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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-11076(SHL)

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In the Matter of:

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

Debtors.

- - - - - x

United States Bankruptcy Court

One Bowling Green

New York, New York

April 17, 2012

11:33 a.m.

B E F O R E :

HON SEAN H. LANE

U.S. BANKRUPTCY JUDGE

1 Case Management Status Conference
2
3 Motion to (A) Authorizing Debtors to (I) Continue Existing
4 Cash Management System, Bank Accounts, and Business Forms
5 and (II) Continue Ordinary Course Intercompany Transactions;
6 and (B) Granting an Extension of Time to Comply with the
7 Requirements of Section 345(b) of the Bankruptcy Code;
8
9 Application to Employ GCG, Inc. as Administrative Agent --
10 Debtors' Application for Entry of Interim and Final Orders
11 Authorizing and Approving the Employment and Retention of
12 GCG, Inc. as Administrative Agent for the Debtors and
13 Debtors-in-Possession Nunc Pro Tunc to the Petition Date;
14
15 Application to Employ GCG, Inc. as Claims and Noticing
16 Agent, Debtors' Application for Interim and Final Orders
17 Appointing GCG, Inc. as Claims and Noticing Agent for the
18 Debtors.

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

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17 MARC SCHWARTZ

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19 ERIC VANDERMILL

20 NATHAN VAN ZELFIELD

21 AARON WERNICK

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P R O C E E D I N G S

THE COURT: Let's get the parties who are on the phone called in.

(Pause)

CONFERENCE CALL OPERATOR: Good morning. May I have the name of your court, please?

THE CLERK: U.S. Bankruptcy Court, Southern District, New York, Judge Lane's hearing.

CONFERENCE CALL OPERATOR: Okay. And I will join you now.

THE CLERK: Thank you. Can you let me know who is on the line?

CONFERENCE CALL OPERATOR: Yes, Madame Clerk.

Okay. And we have Christopher Doherty.

THE CLERK: You can just say all of them.

CONFERENCE CALL OPERATOR: Okay. I'm sorry. Christopher Doherty, Jeffrey Friedman, Kimberly Gianis, Joseph Cronsberg (ph) and Natasha Labovitz is being substituted by Melissa Micgang. Would you like me to spell that name?

THE CLERK: Yes, please.

CONFERENCE CALL OPERATOR: Okay. That's M-E-L-I-S-S-A and the last name is M-I-C-G-A-N-G. Okay. And we have Marc Schwartz, Oliver Seagalo (ph) and we have Eric Vandermill (ph), Nathan Van Zelfield (ph) and Aaron

1 Wernick.

2 THE CLERK: Thank you.

3 CONFERENCE CALL OPERATOR: You're welcome.

4 THE COURT: All right. Let's get appearances from
5 the folks here in person.

6 MR. ROSENTHAL: Good morning, Your Honor. Michael
7 Rosenthal with Janet Weisse and Bob Weigel on behalf of the
8 Arcapita debtors.

9 MR. DUNNE: Good morning, Your Honor. Dennis
10 Dunne from Milbank, Tweed, Hadley and McCloy. I'm here with
11 my partner, Evan Fleck, on behalf of the Official Committee
12 of Unsecured Creditors.

13 MR. MORRISSEY: Richard Morrissey for the U.S.
14 Trustee.

15 MR. SAGE: Good morning, Your Honor. Michael
16 Sage, Dechert, on behalf of SCB, Standard Charter Bank.
17 Thank you.

18 THE COURT: Anyone else who anticipates speaking?

19 (No verbal response)

20 THE COURT: All right.

21 MR. ROSENTHAL: Your Honor, when I was -- when I
22 was getting ready for this hearing I was thinking about the
23 movie, What about Bob? I don't know if you saw it, but --

24 THE COURT: I have had the pleasure if that's --

25 MR. ROSENTHAL: There was a comment made by -- by

1 -- often times in that movie that said, baby steps, baby
2 steps. So I think we actually have taken some steps, maybe
3 even just baby step, but we did have the appointment of --
4 of a committee by the U.S. Trustee's Office the Friday
5 before -- well, Good Friday, actually, the Thursday before
6 that.

7 THE COURT: And I am very happy to see them here
8 today.

9 MR. ROSENTHAL: And the committee last week
10 selected Milbank as counsel and they selected financial
11 advisors, Houlihan and FTI.

12 We have been meeting with those parties ever since
13 their selection. In fact, we started the afternoon that
14 they were selected, Thursday afternoon. We met with them.
15 We had long -- a long discussion. We had a telephonic
16 discussion Friday, which is last Friday. We had all -- you
17 know, we had telephone conference calls over the weekend all
18 in an effort to try to bring the committee up to speed as
19 quickly as possible on all of the issues that the debtors
20 are confronting.

21 A little -- a little update on some things I've
22 reported to the Court before. We are still in the process
23 of developing a protocol with the provisional liquidator,
24 but, also, with the committee. We had gone some way down
25 the road with the provisional liquidator when the committee

1 was appointed and engaged as professionals. We think it
2 should be a combined protocol that addresses the interests
3 of all of those parties. So we're attempting to negotiate
4 that with the provisional liquidator and with -- and with
5 the committee, and hope to be able to present that to the
6 Court at the next hearing.

7 With respect to bank accounts, as the Court
8 recalls when we were here before the issue was that Arcapita
9 Bank had a bank account which was where all the funds were
10 deposited, and there had been efforts made by the debtor to
11 set up a separate bank account for the Arcapita Investment
12 Holdings, Ltd. debtor at JP Morgan Chase. That account,
13 after going through some know your customer issues, was
14 opened and -- and has been funded with all post-petition
15 proceeds that were generated from sales of AIHL assets.

16 As the Court recalls, there were some condominium
17 sales that occurred after the filing of the case. Those
18 proceeds have been moved to the AI -- the new AIHL account.
19 And there's some -- some other proceeds that have come up --
20 up that AIHL chain that have been deposited in the AIHL
21 account.

22 The -- in addition, we represented to the Court,
23 and it was in the budget, that we would transfer a million
24 dollars to an account that the provisional liquidator
25 established. That account has been set up, as I understand

1 it, at HSBC. The account was funded with a million dollars.

2 We currently have, Your Honor, in terms of cash --
3 just a little update. We currently have \$161 million -- and
4 these are rough numbers -- \$161 million in cash which --

5 THE COURT: When you say "we," what does that
6 mean?

7 MR. ROSENTHAL: I'm -- I'm going to break that --

8 THE COURT: All right.

9 MR. ROSENTHAL: I'm going to break that down.
10 Which breaks down into the following accounts:

11 At the JP Morgan Arcapita account -- and -- and
12 this is as of the 13th. I mean, we're a couple of days
13 behind. As the JP Morgan Arcapita Bank account has
14 \$104,750,000. The JP Morgan AIHL account has \$4,470,000.
15 The HSBC account has the million dollars that I just spoke
16 about, and there is spread around the system for local
17 offices and in the management company accounts, which we,
18 although they're non-debtors, we have -- when Alvarez has
19 been presenting the information to the committee and when
20 we've been in discussion with the committees we've -- we've
21 wanted to give a complete picture of what's in the
22 management company accounts. There's about \$8.9 million in
23 -- in various accounts throughout the world.

24 The account list has been, I think, provided to
25 the -- to the committee and we continue to update it

1 regularly.

2 THE COURT: And those accounts that total 8.9
3 million, what entities are they for? I do have -- still
4 have your charts to the extent that it's -- they're helpful
5 to you to explain the answer to that question.

6 MR. ROSENTHAL: They're -- they're for -- they are
7 for Suntrust account for Arcapita, Inc., which is the
8 management company in the U.S.; a -- an account for
9 Arcapita, Ltd., which is a -- a -- which is the management
10 company in the U..K; the HSBC account for -- I'm sorry --
11 the limited accounts at RBS; the U.S. account for Arcapita,
12 Inc. is at Suntrust and the Singapore account is at HSBC
13 with a little over a million dollars. That's -- that's the
14 vast majority of it. There are some smaller amounts, \$2,000
15 here, \$9,000 there, \$5,000 at other places.

16 THE COURT: All right.

17 MR. ROSENTHAL: The big issue that I want to
18 report on, though, is the status of the placements.

19 The fund -- the account balances that I gave you
20 reflected the monies that have been placed with accounts in
21 Bahrain that have been returned to the JP Morgan account.
22 There are still \$35 million of funds in three accounts -- in
23 three banks in Bahrain where at least initially the banks
24 have indicated that they believe they have set-off rights
25 and have not turned the funds over.

1 We -- that's totally unacceptable to the debtors,
2 Your Honor. We -- obviously, we -- we believe the assertion
3 of the set-off is inappropriate. We have done a number of
4 things:

5 One is we've demanded the return of the funds.

6 Two, we've requested the Central Bank of Bahrain
7 in its regulatory capacity to attempt to cause those banks
8 to return the funds; and

9 Third, as you would expect, we're evaluating
10 alternatives available before this Court, including turn-
11 over actions, disallowance of claims actions and the like,
12 any -- any actions that we can to compel the turnover of
13 those funds. The goal, as I told the Court day one, is that
14 all of the monies would be either at the JP Morgan account -
15 - accounts or in the management company accounts to the
16 extent that they -- that they needed funds.

17 So I --

18 THE COURT: And the --

19 MR. ROSENTHAL: -- I wanted to report on what --
20 the status of this. We're -- we're working on it.

21 THE COURT: The three accounts that you -- you
22 said three banks and those accounts are in the name of what
23 entities?

24 MR. ROSENTHAL: I believe they're in the name of
25 Arcapita Bank.

1 THE COURT: All right.

2 MR. ROSENTHAL: But the banks themselves --
3 obviously, the banks themselves are not Arcapita Bank. The
4 entities themselves are Al Baraka Islamic Bank, Bahrain
5 Islamic Bank, and Tadhamon Capital.

6 And this is really -- this is relatively recent.
7 In fact, one of them -- \$10 million of this was supposed to
8 have been turned over today and I -- and I think was not,
9 and that's included in the number that I gave the Court.

10 Your Honor, as you call -- as you recall we've had
11 two hearings before we had -- the first hearing we had a
12 ten-million-dollar budget. We spent nothing. The second
13 hearing we had a -- we had a budget. We spent -- we have
14 spent substantially less than our budgeted amount during the
15 -- during that period. Ms. Weisse will go over that for
16 you.

17 We -- as a result of our discussions with the
18 committee, we've decided, because we want to start on the
19 right footing and we want everybody to be up to speed, we've
20 decided to take it in small pieces -- small steps, which is
21 the reason that you have before you -- you will have a
22 budget that only extends through the next hearing, which
23 Your Honor was kind enough to give us on -- on May 7th.
24 And we have -- except for the Garden City Group applications
25 we have essentially adjourned all of the other matters

1 before the Court which are primarily retention matters and a
2 motion to establish interim fee procedures, adjourned those
3 until the May 7th hearing.

4 THE COURT: I noticed that.

5 MR. ROSENTHAL: We're hoping that by that -- by
6 the time of that hearing, at least on the -- while the Court
7 may have some questions, hopefully we'll -- we will be able
8 to resolve any issues that arise.

9 Your Honor, I -- I'm going to turn it over to Ms.
10 Weisse to handle the cash management. Can I -- do you mind
11 if we do the Garden City Group first? That's the --

12 THE COURT: Not at all.

13 MR. ROSENTHAL: It's -- it's administrative. I'm
14 sorry.

15 MR. DUNNE: Your Honor, may I make a couple of
16 preliminary remarks? It will be helpful, I think, to --

17 THE COURT: Absolutely.

18 MR. DUNNE: -- in order to hear what the
19 committee's been focused on.

20 For the record, Dennis Dunne, from Milbank, Tweed,
21 Hadley and McCloy representing the Official Committee of
22 Unsecured Creditors.

23 And let me just quickly, for the Court's benefit,
24 go through who those institutions are that -- that comprise
25 the committee. Barclays Bank is one of the members.

1 They're also the chair. Commerce Bank is a member. Vr
2 Global Partners, Euroville (ph), the Central Bank of
3 Bahrain, the National Bank of Bahrain, and Arc Su Cook (ph)
4 -- and I'll have a standing apology for mangling any terms
5 related to Shariah-compliant financing services.

6 THE COURT: I'm sure you'll do better than I will,
7 so.

8 MR. DUNNE: Arc Su Cook 2011-1 and they sit
9 through Bank of New York Mellon as -- as the trustee.

10 As Mr. Rosenthal eluded to, the committee
11 concluded their selection of professionals last Thursday
12 with Milbank, Houlihan Lokey and FTI retained. And as you
13 can imagine, the days since the retention have been a blur
14 with many sleepless nights where, basically, drinking from
15 the fire hose -- I hate to use that shop-warn metaphor, but
16 it is -- it is apt.

17 And so let me just spend a few minutes talking
18 about what the committee has been focused on in those days,
19 recognizing it's the early triage phase of the case, one of
20 which has been visibility and transparency here, given which
21 entities filed, where the value is located in various non-
22 debtor entities. We need to understand those balance
23 sheets, need to understand who actually owns the assets,
24 where the liabilities reside, and the flow of funds.

25 The debtors have been sending us requested

1 information on this since Thursday and have generally been
2 very responsive to our requests.

3 The other is kind of stabilization of the
4 companies and committee oversight. At the beginning of any
5 case, and particularly with respect to financial investment
6 companies, the debtors can be faced with manifold
7 challenges, some from creditors seeking to grab assets
8 around the world with respect to non-debtors or outside this
9 Court's jurisdiction, and others from underlying structures,
10 i.e. the portfolio companies here that require funding, all
11 at a time when cash is precious and the wrong decision with
12 respect to honoring a funding call can lead to the loss of
13 those dollars that leave the system.

14 So it's essential that the committee becomes
15 quickly informed and educated as to the current as well as
16 the future value and prospects of the debtors' assets. And
17 we've been working with the debtors' advisors on this task,
18 though I have -- I have one point we have to say is that the
19 committee, particularly in the near term, is looking to and
20 relying on the debtors' advisors as well, you know, their
21 reputations, their experiences, their credibility here.

22 You know, we've worked with A&M in the Lehman
23 case. They understand the risks and the tensions in a case
24 like this. Cash is finite. The decision to redeploy or
25 reinvest that cash to make a further investment in existing

1 assets is frequently a very tough decision. There were many
2 instances in Lehman where the capital outlay simply was not
3 warranted by the likely future return on the asset.

4 More importantly, A&M is new to the company. They
5 were not involved with respect to the initial investment
6 decisions. They had no prior recommendation to continue to
7 support, and they can look at things anew. They and us need
8 to do exactly that here and I think the case can benefit
9 from a fresh set of experienced eyes to review all of it.

10 With respect to oversight, I'm not going to go
11 into it in detail, but Mr. Rosenthal touched on it. In
12 Lehman and some other financial institution cases we set our
13 protocols at the outset of the case to govern the management
14 of the estates, particularly when a lot of the decisions are
15 being made with respect to valuable non-debtor entities.
16 We're seeking to craft a comprehensive network of
17 understanding with the debtors so that we can do a lot of
18 the heavy lifting outside the courtroom. And, to the extent
19 we don't succeed, we'll at least have telescoped the issues
20 for Your Honor when -- when we come back with a
21 disagreement.

22 A third and an extremely important one,
23 particularly for today and the future hearings, is -- is
24 cash management, budgeting and related accounting.

25 This is a case like many where we have different

1 creditors holding different rights with respect to different
2 debtors. We need to do our utmost to preserve each
3 constituent's rights as of the petition date with respect to
4 their respective debtors.

5 Houlihan Lokey and FTI have been scrubbing the
6 budget to identify areas of costs that either require more
7 explanation or justification or should not be paid at all in
8 our view. We are also working on a way to minimize the
9 credit risk associated with cash leaving the system, and
10 I'll define the system as under your direct jurisdictional
11 control and coming from debtors to fund a non-debtor.

12 In Lehman, as an example -- and we're trying to
13 work out something similar here -- we insisted that such
14 funding not be effectuated unless we had documented an
15 interest-bearing note between the debtor affiliate providing
16 the funding and the non-debtor entity, and, also, provided
17 collateral to support repayment of that. We're hoping that
18 that's an example of something we can finalize with the
19 debtors between now and the May 7th hearing.

20 What we've managed to accomplish in the days is to
21 realize that the budget that takes us from here to there
22 involves very little debtor cash flowing for non-debtor
23 operations. I believe the number is \$175,000. And between
24 now and the 7th of May hopefully we'll -- we'll have
25 agreement on the longer budget and, if not, we'll -- we'll

1 have -- we'll be back to you with specific issues for Your
2 Honor to resolve.

3 Lastly, and I know this was mentioned repeatedly
4 in the -- in the transcripts for the first two hearing,
5 we're -- we're focused on other assets as well, some of
6 which are -- are contingent litigation-related assets or
7 some would provide claw back opportunities.

8 There were a number of transactions entered into
9 prior to the petition date, including Lusail that require
10 immediate review and analysis. And the Lusail one raises an
11 issue not with respect -- not only with respect to what
12 avoidance actions or other causes of action may exist, but
13 what's the accounting of the uses of those proceeds.

14 As Mr. Rosenthal mentioned, there was -- there was
15 basically a hundred-plus-million-dollars in the Arcapita
16 Bank account. I believe most, if not all of that, are the
17 proceeds from the Lusail transaction. But that was an asset
18 that the debtors believe was worth an excess of \$300
19 million, sold for 200 million, and slightly more than half
20 of those proceeds have found their way into where -- where
21 we believe they should be. So we need an accounting for
22 that and -- and to see if that is satisfactory or not. If
23 not, we'll be back in front of Your Honor in an appropriate
24 forum.

25 THE COURT: All right.

1 MR. DUNNE: And with that, that concludes my
2 opening remarks. And unless the Court has any questions
3 I'll cede the podium to --

4 THE COURT: No, I don't. Thank you. That's very
5 helpful. That strikes the same cord as a lot of discussions
6 in the first two hearings we've had in this -- this case.

7 MR. ROSENTHAL: That's right, Your Honor, and
8 you're going to hear more about Lusail, I'm sure. We have a
9 different view of that transaction, obviously.

10 THE COURT: I expected you would.

11 MR. ROSENTHAL: The -- there are two applications,
12 Your Honor, for Garden City Group and we're asking for --
13 for final orders. I don't believe there have been any
14 objections. One is to approve Garden City Group as the --
15 you know, as the Court claims and noticing agent, which is
16 required; and another is to approve Garden City Group's
17 assistance as -- in various administrative functions.

18 This is a fair -- these are fairly typical
19 applications, I believe, for how claims -- claims and
20 noticing agents are used in these kinds of cases, and we
21 would ask the Court to approve that --

22 THE COURT: All right. Does anyone --

23 MR. ROSENTHAL: -- those two.

24 THE COURT: -- want to be heard as to the two
25 applications to retain Garden City Group?

1 (No verbal response)

2 THE COURT: All right. I will grant both those
3 applications.

4 MR. ROSENTHAL: Thank you, Your Honor.

5 MS. WEISSE: Good morning, Your Honor. I'm Janet
6 Weisse for -- from Gibson, Dunn and Crutcher for Arcapita.

7 We are here today on what is the third interim
8 budget. Mr. Dunne, I think, said correctly these are very
9 modest amounts and they are, in fact, baby steps.

10 Pursuant to the budget that we filed was a six-
11 week budget, but to accommodate the committee we are
12 limiting our request to a three-week -- three-week budget,
13 but it excludes two items which is a \$1.1 million funding.
14 If Your Honor has the budget you will see -- which is in a
15 couple of places, although not currently right in front of
16 me.

17 THE COURT: And that's document -- I guess that's
18 on the docket as Document 72 filed April 13th.

19 MS. WEISSE: Yes.

20 THE COURT: Am I looking at the correct one?

21 MS. WEISSE: Yes, Your Honor.

22 And if you look at -- in the consolidated budget
23 you'll see a line item in the weeks that's from May 6th,
24 2012 to --

25 THE COURT: All right. Let me --

1 MS. WEISSE: -- May 12th --

2 THE COURT: Let me just make sure. There's a
3 couple of pages here. What page are you on?

4 MS. WEISSE: Well, if you --

5 THE COURT: First page?

6 MS. WEISSE: -- look at the top, I'm not sure if
7 it's in the same order, but it says, "Cash Flow Forecasts
8 Consolidated."

9 THE COURT: Okay. So that's -- that's Page 1 of,
10 I guess, 3.

11 MS. WEISSE: Okay. Okay.

12 THE COURT: Oh, I'm sorry. There's -- this is a
13 multiple-page document. I guess this is Page 3 of 5, then.

14 MS. WEISSE: It's --

15 THE COURT: All right.

16 MS. WEISSE: Okay.

17 THE COURT: I think I'm there.

18 MS. WEISSE: Oh, it is. Yes.

19 THE COURT: So cash flow forecasts consolidated
20 for the period ending June 2nd, 2012.

21 MS. WEISSE: Yes. And so --

22 THE COURT: All right.

23 MS. WEISSE: -- there are two items that we're not
24 seeking approval for. If you look down to the deal funding
25 and expenses, there's a \$1.1 million deal funding request.

1 THE COURT: And that's for real estate. Is that
2 correct?

3 MS. WEISSE: It's -- that's right. That's for one
4 of the underlying real estate investments.

5 THE COURT: And that's listed in the column that
6 says, "5/6/12 through 5/12/12"?

7 MS. WEISSE: Yes, Your Honor.

8 THE COURT: All right.

9 MS. WEISSE: The second one is listed in that same
10 third week. It's under intercompany transfers and it's an
11 \$802,000 item.

12 THE COURT: All right. I see the 802 showing up
13 in two different line items. Both say -- one's cash inflows
14 and one is cash outflows. Okay. All right.

15 MS. WEISSE: What essentially that is, and there
16 might be a parentheses missing on one of those, but,
17 essentially, that was going to be an outflow of cash from
18 the debtors to non-debtors. And we're not --

19 THE COURT: Right.

20 MS. WEISSE: -- seeking approval of that.

21 THE COURT: I figured no one would object to an
22 inflow of cash.

23 MS. WEISSE: No. No, Your Honor.

24 And so with -- with those two changes I'm going to
25 refer to the budget as the three-week light budget because

1 in all references I'm making is to the three-week budget,
2 but minus those two expenditures.

3 THE COURT: All right. So we'll call it the
4 modified three-week budget.

5 MS. WEISSE: Okay.

6 As Mr. Dunne mentioned, in terms of funding
7 investments, the debtors are asking during this period only
8 for \$175,000. The request is to fund certain fees in
9 connection with the development of real property, and that
10 \$175,000 outlie (sic) -- outlay is to preserve the
11 opportunity to earn \$9 million in fees and development fees
12 later on, if the project is successful.

13 THE COURT: And it sounds like you're applying the
14 same standard as was discussed at the prior hearings, which
15 is it -- the payment is necessary to preserve a right that
16 the debtors believe, in acting in their fiduciary capacity,
17 is -- is a valuable asset of the estate.

18 MS. WEISSE: Yes, Your Honor. And that -- that
19 brings up my next point is that we filed last night rather
20 late a declaration of Mr. Lawrence Hirsh (ph) from A&M.

21 THE COURT: I have it.

22 MS. WEISSE: Okay. Mr. Hirsh is with A&M. He is
23 a managing director. You'll hear, I think, throughout these
24 cases that they've been really scrubbing the budget.
25 They've spent a lot of time both with the debtors and with

1 the committee going through these numbers. They spent an
2 extraordinary amount of time going through the funding
3 requests that would be up in this six-week period, and
4 significantly reduced the funding requests just to those
5 that meet the standard of irreparable harm, preservation of
6 the value of the asset, or preventing the incurrence of the
7 fee or a cost that otherwise wouldn't be incurred.

8 THE COURT: All right.

9 MS. WEISSE: And so Mr. Hirsh's declaration covers
10 a much broader period during the six-week budget, but in --
11 it does cover the \$175,000 payment, is within this amount
12 and Mr. Hirsh would testify that it is -- it does meet that
13 standard.

14 Under the three-week budget, in addition to the
15 \$175,000 that's going out to fund a deal expense, there's
16 also an outflow of about \$1.2 million to -- to non-debtors.
17 Essentially, most of it is the SG&A of the management
18 companies, which are the non-debtor entities that manage the
19 assets which comprise, basically, the value of this debtor -
20 - these debtors.

21 There's also an inflow of cash during this period.
22 It's approximately \$2.9 million, and the bulk of that, or
23 2.7 of it, relates to the sale of a condo project or
24 individual condo units in the Elysian (ph) project. That's
25 an asset that is one of the non-debtor entities that is

1 below the AIHL entity.

2 And with Your Honor I would like to approach the
3 Court with a copy of our chart. We have extra copies of it.

4 THE COURT: Certainly.

5 I confess, I still have a copy of -- if that's the
6 same thing that's been provided earlier.

7 MS. WEISSE: It is.

8 THE COURT: All right.

9 MS. WEISSE: This is --

10 THE COURT: Then -- then I'm good because I have
11 some --

12 MS. WEISSE: Okay.

13 THE COURT: -- notes on this one already.

14 MS. WEISSE: This one is a little harder to read
15 than, I think, the three-by-five version on my wall. But,
16 essentially, the point is -- and there is some misleading
17 elements of this chart, which is --

18 THE COURT: All right. Which -- I am assuming
19 you're on the chart with -- of the two charts --

20 MS. WEISSE: Exactly.

21 THE COURT: -- the second one.

22 MS. WEISSE: Exactly.

23 If you look under -- the entities in yellow are
24 debtors. If you look under Arcapita Bank, you see a wholly
25 owned subsidiary is Arcapita Investment Holdings, Ltd.

1 That's what we refer to --

2 THE COURT: Right.

3 MS. WEISSE: -- as AIHL.

4 THE COURT: AIHL.

5 MS. WEISSE: If you look, it looks like they're
6 sister companies and you can see that it says, Arcapita
7 Limited Holdings, Arcapita LT Holdings, Ltd.

8 THE COURT: Right. I --

9 MS. WEISSE: That's --

10 THE COURT: That's -- I think it had been referred
11 to as the AIHL sub.

12 MS. WEISSE: Exactly. That's the AIHL sub and, in
13 fact, it's a wholly owned subsidiary of AIHL.

14 When you look down on the right hand side and you
15 see these, I guess, tangerine-colored boxes, these are
16 essentially the asset side. The Elysian Condo project is
17 within this group of assets and, essentially, comes up the
18 chain through AIHL sub to AIHL. And as we have reported to
19 the Court, we're depositing funds into the bank account
20 established at JP Morgan for AIHL.

21 The reason I point this out, Your Honor, is that
22 there are some claims that are at AIHL sub that don't exist
23 at the other -- or that do exist at the other entities, but
24 that are structurally senior. And so what this order does
25 is tries to preserve the status quo.

1 So with respect to money that comes up from these
2 Elysian condos, we're giving AIHL sub the administrative
3 claim with respect to those funds. So it preserves the
4 status quo of the entity structure.

5 THE COURT: All right.

6 MS. WEISSE: We've proposed a couple of other
7 administrative expense claims along the line with the first
8 claims in the first budget, which is if they are intra --
9 intercompany debt transfers, they will be administrated
10 expense claims on -- to show those transfers. And so that
11 there's not any co-mingling and we can keep track of those
12 transfers.

13 We have spoken to the creditors' committee and to
14 counsel for Standard Charter. We have what is an agreed
15 upon order, some of it the language is not quite hammered
16 out, but in concept it is. I would like to just go through
17 a couple of those provisions in addition to those two.

18 THE COURT: Sure. Let me just -- so I don't
19 forget to ask. If you would be so kind, if we're going to
20 spend significant time in future hearings talking about the
21 so-called tangerine-colored boxes as well as the green-
22 colored boxes, meaning the asset side and the working
23 capital facilities, it would be great to have just those on
24 a separate chart because, I confess, you've -- you've
25 shattered any illusion I have as to whether I need reading

1 glasses. But even -- even giving in to --

2 (Laughter)

3 THE COURT: -- throwing -- tossing vanity aside,
4 it's -- it's a tough read.

5 MS. WEISSE: Okay.

6 THE COURT: Thank you.

7 MS. WEISSE: I understand that, Your Honor.

8 In addition to the administrative expense claims,
9 during this period we are also providing -- we've agreed to
10 provide accounting to Standard Charter for the funds that
11 flow up from the entities that are in the tangerine boxes up
12 through AIHL sub. And we'll put the specifics in the order
13 and we'll work out the language, but, essentially, we're
14 agreeing to give an accounting to Standard Charter so they
15 can see what assets flow throughout that chain.

16 And we'll also agree at an undertaking that the
17 debtors will take some time and explain it to the extent
18 that Standard Charter has any questions about that.

19 The other thing we've agreed to -- and I should
20 note that other than that \$2.7 million transfer from the
21 non-debtors to the debtors, there are no other intercompany
22 transfers during this modified three-week period.

23 THE COURT: All right.

24 MS. WEISSE: The -- and I think -- I think I've
25 covered all of it, although I'm sure -- counsel for Milbank

1 is here. They can tell me if I've missed something.

2 In addition to that, this order continue and the
3 relief that was granted on an interim basis and the other
4 two orders continuing using the cash management system, the
5 bank accounts, all subject to the order, in continuing,
6 again, the intercompany transactions subject to the
7 provisions we have in this. I will report to the Court that
8 we have already modified the business forms so there's a
9 notation now that it's debtor-in-possession.

10 And I think with that those are the main points of
11 the order.

12 THE COURT: All right.

13 All right. Anyone want to be heard in connection
14 with this interim order and the proposed order that was just
15 discussed?

16 MR. SAGE: Yes, Your Honor. Michael Sage, again,
17 from Dechert, LLP, for Standard Charter Bank.

18 We had filed an objection to -- to this motion and
19 in view of the committee's recent appointment and the fire
20 hose experience that they're having, we decided to -- and
21 the ability to work out some changes to the order, we
22 decided to withdraw the objection for now. We would note
23 that there may be a reason to reinstitute that objection if
24 there's a future interim order or a future final order. But
25 for -- but for now we're not going to pursue the objection.

1 THE COURT: All right.

2 MR. SAGE: I -- I will also note that there are a
3 few other items not described by Ms. Weisse that we agreed
4 to. But I'm confident that we'll be able to work that out
5 with her and her team and get that into the order. So --

6 THE COURT: All right. And, certainly, the issues
7 raised in your objection are issues that we have been
8 chatting about in this case at the first two hearings. So I
9 think that some progress, significant progress has been made
10 and, hopefully, we'll -- we'll -- we'll continue to make
11 progress on both -- on all those fronts.

12 MR. SAGE: We hope the same thing.

13 THE COURT: All right.

14 MR. SAGE: Thank you.

15 THE COURT: Thank you.

16 Any other comments to the request to enter this
17 interim order and any particular things that need to be
18 noted for the record?

19 (No verbal response)

20 THE COURT: All right. Given that there's
21 agreement on this, I appreciate the parties' efforts to --
22 to reach a consensus on this. I -- I know there is a --
23 definitely a fire hose problem in terms of getting
24 everyone's brain wrapped around the operations, but I
25 appreciate all the efforts that the parties have made and

1 I'm happy to approve the interim budget through the period
2 that will take us to May 7th, at which point we can discuss
3 whether we're talking about another interim order or a final
4 order.

5 And I would just ask if you could give chambers an
6 update at -- at your earliest convenience that -- that week
7 before just to let us know what we expect to be -- to be
8 addressing at that hearing.

9 MR. ROSENTHAL: We will do that, Your Honor.

10 THE COURT: All right.

11 MR. ROSENTHAL: Your Honor, I'm -- do you have
12 room on your wall? We can send you a three-by-five if you
13 want.

14 (Laughter)

15 THE COURT: Well, this actually is a very useful
16 size because I can bring it out with me --

17 MR. ROSENTHAL: Okay.

18 THE COURT: -- and so I -- I anticipate we may end
19 up spending some time chatting about both those -- those
20 sets.

21 MR. ROSENTHAL: Well, we'll try to make it
22 slightly larger --

23 THE COURT: And I already have a --

24 MR. ROSENTHAL: -- typeface.

25 THE COURT: -- a comically large calendar that I

1 occasionally drag out here, so I -- I don't want to be the
2 subject of too much ridicule. So -- so that will be great,
3 at your convenience, just because I expect we'll end up
4 having some chats about those.

5 MR. ROSENTHAL: Okay. Thank you for your time.

6 THE COURT: Anything else we need to address?

7 MR. ROSENTHAL: We do not.

8 THE COURT: All right. If you would get chambers
9 a copy of the orders once you iron out that last bit of
10 language. I would say wait to send them all in one email so
11 that we know we have the finals of everything.

12 MR. ROSENTHAL: I will do that. Thanks --

13 THE COURT: All right.

14 MR. ROSENTHAL: -- for your time, Your Honor.

15 THE COURT: Thank you.

16 MR. DUNNE: Thank you, Your Honor.

17 (Whereupon these proceedings were concluded at 12:07
18 p.m.)

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I N D E X

RULINGS

| DESCRIPTION | PAGE | LINE |
|---|------|------|
| Application to Employ GCG, Inc. as Administrative Agent -- Debtors' | | |
| Application for Entry of Interim and Final Orders Authorizing and Approving the Employment and Retention of GCG, Inc. as Administrative Agent for the Debtors and Debtors-in-Possession Nunc Pro Tunc to the Petition Date | 20 | 1 |
| Application to Employ GCG, Inc. as Claims and Noticing Agent, Debtors' Application for Interim and Final Orders Appointing GCG, Inc. as Claims and Noticing Agent for the Debtors | 20 | 1 |

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I N D E X (CONT.)

RULINGS

| DESCRIPTION | PAGE | LINE |
|--|------|------|
| Motion to (A) Authorizing Debtors to (I) Continue Existing Cash Management System, Bank Accounts, and Business Forms and (II) Continue Ordinary Course Intercompany Transactions; and (B) Granting an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code | 30 | 20 |

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

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

SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber

CERT*D -397

Veritext

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Date: April 18, 2012