all respect to my pronunciation, Captain
4 Hani, since I have trouble with his last name, but that
5 wanted me to be aware that Captain Hani was interested in
6 having an adjournment, so that he might find counsel.

7 So at least I wanted to make the Court aware of
8 that. It's the debtor's position that this nature of this
9 motion is such that the retention of counsel is not really
10 going to change things. And also that ample time has been
11 allowed for that to occur, considering that this was first
12 provided to the Court in September. We had a status
13 conference on the matter back in November 15th, we've teed
14 it up today. And that even if you were to apply a Rule 12
15 standard as we noted and cited exception for argument sake
16 that the facts are true, that a violation of the regulation
17 assuming that occurred, is not grounds for dismissal.

18 So we'd request that we go ahead today, but I did
19 want the Court to be aware of that request.

20 THE COURT: I appreciate that. If the matter had
21 not been first teed up in -- I believe it was even August,
22 what I have was a letter sent to me August 25th of 2012, and
23 I think it made its way into the docket later. So it's been
24 around for quite some time. And I certainly am always have
25 to happy folks who are not represented get counsel, that's

1 their right. But I don't have anything in front of me that
2 that is in the works or imminent, and I don't think given
3 the allegations contained in his papers, that it's
4 appropriate to adjourn it at this point.

5 MR. MILLET: Thank you. Then we'd request we go
6 forward with an entire ruling on the matter.

7 THE COURT: All right. Yeah, I'm going to deny
8 the motion for a dismissal of this case, and can you help me
9 with the gentleman's pronunciation of his name?

10 MR. MILLET: I believe it's Alsohaibi.

11 THE COURT: Alsohaibi, okay. He is a resident and
12 citizen of Saudi Arabia and is apparently a former airline
13 pilot, and he apparently had a relationship with Arcapita
14 Controlled Holding Company names Cirrus, C-i-r-r-u-s, and
15 his interests from what debtors explained were sold some --
16 almost a year before the -- this petition was filed in this
17 bankruptcy court.

18 He apparently was critical of the management of
19 that company and he has been critical of the operations of
20 Arcapita Bank, making various allegations about
21 improprieties as he sees it, and things that should happen
22 by the governing authorities in Saudi Arabia. And I don't
23 think it is in a basis in any way, shape, or form to dismiss
24 this case for several reasons.

25 One is, it's certainly well known in U.S. law that

1 a bankruptcy does not stay in police power of a sovereign,
2 and it would not operate to impede any appropriate
3 government authorities of Saudi Arabia from doing what it is
4 they believe to be appropriate, although I don't have any
5 evidence that they have done anything at all in this case.

6 Two, dismissal has not been shown to be in the
7 interest of any of the creditor bodies here, in the best
8 interests of the debtors, the estate, anyone including this
9 individual, in fact, to the extent that he may have a claim
10 in this case. So there has been nothing provided to me that
11 would support that.

12 Third, there's really been no evidence or
13 appropriate law cited to me to explain why his views on the
14 matters that he expresses, and namely how he was treated,
15 and Arcapita's operations, as he describes them overseas are
16 a basis for a dismissal in any way, shape, or form.

17 So for all those reasons, I'm going to deny the
18 motion for a dismissal, and I would ask that the debtors
19 provide an order and since we're dealing with somebody who
20 is a pro se individual, I'd ask that the order in its
21 recitals and whereas clauses, explain a little bit of what
22 the basis is for my ruling, so that it's clear to someone
23 who would just get a copy of it.

24 MR. MILLET: Very well, Your Honor, we'd be happy
25 to do that.

1 THE COURT: Thank you.

2 MR. MILLET: That then leaves us with the status
3 conferences. Prior to getting to the fee apps, I should
4 say, that leaves us with the status conferences, that are
5 items number 1 and 2 on the agenda.

6 THE COURT: All right.

7 MR. MILLET: As to the Hopper adversary action and
8 the pending motion for relief of stay of the Tide parties.

9 THE COURT: All right. So let's talk about the
10 status of it. Folks interested in that, come on up.

11 MR. MILLET: As the Court knows, the mediation was
12 unsuccessful. We tried valiantly before Judge Martin. We
13 had a full day together, and he made considerable efforts,
14 but we were unable to bridge the gap.

15 THE COURT: Well, that sometimes happens, you
16 never know what's going to happen unless you give it a shot,
17 so I certainly won't hold that against anyone at all. And
18 if there are any further discussions where folks think that
19 that would be helpful to re-enter that arena, just let me
20 know. But I'm sure that will proceed to decide how to get
21 this thing teed up.

22 So let me hear from the Tide folks first as to --
23 where I understand that we are, is that everyone agreed that
24 mediation was worth a shot. And now we're back. There are
25 two sets of motions dealing with among other things the

1 forum and where it should be decided, what happens to the
2 escrow amount.

3 And my understanding is those are teed up for mid-
4 January.

5 MS. FELDSHER: Well, Your Honor, my understanding
6 is that the Hopper adversary where the Hopper parties are
7 seeking an adjudication that \$8.25 million of the escrow is
8 their property, not property of the estate, might be on for
9 January 16th. Tide, our claimants, lift stay motion has not
10 been scheduled. My understanding is that my colleague was
11 here at the last hearing, Your Honor, but he's on trial
12 today, so you get me. I wasn't --

13 THE COURT: That's fine.

14 MS. FELDSHER: I wasn't much fun for Mr. Millet, I
15 will tell you not to take offense to that comment, but our
16 motion on the lift stay, we agreed not to go forward at the
17 last hearing, so we could pursue mediation.

18 THE COURT: Right.

19 MS. FELDSHER: So there was no date set. We would
20 request that it be set, and we're happy for it to be set on
21 the same date as January.

22 THE COURT: Well, is there any reason not to set
23 it for that day?

24 (No response)

25 THE COURT: All right. So I think these are all

1 -- have tremendous overlap, so I would think we'll just --
2 we'll have an afternoon and a morning, and just discuss it
3 and figure out what to do with --

4 MS. FELDSHER: We agree with that.

5 THE COURT: -- the case going forward, and all
6 it's permeations.

7 MS. FELDSHER: We agree with that. Thank you,
8 Your Honor.

9 THE COURT: All right. So is there anything else
10 that we need to do in connection with the status conference,
11 it was really just a matter of to make sure everybody is on
12 the same page as to how to go forward.

13 MR. MILLET: Your Honor, I -- perhaps just for the
14 record, the Court's record, we should I guess have the
15 Hopper action, which is to have another status conference on
16 that date, setting the motion that's pending for the relief
17 of stay I suppose. Unless the Court doesn't want another
18 status conference on Hopper.

19 THE COURT: Well, let me sort of take it from the
20 top. On for -- it's January 16th, will be the same motion
21 that was filed by Tide.

22 MR. MILLET: Correct, Your Honor.

23 THE COURT: And also will be the debtor's motion.

24 MR. MILLET: Motion for leave to file
25 counterclaims with third party claims in the Hopper action,

1 to name Tide and HBC, yes. I didn't know if it was the
2 Court's practice to also have another status conference in
3 the pending adversary action or not. That's why I was
4 asking.

5 THE COURT: Well, my thought is if we're going to
6 talk about, we should talk about it, so we should put
7 everything on the table. So I would think unless the
8 parties think that we'll somehow bog down the efficiency of
9 it, that at this point, there's a lot of overlap, so we
10 should just talk about the issues --

11 MR. MILLET: Sure.

12 THE COURT: -- and figure it out from there.

13 Is there any other motion or -- that has either
14 been filed but not yet scheduled or is contemplated to be
15 filed between now and that date in connection with Tide,
16 Hopper, or any of those issues?

17 MR. MILLET: Not by the debtors, Your Honor.

18 THE COURT: All right.

19 MR. ZDUNKEWICZ: Not by Hopper, Your Honor.

20 MS. FELDSHER: And not by Tide.

21 THE COURT: All right. I just sort of want to get
22 a sense of what we have on the plate. All right. So --
23 well, let's talk about it all January 16th, and let me ask
24 the debtors what else is anticipated to be on that calendar.

25 MR. MILLET: Always a good question.

1 THE COURT: Even though it's a good ways out.

2 MR. MILLET: One thing we do know is cash
3 management on a twelfth interim basis.

4 THE COURT: All right.

5 MR. MILLET: I would start with the top.

6 THE COURT: That's fair enough. So let's -- I'm
7 just trying to figure out what time we're on for.

8 MR. MILLET: 11 a.m. currently I believe, Your
9 Honor.

10 THE COURT: All right. I do have some matters on
11 that afternoon, so that's why I'm asking. But I figure if
12 we set aside a couple of hours, we should get where we need
13 to be on that day.

14 MR. MILLET: I think so, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. ZDUNKEWICZ: Your Honor, just a point to
17 clarify. The debtor's motion to file the counterclaim and
18 bring in a third party, that will be heard or just a
19 conference on that motion?

20 THE COURT: No, I think we'll hear it, because I
21 think we're really at a certain point talking about teeing
22 it up here, or teeing it up somewhere else. So I think
23 there are different aspects of the same Rubik's Cube, it's
24 just a different size of the puzzle, is how I understand it.

25 All right. So everything that is --

1 MS. FELDSHER: Your Honor?

2 THE COURT: Yes.

3 MS. FELDSHER: Is there a date for responses on
4 that motion? We're not party to that proceeding.

5 MR. MILLET: January 2nd was the date I believe
6 that was put in the motion; however, understanding what date
7 that is, we'd be happy to discuss with interested parties a
8 reasonable schedule that doesn't ruin your Rose Bowl Game,
9 hopefully.

10 THE COURT: Yeah, that sounds like a good idea.
11 And just -- my thought would be, I just want to make sure we
12 get something in sufficient time to read it, which is
13 sometimes a challenge in this courthouse with things
14 creeping closer and closer to hearings.

15 MR. MILLET: We'll make sure whatever schedule we
16 adopt allows ample time for the Court.

17 THE COURT: All right. Thank you.

18 MR. MILLET: You're welcome. And now for the real
19 and entertainment, we'll go back to the fee apps. Mr.
20 Rosenthal will be addressing those.

21 THE COURT: All right.

22 MR. ROSENTHAL: This is the rewarding part. Your
23 Honor, this is the second hearing for interim allowance of
24 fees and expenses of the professionals in these cases.

25 As I hope the Court knows, all the professionals

1 here have exerted and continue to exert tremendous effort to
2 try and bring these cases to a conclusion. And not only has
3 the Court seen a lot of this play out in front of its own
4 eyes, the DIP, the plan discussions, the various asset
5 sales, but I think this case is distinctive. I mean, we
6 made a point of saying it, but it's really a tribute to all
7 the parties here. This case is distinctive. We have
8 managed basically to consensually resolve virtually every
9 issue in this case.

10 Now, I know that's kept you from doing a lot of,
11 you know, some work, but I think in terms of the case as a
12 whole, it's meant that the case has proceeded incredibly
13 smoothly. And I think the way a case of this magnitude
14 should proceed. It's a very complex case, particularly
15 because of the fact that it's a multi-jurisdictional issue.
16 We have Cayman issues, we have Ukraine issues, we have
17 assets all over the world. So -- not to mention Sharia
18 issues.

19 We received no objections, Your Honor, although
20 we've all had discussions with the U.S. Trustee's office.
21 And so let me tell you how we'd like to approach this. We
22 -- the U.S. Trustee's office had identified some issues that
23 they had potential difficulties with. And so we endeavored
24 to put together a schedule that went through the fee
25 applications and identified those issues, trends towards

1 professionals, time spent on compliance with the U.S.
2 Trustee guidelines and the like.

3 I talked to Mr. Morrissey yesterday. There are
4 some parties -- and we distributed that out to the various
5 professionals. There are some parties, most parties here
6 who have agreed to the proposed reductions from the U.S.
7 Trustee's office. Some who just haven't had time to review
8 the proposed reductions.

9 And so what we are going to propose to the Court
10 is that we enter an order assuming the Court, you know,
11 grants the order, that we enter an order that takes into
12 consideration the proposed reductions. And in the case of
13 professionals where there are agreements, the agreements
14 that were reached with the U.S. Trustee's office, and that
15 subsequent to that if parties reach a resolution of their
16 issues with the U.S. Trustee's office, we can file a
17 supplement to that order.

18 But that's where --

19 THE COURT: So that the order would be the
20 baseline and --

21 MR. ROSENTHAL: Absolutely.

22 THE COURT: -- and it would contemplate any other
23 order would be -- would only be an increase --

24 MR. ROSENTHAL: A slight increase, a slight
25 increase.

1 THE COURT: -- because the number increased.

2 MR. ROSENTHAL: A slight increase. You know,
3 whatever the increase is based on the reduction. Remember
4 also this is only an interim application. We are as the
5 Court knows, we are going to ask the Court to release --
6 this is a second fee hearing, as the Court said it's
7 practice, we are going to ask the Court to release the
8 holdback from the first interim hearing. But that will
9 still leave -- the first interim period I think ended in
10 July, so that would still leave holdbacks from August,
11 September, October, November, all the way through the next
12 fee hearing, which may be the last. So there will be
13 significant holdbacks in addition to work in progress, and
14 all that stuff.

15 THE COURT: Right.

16 MR. ROSENTHAL: So with that in mind, Your Honor,
17 let me first address Tide's objection so -- before we get to
18 the individual applications.

19 Your Honor, the Tide parties object to the extent
20 that these fees and expenses might be allocated to the
21 Falcon Estate. We are -- we believe that some of these fees
22 are properly allocable to the Falcon Estate, fees related to
23 the mediation, fees -- all the fees related to Falcon
24 specific issues that the motion that Mr. Millet was just
25 talking about.

1 However, we think it's premature to raise those
2 now. One, because we are trying to resolve all of those
3 administrative expense allocations in the joint plan, I
4 already mentioned that in connection with exclusivity.

5 And two, because for the time being, all of those
6 expenses are going to be paid out of the bank AHL creditor
7 estate with the -- with a resolution of how much of that
8 gets allocated to the Falcon estate to be determined at a
9 later date.

10 So while Falcon does have cash that is not
11 encumbered, 6 or \$700,000 I believe from a settlement of a
12 -- the lawsuit involving I think an aircraft, while it does
13 have cash that's not in escrow, we're not seeking right now
14 to use that cash to make these payments.

15 THE COURT: All right.

16 MR. ROSENTHAL: Would the Court like to first
17 resolve that issue or should I go --

18 THE COURT: Yeah, let's -- that's the one
19 objection I know to exist, so if there are any others. But
20 before -- so let's chat about that first.

21 MS. FELDSHER: Your Honor, we agree with the
22 debtor. I mean, as you can see, our limited objection was
23 more of a reservation of rights. The reason we filed it
24 again was because we haven't seen the allocation. We do
25 agree that there are some expenses that will be allocated to

1 the Falcon Estate, and that that is proper. But given that
2 we haven't seen it, we obviously have not been able to
3 object to it. So we've reserved our rights. So we just
4 wanted to make sure the Court was aware that we may come
5 back and we may want to discuss whatever fees get allocated,
6 and whether those fees are reasonable or not reasonable, we
7 will discuss it at that time.

8 We just wanted -- we didn't want to have a
9 situation where we get up at a potentially a final hearing,
10 and the Court says, where have you been, why didn't you
11 mention that you might have had an issue.

12 THE COURT: No, that's fine. All right.

13 MS. FELDSHER: Thank you, Your Honor.

14 THE COURT: That's helpful.

15 MR. ROSENTHAL: All right. Your Honor, I will
16 handle the debtor's professionals, and Mr. Fleck will handle
17 the committee professionals.

18 THE COURT: All right. I don't know if it's
19 productive or the appropriate time if the U.S. Trustee's
20 office wants to weigh in generally on what the debtors set
21 forth thus far, or do you want till we get through each
22 application. I thought you might have a global comment.

23 MR. MORRISSEY: Your Honor, I think it would be
24 better, more efficient that is if Mr. Rosenthal and Mr.
25 Fleck went first. But I will say generally that they have

1 both been extremely cooperative in this process as they were
2 the first time around. And that has saved I think the
3 estates and will save the Court a lot of time overall in
4 terms of discussing the fees, because we don't want to
5 generate too many more fees by discussing the fees
6 themselves. And I think we're all on the same page in that
7 regard.

8 THE COURT: All right.

9 MR. MORRISSEY: But as far as specifics, I'll wait
10 for Mr. Rosenthal and Mr. Fleck.

11 THE COURT: Let me just ask one question. It's
12 safe to assume that you're content with the process that Mr.
13 Rosenthal set forth, which is to have orders that are
14 submitted with the proposed reductions of the U.S. Trustee's
15 office with the thought that if there's a subsequent
16 agreement of the parties, that haggling on particular things
17 that would amend that and perhaps grant additional fees,
18 that that process is acceptable to you, your office.

19 MR. MORRISSEY: It is, Your Honor, and I might as
20 well add at this time, that we're also comfortable with the
21 -- with what Mr. Rosenthal said about the holdback. Because
22 I think Your Honor made that same point at the hearing on
23 the first interim, and we're not going to dispute that now.

24 THE COURT: All right. And for the holdbacks, I'm
25 trying to be consistent from case-to-case, and my floor has

1 to be keep one period held back, and then if there's a
2 concern about administrative insolvency or something else,
3 it can be raptured up in the individual circumstance. But I
4 think it's important to be consistent or I think folks will
5 end up discussing every case, and spend a lot of time and
6 fees talking about fees.

7 So with that, Mr. Rosenthal.

8 MR. ROSENTHAL: Thank you, Your Honor. Let me say
9 out of the box, we are definitely not administratively
10 insolvent.

11 THE COURT: No, I -- that was not a reference to
12 this case. It's just in case parties are trying to find a
13 consistency. It is that that's the floor, and if there are
14 other -- I've had other cases where there have been issues
15 about exactly how it was going to play out on the what the
16 end game was, and in fact, whether there was an end game,
17 that those cases are -- that with as to fees and facts and
18 circumstances that are present, and which are not happily
19 present here.

20 MR. ROSENTHAL: Your Honor, first turning to
21 Gibson Dunn's application, and please pardon me for all of
22 these applications. I'm going to try to get the numbers
23 right, but there are a lot of numbers, and A&M, Alvarez and
24 Marsal has been the keeper of the numbers. So the order
25 will correctly reflect them, and this will be generally

1 correct, but if I'm off a little, please apologize --

2 THE COURT: That's fine.

3 MR. ROSENTHAL: Please accept my apology.

4 THE COURT: And to the extent that your colleagues
5 weigh in on that, I will take it in the context of keeping
6 you straight on the numbers, so.

7 MR. ROSENTHAL: Thank you, Your Honor.

8 Your Honor, during the second interim fee period,
9 Gibson Dunn professionals spent almost 7,300, more than
10 7,300 hours assisting the debtors in any number of
11 activities detailed in our fee statement.

12 We are requesting a compensation of \$5,428,000 --
13 428,183.25 which reflects the two reductions. One, it
14 reflects the 50 percent non-working travel reduction, of
15 course. But it also reduces -- reflects a reduction that we
16 have agreed with the U.S. Trustee about of about 42 and a
17 half thousand dollars, \$42,500 related to issues that the
18 U.S. Trustee raised.

19 In addition to the fees we're requesting
20 reimbursement of expenses in the amount of approximately
21 \$164,000. Of course, we are requesting that of those
22 allowed fees and expenses, we be paid a hundred percent of
23 expenses and 80 percent of the fees, the balance of those
24 fees obviously would be subject to the continued holdback.

25 We are, in addition, requesting release of the

1 first period holdback, which is \$1,332,153.

2 THE COURT: All right. Anyone wish to be heard as
3 to this application?

4 (No response)

5 THE COURT: All right. I will, consistent with
6 the representations here today about the reductions, I will
7 grant the second interim application and also permit release
8 of the first period holdback.

9 MR. ROSENTHAL: Thank you very much, Your Honor.

10 THE COURT: And I think -- we'll deal with that
11 one separately because it's debtor's counsel and it's rather
12 large, but I think what we'll do for the others is just
13 group them, you can present them all, the other debtors'
14 applications, and then we'll take any comments at the end.

15 MR. ROSENTHAL: That's fine, Your Honor.

16 And Linklaters had a very small fee application of
17 only \$31,000 with expense reimbursement of about \$1,700.
18 The initial cut from a review of that application which we
19 haven't yet talked to Linklaters about, reflected that
20 amount, most of that, actually \$22,000 fit into that non-
21 allowable category according to the U.S. Trustee.

22 So I imagine there will be further discussions
23 with Linklaters about that. The balance, which is
24 approximately \$9,400 would -- we'd request be approved now,
25 subject to the ability to come and increase that after

1 discussions with Mr. Morrissey and Linklaters, as well as
2 the expenses of \$1,700, as well as their holdback from the
3 first period of about \$46,000.

4 THE COURT: All right.

5 MR. ROSENTHAL: KPMG UK, Your Honor, they have had
6 discussions, Ms. Spigel was here, has had discussions with
7 Mr. Morrissey about their reduction, and they have agreed
8 that there will be no reduction now, but that would be
9 reserved until the end because of the holdback.

10 The total amount requested was \$1,393,000 -- I'm
11 sorry, the total amount requested was a little over that,
12 was \$1,413,243.46, and expenses of approximately \$35,000.
13 Based on the agreement that I believe Mr. Morrissey and Ms.
14 Spigel reached, KPMG UK would be requested that that all be
15 approved and that 80 percent of the fees be paid.

16 There's currently a holdback of approximately
17 \$742,000 from the first application.

18 THE COURT: All right. Mr. Morrissey?

19 MR. MORRISSEY: Your Honor, there's also a cap on
20 that particular entity's fees, and I think Ms. Spigel is
21 about to address that.

22 THE COURT: All right.

23 MS. SPIGEL: Good afternoon, Your Honor, Robin
24 Spigel, Wilkie, Farr & Gallagher, counsel for KPMG LLP in
25 the U.K.

1 Just to clarify, the KPMG is working with the
2 debtors in connection with a fee cap or a voluntary
3 reduction of their fees overall. So pursuant to this
4 application, it's agreed -- it's seeking allowance of the
5 \$1.4 million, but it's only seeking payment of a relatively
6 small amount based on the good faith discussions that are
7 going on for the caps. So ultimately with respect to the
8 U.S. Trustee's objections, we just decided to kick that to
9 the final fee application to see what the total --

10 THE COURT: Depending on how those other
11 discussions go.

12 MS. SPIGEL: Correct. So at the end, we'll know
13 the total voluntary reduction, which will be hundreds of
14 thousands of dollars, then we'll discuss the ultimate final
15 reduction, if there is any with or any objection by the
16 trustee at the end.

17 THE COURT: All right. Thank you.

18 MR. ROSENTHAL: KPMG U.S. is the next applicant,
19 Your Honor. The proposed reduction is about \$1,900. Before
20 the -- after the reduction, the total amount of the fees is
21 101,000 and the expenses, there were no expenses on this
22 application.

23 The holdback that they would request be released
24 from the first period is approximately \$14,000, 14,200.

25 King & Spalding, Your Honor, requested fees of

1 approximately \$570,000. They have agreed to the reduction
2 proposed by the U.S. Trustee of about \$27,000. So the
3 balance is \$542,000 of which 80 percent would be payable
4 with a balance, the remaining 20 percent of fees and
5 holdback. And the expenses of 15,000 would be paid.

6 Their holdback from the previous period is
7 approximately \$114,000.

8 Trowers & Hamlins, which is our -- one of our
9 Bahamian counsel has agreed also to the U.S. Trustee's
10 proposed reduction of about \$6,000. After the reduction,
11 their fees are 130,000, which they're requested that all be
12 allowed, and 80 percent be paid. Their expenses are
13 nominal, \$621. And they have requested that again, that
14 their 20 percent holdback from the previous application of
15 about \$27,000 be paid.

16 Mourant Ozannes, who is our Cayman counsel, Mr.
17 Dixon should be on the line with us, if you have any
18 questions for him, has also agreed to the reduction. It's a
19 reduction of \$4,200. After that reduction, Mourant's fees
20 are \$306,000, approximately 306,000. Their expenses are
21 approximately 2,000, and their holdback from the previous
22 period is about \$3,500.

23 Alvarez and Marsal has also agreed. The reduction
24 was about \$7,000. They -- after the reduction, their fees
25 are \$2,168,000 or so, of which 80 percent would be paid with

1 the balance in holdback. Their expenses for the period are
2 \$35,000. And I don't have the number of their fee holdback
3 from the prior period, but they would request that be
4 released.

5 Now, I have a little explanation that deals with
6 -- that relates to Hurricane Sandy and Mr. Morrissey. So
7 from the prior -- the first period, the A&M expenses were
8 subject to some continued review by Mr. Morrissey. Which
9 was hijacked, if you will, by Hurricane Sandy. Because all
10 of the information that A&M did provide to back up their
11 expenses is sitting on his desk in an office that he can't
12 -- he's no longer allowed to be in until it gets renovated
13 -- repaired.

14 So their expenses for that first period have still
15 not been approved, and they're not going to be paid until
16 Mr. Morrissey continues to look at them. Mr. Morrissey has
17 agreed that they can get their 20 percent holdback for fees
18 for that period, and he has agreed that their expenses for
19 this period of \$35,000.

20 THE COURT: Right, because he has access to that
21 information.

22 MR. ROSENTHAL: Yes. Your Honor, there was no
23 reduction for Rothschild because it's on a fixed
24 compensation arrangement. And similarly, there is no
25 reduction that I know of for Ernst and Young and Bahrain.

1 But there's no reduction for that. I didn't -- I'm not sure
2 Mr. Morrissey had anything for Ernst & Young and Bahrain. I
3 know he had the fee applications, I'm not sure if he had any
4 issues. We were unable to provide him with the summary for
5 Ernest and Young Bahrain, so I would propose it's, you know,
6 it is \$700,000, but I would propose that that be authorized
7 to be paid. There are no expenses. There's no holdback
8 from the first period, as this is only the first application
9 for that entity, and that we deal with Ernst & Young Bahrain
10 down the road. But I defer to Mr. Morrissey on that.

11 THE COURT: All right. Mr. Morrissey, any views
12 on that?

13 MR. MORRISSEY: Your Honor, I'm perfectly willing
14 to wait until the next, and hopefully the next will be the
15 final to deal with that. I just wasn't sure if Mr.
16 Rosenthal was proposing that the holdback be imposed on them
17 as it is on everybody else.

18 MR. ROSENTHAL: Yes, I think the holdback --

19 MR. MORRISSEY: Okay.

20 MR. ROSENTHAL: -- applies to all of the
21 professionals for the same period.

22 THE COURT: Yeah, that was the reason why I
23 thought it could wait until the next time.

24 MR. MORRISSEY: Yes, exactly, Your Honor.

25 THE COURT: All right.

1 MR. ROSENTHAL: So based on that, Your Honor, I
2 believe that is all the professionals for the debtor, and I
3 would ask that all of their applications be approved as
4 we've gone over them.

5 THE COURT: All right. I've heard from some folks
6 already. Anybody else wish to be heard on the applications
7 that were just set forth?

8 (No response)

9 THE COURT: All right. Hearing no one, I will
10 grant as consistent with the explanations and the
11 modifications that have been explained for Linklaters LLP,
12 KPMG LLP Valuation's Advisor, KPMG LLP U.S.'s tax
13 consultants, King & Spalding LLP, King & Spalding
14 International LLP which is one application, Trowers and
15 Hamlins, Mourant, Walkers, the Cayman Island counsel,
16 Alvarez and Marsal, Rothschild, and Ernst & Young. And that
17 obviously is consistent with our prior discussions, which
18 included reservations of the U.S. Trustee's rights on a few
19 applications, as well as Tide's reservations of rights, in
20 terms of allocation, as well as I think they had a comment
21 in their objection about King & Spalding, but that will all
22 wait till another day.

23 MR. ROSENTHAL: Thank you, Your Honor, and we will
24 -- that will include the release of the holdback from the
25 first --

1 THE COURT: Correct.

2 MR. ROSENTHAL: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. FLECK: For the record, Your Honor, Evan Fleck
5 on behalf of the creditor's committee. We have fewer
6 applications. There are five on behalf of the committee's
7 professionals. They're docket numbers 10 through 14 on the
8 amended agenda.

9 In the interest of efficiency, I'd propose to go
10 through all of them at once.

11 THE COURT: That'd be fine.

12 MR. FLECK: Docket No. 14 is the second interim
13 fee application of Milbank, Tweed, Hadley & McCloy as
14 counsel to the creditor's committee. The amount of fees
15 sought on this application are \$3,434,030.50. Those are the
16 fees and expenses of approximately \$94,000.

17 Your Honor, that amount reflects reductions of a
18 few categories. The first is our standard reductions to
19 comply with the U.S. Trustee's guidelines, as well as some
20 additional reductions that we've agreed to take in this
21 case, with respect to transitory timekeepers, certain meal
22 expenses, and other matters that are more restrictive than
23 the U.S. Trustee's guidelines.

24 The fee amount also reflects an agreed upon
25 reduction with the Office of the United States Trustee of

1 \$25,000. That was from the amount originally requested in
2 Milbank's application.

3 Your Honor, there's additional detail with respect
4 to the services performed for the committee by Milbank Tweed
5 during this fee application period that I'd be happy to
6 speak to. I'll just -- just to give a statistic, as Mr.
7 Rosenthal did, the Milbank attorneys spent 5,226.4 hours
8 during the second interim application period serving the
9 committee and the creditor constituency, and we'd
10 respectfully request both the approval of the fees that I
11 just addressed, as well as release of a holdback of
12 \$849,144.80 with respect to the Milbank application.

13 I'd be happy to answer any questions on that,
14 otherwise, I'd proposed to proceed with the next.

15 THE COURT: Proceed.

16 MR. FLECK: Agenda item number 12 is the second
17 interim fee application of Houlihan Lokey as financial
18 advisor and investment banker to the committee. Houlihan is
19 seeking \$600,000 in fees, that's based upon a set monthly
20 arrangement, and the reimbursement of expenses in the amount
21 of \$46,100.68. Mr. David Hilte is in the courtroom today on
22 behalf of Houlihan, and would be happy to respond to any
23 questions from the Court.

24 As well, Houlihan would request the release of the
25 holdback from the first period, and I believe that amount is

1 \$145,333.33.

2 THE COURT: All right.

3 MR. FLECK: Agenda item number 13 is FTI, that's
4 the second interim fee application of FTI as financial
5 advisor to the committee. FTI is seeking a payment of
6 \$667,772 in fees, and the reimbursement of approximately
7 \$14,000 in expenses.

8 Your Honor, those amounts reflect a reduction of
9 \$2,500 from the amount originally requested in the
10 application, and I believe that resolves the informal
11 objection that was raised by the Office of the United States
12 Trustee. FTI also requests the release of the holdback from
13 the first period in the amount of \$137,790.05. Mr. Sam Star
14 (ph) of FTI is in the courtroom today, and would be happy to
15 respond to any questions from the Court.

16 THE COURT: All right. Thank you.

17 MR. FLECK: Agenda item number 10 is Walkers.
18 Walkers is Cayman counsel to the creditor's committee.
19 They're seeking a payment of \$52,915 in fees, and the
20 reimbursement of \$192.72 in expenses. This amount reflects
21 a reduction of \$2,000 from the amount that was originally
22 requested in the Walkers' fee application, and that resolves
23 the objection of Mr. Morrissey and the Office of the United
24 States Trustee.

25 Walkers is also seeking the release of the

1 holdback from the first period in the amount of \$9,724.50.
2 Mr. Barnaby Gowrie is on the phone from Walkers and would be
3 pleased to respond to any questions from the Court.

4 And lastly is agenda item number 11. This is the
5 second interim fee application of Hassan Radhi, the
6 Committee's Bahraine counsel. Hasan Radhi is seeking the
7 payment of \$5,500 in fees, and no expenses. Jalil Al-Aradi
8 is on the phone from the firm, and would be pleased to
9 respond to any questions. There has also been a reduction
10 at the request of the Office of the United States Trustee of
11 \$500. That's reflected in the 5,500 -- it's actually \$5,532
12 that reflects the reduction based upon discussions with the
13 Office of the United States Trustee. And Hasan Radhi has a
14 holdback from the first period that it's seeking to be
15 released, that's \$786.04.

16 And that completes the five applications on behalf
17 of the creditor's committee.

18 THE COURT: All right. Anyone wish to be heard as
19 to those five applications?

20 (No response)

21 THE COURT: All right. Consistent with the
22 discussions of counsel here about each of these fee
23 applications, I'm happy to approve these five applications
24 for Milbank Tweed, Houlihan Lokey, FTI, Walkers, which I
25 think I had originally erroneously mentioned as counsel for

1 the debtors, so thank you for clarifying that, and Hassan
2 Radhi, and it will include the release of the holdbacks from
3 the first period.

4 MR. FLECK: Thank you very much, Your Honor.

5 THE COURT: Thank you very much.

6 All right. Anything else that we need to discuss
7 here this morning or now this afternoon?

8 MR. ROSENTHAL: Nothing, Your Honor. Thanks for
9 your time.

10 THE COURT: All right. Thank you very much. So I
11 would just -- again, I think you can put that exclusivity
12 extension, given our discussion today on for presentment for
13 noon on Friday, but make sure that the notice makes very
14 clear that if there are objections that we'll get together
15 at 4 o'clock on that same day.

16 MR. ROSENTHAL: The beauty of the Blackberry is
17 already in process.

18 THE COURT: All right. Wonderful. Thank you very
19 much.

20 (Proceedings concluded at 1:42 PM)

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E X H I B I T S

PARTY	NO	DESCRIPTION	ID.	EVID.
Debtor		Declaration of		
		Jon Makuch	--	21
		Declaration of		
		Homer Parkhill	--	21

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

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

AAERT Certified Electronic Transcriber CET**D-408

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

Dated: December 20, 2012

Signature of Approved Transcriber

Veritext

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