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, NY 10004

March 4, 2013

2:00 PM

B E F O R E:

HON. SEAN H. LANE

U.S. BANKRUPTCY JUDGE

ECRO: K. Harris

HEARING re Doc #843 Motion to Authorize/Motion of Official Committee of Unsecured Creditors for Entry of an Order Pursuant to Fed. R. Bankr. P. 2004, 9006, and 9016 Authorizing Expedited Discovery from the Debtors

Transcribed by: Theresa Pullan

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good afternoon. Please be seated.

All right. We are here in Arcapita Bank B.S.C. for a motion to authorize entry of an order pursuant to certain rules for expedited discovery from the Debtors. So I believe it's the Committee's motion.

MR. DUNNE: Good afternoon, Your Honor, Dennis Dunne of Milbank, Tweed, Hadley & McCoy on behalf of the Creditors Committee.

I think you're right, Your Honor, the sole matter on today's agenda is consideration of the Committee's Rule 2004 motion to compel the debtors to produce certain documents to the Committee; the debtors have objected to that relief. We filed a reply pleading this morning. With Your Honor's indulgence I propose to briefly describe the relief requested and the reasons therefore and show the Court why the Debtors' objection should be overruled.

THE COURT: All right. Let me share a couple of preliminary thoughts that may assist the parties in their remarks.

One is there seems to be a dispute about whether it would be a violation of Bahraini law to grant the relief requested. I will say that I don't have any confidence one way or the other based on what I have in front of me as to whether

that's the case or not. I'm not an expert in that particular area. And so that is a problem that I currently have trouble figuring out how to resolve based on what I have in front of me.

The second comment is more broad. It relates to the Committee's need for information to figure out what makes sense in this case, to put it in non-bankruptcy terms. That is what a plan would look like and how feasible a plan would be and how likely a plan would be to succeed in the managing of these assets for the recovery of its constituencies. At the same time, I am having some trouble identifying the specific identities of these I guess I'll just call them broadly investors as being the operative issue. I certainly understand that there's a question about what does the management look like, and I guess the word governance was used going forward after a plan for these assets, and who has what rights to upset that apple cart. I'm not sure how much of that has been disclosed, whether all of it's been disclosed, but the specific identity of the investors I'm having trouble seeing how that would change that calculus in terms of what the agreements are. I can see why it would be the subject of negotiations for a plan to try to nail down certain of those items so that people live in a world of certainty rather than the world of uncertainty, but the identity of these individuals it seems to be the only live dispute I have in front of me, is a little

less clear to me as to where that fits in the picture, so.

MR. DUNNE: Thank you, Your Honor. Those are helpful preliminary comments. I do address both of those points here. I do want to be clear at the outset and then I'm going to give some background which I think is helpful, that we are seeking not only the identity but to figure out precisely who owns what with respect to particular assets. The advisors of the Committee have spent a lot of time, there were some investments that Arcapita made that frankly aren't very valuable right now. There are others that are valuable and the creditors are going to receive a disproportionate amount of their recovery from a few of the investments that they have done. So it matters greatly who matches up with what asset in terms of who you need in order to maintain their current relationships with Arcapita with respect to those assets in order to maximize value.

And let me just set it out specifically, Your Honor. The Committee seeks to receive and review information relating to the Debtors' co-investors, particularly to one receive all the proxies executed with respect to any company in the holding structure and a current share register for each entity in the holding structure, which will also identify the investors in the syndication companies.

And that brings me to my first factual point which is that this motion and the related dispute all stem out of a unique structure for what we view as a private equity

investment house. If this were a U.S. private equity firm, say a Blackstone or an Apollo or Behm (phonetic), when they raise money, they would raise it through a separate fund, it would be Apollo Private Equity Fund 1, 2, 3, 4, 5 or 6, and the investors who wish to make money based on Apollo's investment decisions would become limited partners in Apollo Private Equity Fund 1, 2 or 3. And then when Apollo went out to purchase a company, that would be its portfolio company, that new fund would buy the equity of the portfolio company, and the fund would be the equity owner of a particular portfolio company and the investors would be limited partners up top with respect to that investment vehicle.

Arcapita did it very differently. They brought the co-investors in at the deal level or very close to the deal level and not through a formal private equity fund. As a result of that decision, the co-investors own the equity interests themselves in many instances and in some of them Arcapita owns directly less than 20 percent of the equity, but Arcapita manages the entire portfolio. Through a series of proxies and administrative agreements, it manages 100 percent of the equity. So they're managing it as if were Apollo or Behm, but the structure is different and it matters greatly because those relationships through the contracts that the co-investors have back into Arcapita to manage the underlying assets are key rights of the estate. We think they're critical

drivers of value to the estate.

THE COURT: Well let me ask you whether you've gotten all the information you seek as to those rights. That is the rights to control potential change of control and things of that sort.

MR. DUNNE: We have not. What we're seeking here is to figure out by specific deal who owns what. I know what Arcapita owns, and I know that --

THE COURT: That's a slightly different question. Right? The identity of who owns certain things is one thing, and it may tell you who you want to talk to about various issues, but the structure of the entities involved and who has the right to what control and under what circumstances those rights may change, that's sort of my question, which is is there any outstanding discovery or information you don't have that addresses that question -- that is agreements, signed agreements, any of that kind of material.

MR. DUNNE: I think that we generally understand the legal structure as Your Honor was just positing it in terms of with respect to each portfolio company, how is the investment made, where do the co-investors come in, it's kind of amorphous group. We know the percentage and aggregate that Arcapita does not hold directly with respect to each of those, and we've seen samplings of the relative contracts that govern the proxies and administrative agreement so that we can figure out generally

what the rights of the co-investors are. In simplified format, Your Honor, this is no different than if the Debtors owned a joint venture and the Committee sought to identify who is your joint venture party and what percentage ownership of the JV do they have.

The Committee believes it's met cause for Rule 2004 in large part because of our statutory duties and our fiduciary duties. We are not an adversary or a competitor here. We're seeking to simply find out what is the best solution for the company. And we think that these contracts and who is on the other side of these contracts is important to the discharge of our duties under 1103 where it says we have the right to investigate the financial condition, assets, liabilities of the Debtor. Clearly, these contracts are an asset of the Debtor.

Why are we here, Your Honor? I think we're going to begin to get into the key part here. Why haven't the Debtors just provided the information to us? I think the answer to that question illuminates the difference between the Debtors and its management. It --

THE COURT: Well before we get to the Debtors, I just want to get a better sense of what it is you're looking for and why you're looking for it. The Debtors make the argument that this is not really relevant to the extent that we're talking that the identity of the investors the Committee already knows who has what rights, how the agreements are structured,

anything dealing with change of control and that therefore talking to these folks won't change any of that, and therefore won't change any -- I think the next step is won't change any understanding of how post confirmation things would be managed, but rather the only issue is one of identification. And first let me ask you whether you agree with that characterization or not.

MR. DUNNE: I was going to say no. But I agree with it in the sense that that is the first part of what we need to understand and assess. Without the identities of who these investors are and map it to particular deals, we cannot answer all the questions we need to answer. Let me tell you what those questions are.

THE COURT: All right.

MR. DUNNE: I think that's what Your Honor is driving at. I think that we've all recognized from the beginning of the case, that given this unique structure that I described that there was a risk inherent in this transaction. And what is that risk? That those co-investors, the yet identified co-investors would terminate their proxies, terminate their rights to have Arcapita manage the underlying assets. What we didn't think was a risk but turns out that it is a risk is that management including insiders of the Debtors have decided to pursue a path where management sets up a competing company, sets up a new co facilitates or urges the co-investors to

terminate their relationships with Arcapita and move their proxies and management from Arcapita to new co. They told us that they intend to do that and there's no looking back. We need to find out who the investors are, and we've heard rumors that investors aren't happy with management, they may be happy with management. We cannot be put in a situation where the only viable alternative for this company is to sever that relationship, have management set up Arcapita 2 across the street and say well that was a risk that was always inherent in the structure, Mr. Dunne, but I'll do you a favor. For a price, I'll manage your asset back. So it would have been the worst of both situations where we don't have an opportunity to see if we can keep the assets in the estate today. What are those assets? The proxies, the right to manage this. There's control premiums that go with being an investment bank that can deliver to a purchaser of assets 100 percent of the equity as opposed to 17 percent or 20 percent.

THE COURT: Let me get a sense, so just back up for forest and tree purposes of what is provided for in the plan and what is contemplated for going forward in terms of these, the management of these assets until I can understand where new co fits into this, because obviously you all are very much in the weeds and I'm not there. And so I'm just trying to get a sense of what and how fixed the information in the plan is or isn't, what the timing is and how all that relates.

MR. DUNNE: It's a good question, Your Honor. There's not much of this at all in the plan. This is subject to negotiations that have been going on. When I was last here, I mentioned that we had spent a lot of time prior to the filing of the plan on the economics on the allocation of value creating the --

THE COURT: Right. The interested allocation was the big issue.

MR. DUNNE: Right.

THE COURT: And this sounds like it's the next big issue.

MR. DUNNE: This was the next big issue, precisely. And so the plan is going to have to be revised. There's not a lot in it, it doesn't describe precisely how the company is going to be managed going forward.

THE COURT: All right. Well what -- is there an informal proposal? Because obviously what I'm trying to do is figure out for purposes of the case moving forward what's relevant and what's not relevant. And it's very difficult for me to do that in a vacuum. 2004 is very broad, but at the same time it's got to be tied to something. So I'm just trying to figure out what it is that essentially you're responding to because, when I hear that the Debtors are entitled to a chance to essentially make their plan work, it's got to be tied, this is all tied to the case moving forward. So can you give me any

kind of a skeleton as to what the framework is that's being discussed so I can try to get this --

MR. DUNNE: Yes. And this is -- yes, Your Honor. And let me kind of drill down on that a little bit because this is all, it's a fluid process, and there have been meetings going on over the past several weeks. We've received proposals, we have given our ideas on what might work, and one of the proposals from the company is along the lines that I described that they're saying you know they're hearing noise from the co-investors that don't know what's going on, don't know who is going to run this company at the end, and in order to soothe those feelings of the co-investors, management will create a new co, new co will not be under Arcapita it will be as it implies a new corporation, and it will then be the beneficiary of the management rights of those co-investors, and Arcapita will be left with what it owns directly, X those management rights. And what we own directly are highly illiquid minority positions in a number of investments. And one of the key drivers to value is the right to do more than that and manage the co-investors' investments as well.

There have been suggestions and in fact one was about to take place this week in a meeting in Bahrain to meet with co-investors, and to talk to them about the plan. It is very difficult for us to assess the co-investors' position as a result of such meeting without knowing when person X says

something, which deal does it relate to, what ownership does this person have. If somebody expresses a strong feeling about management pro or against, it matters greatly whether that investor has 2 percent of a portfolio investment that we don't think is a large driver to value or whether he's a 30 percent owner of a particular investment that we think will drive value to creditors. And this gets to the nub of the problem, Your Honor. To go through this process without this information gives management a leg up. they --

THE COURT: Well let me back -- and again, I'm sorry to interrupt you, but I'm just trying to get some traction on some of the forest kind of questions. What is said in the plan that the idea is to liquidate the holdings, what was contemplated by that in terms of level of specificity or lack thereof?

MR. DUNNE: The lack thereof is --

THE COURT: Right.

MR. DUNNE: That goes to the –-

THE COURT: But was there a timeframe, was there any discussion of, is there any discussion of structure? Maybe I'm asking the same question I already asked, but I'm just trying to get a sense of that, so in other words whether this idea of while keeping Arcapita's rights, most of its rights to the portions it owns, by farming out its rights to manage other parties' share of those assets, was that something that's been

contemplated before or anything in the wind?

MR. DUNNE: Well, Your Honor, this is not what was contemplated by our side. What we knew -- let me just go through it.

THE COURT: So we had a plan that was really on this issue of complete placeholder.

MR. DUNNE: Correct. And we're talking about those things now. For instance, should you have a schedule of time to go to market on particular assets, and would you be a seller if you hit certain minimum thresholds. We're talking about those things now, but it's all against the backdrop of only one viable path which is whatever management wants to do because you're saying they control the co-investors. Said another way, the Committee is ultimately agnostic, Your Honor, as to who manages the assets and ultimately agnostic on the structure. We are not agnostic on the process because we need to get to a place where we're convinced it is the best available alternative. And what this is preventing us from having a meaningful look at is could you bring an alternative asset manager. Do you need the current asset manager to do it? Do you need the current managers of Arcapita to do it? Or is there a private equity firm that could run this and get the confidence of the co-investors, and drive value to the unsecured creditors? That is something that we feel statutorily obligated to explore. And I posit that the only

reason we don't have the information is because it gives management a leg up when basically management is in competition with the estate right now because the most valuable assets are not the minority positions of equity, it's the proxies, administrative agreements and the other contractual relationships with the co-investors. And what management is saying is that's gone, the co-investors aren't happy, we're going to terminate that, we'll set up a new co and then we'll charge us, charge Arcapita back for new co to manage our assets. That may be the only viable path forward, but it may not be. And without having a direct interaction with the co-investors, we'll never know.

THE COURT: And it's not a new co for purposes of in your view of bankruptcy law, that is a reorganized debtor, but rather a new company that's essentially offering services to the reorganized debtor.

MR. DUNNE: Correct. And I should have been clear on that, Your Honor, and I apologize.

THE COURT: No, that's fine.

MR. DUNNE: Because there will be a reorganized Arcapita, but it will only have half of -- view its assets in two buckets, one is the equity it owns and the other bucket being the management rights it has vis-à-vis the co-investors. What the proposal is reorganized Arcapita will only have half of that, it will have the equity interest, and then the other,

the proxies in the administrative agreements will go to this new co. New co will not be in the Arcapita family chain, it will be founded by management.

THE COURT: Well the reason why I also asked about what's in the plan or what the understandings are is am I right in saying that the management of the assets is important also to the extent that the reorganized debtor is looking to liquidate assets in a way that is more time sensitive for recovery for the estate than someone else maybe who is interested in more of a long term investment. That is, it's not just a matter of it being a valuable right, there are timing issues involved and if you give up those rights, you lack the ability to influence the timing.

MR. DUNNE: Correct, Your Honor, I mean the very short answer is that is correct.

THE COURT: Right.

MR. DUNNE: And to just tease that out a little bit - -

THE COURT: In particular if you're a minority holder.

MR. DUNNE: Correct. And if new co is this vehicle to provide management with basically Arcapita 2, right, another investment vehicle that you could raise new money, do new investments, they're going to look to have that be a platform for their career, and they may want to have a portfolio of

assets that are on their books for a period of time until they get traction with new investments and the like. Said another way, they may look at an opportunity to liquidate all the investment in this portfolio if that occurred in the near term very differently if it stayed within Arcapita as opposed to being in new co and it was supposed to be a springboard for their next phase of their career in bringing in new business, because everybody wants to say first question out of every investor's mouth is what is your assets under management, how much do you manage.

THE COURT: Well, can I ask it this way? To take it out of the sharia compliant financing context, isn't it possible just like it was in the financing context to essentially have this be a plan negotiation about the other entities out there to manage these assets, and it can either be acceptable or not acceptable for purposes of a plan because it's going to be voted on and folks will get a chance to weigh in after the process that would occur in that, on that question?

MR. DUNNE: Yes and no, meaning it's different, you could certainly do that, you could certainly say in the plan process we will have a formalized procedure to see if there are other asset managers that could come in here and do this more effectively, you know, more cheaply. But there's a big issue and a big contingency, and that is whether or not that asset

manager will get the confidence of the co-investors, because the co-investors, if we just emerged, the co-investors could become organized, I submit it shouldn't be with the facilitation of insiders and management, but we'll put that for another day, but the co-investors could become organized and terminate their contractual relationships with Arcapita. So what you need to determine, and that's what we're trying to do in the near term, is whether there would be alternative asset managers that would be acceptable to the co-investors. And for all we know, the co-investors could say, you know, we've been disappointed with returns in Arcapita. We would actually welcome an asset manager that we could get comfortable with and we know that there are some that do a lot in the Mideast. We haven't been able to have that dialogue, we don't know who owns what where which is part of the issue here. Your Honor, so it's not completely an issue for creditors to vote up or down on in a plan context because the co-investors are over here, and they could wait it out --

THE COURT: It's a function of the way this whole entity is organized --

MR. DUNNE: Correct.

THE COURT: -- in terms of having minority interests.

MR. DUNNE: Correct.

THE COURT: Let me ask, one of the concerns that I don't know changes that much but maybe it does depending on the

number, I saw a number that talked about individuals and persons, I guess is a better phrase, number was 1300 or so, in your view, I assume that you are, the Committee is most concerned with those who are large stakeholders here, in other words, the ones who are going to really effectively make the big decisions.

MR. DUNNE: That is correct, Your Honor.

THE COURT: Is there any sense of what that cut looks like?

MR. DUNNE: We don't have a sense of how the percentage ownership kind of ratchets down on those numbers. But I do want to make one point on this because we were drawing the opposite comfort until recently by the size of the co-investors. The universe of the co-investors was so significant that it gave, it made it seem less risky than otherwise, that they would band together and organize in a way that was disruptive to Arcapita if we kept everything in place. That's changed because management said they've heard some rumblings from some and they're going to go out to the co-investors or have gone out to the co-investors with this notion that we're going to have a new co. If they're facilitating that, it's likely to happen. And we need then to see what the co-investors think about it. And I don't know whether having a cut off line means that you're never going to find out what, you know, 60 percent of the, you know, LPs think about it. I

just don't know whether we quickly get down to 2 percent holders or, you know, a fraction like that. But I agree with you, Your Honor, once we get the information we propose, we'll see the 13, 1400 co-investors, obviously we're not going to spend significant time or any time with the small ones, and it may be that a number of them own fractions of a percent of investments in these vehicles.

Let me address a couple of the other points that were in the Debtors' objection, one of which is that the Committee is somehow a competitor. I'm not going to spend much time on this other than to say it's not true, the Committee is not a business, we don't operate, we're juridical beasts that exists solely as a representative of the unsecured creditors and solely to maximize value of Arcapita. And with respect to the members of the Committee, Your Honor, no member as far as I know competes with Arcapita, none of them is a private equity firm, let alone one that is sharia compliant or focused on raising funds from Mideast investors. But if there was one or more members of the Committee that were competitors which they are not, that would not be a basis for denying the motion, it might require us to interpose additional restrictions with respect to those members. But we don't even have to debate those terms here because there are no competitors on the Committee.

Let me turn to the local law issue, Your Honor. The

debtors argue that local Bahraini law prohibits a disclosure of this information. I have a number of points here because I suspected that this might be an argument that would be difficult for Your Honor to get comfortable with. First of all, let me say that the Committee has retained Bahraini counsel months ago in the case, he's actually in the line, Jalil Al-Aradi of Hussan Radhi is on the phone available to answer Your Honor's questions on this. We also filed a declaration. So let me just tic through why we think entry of the order does not violate Bahraini law.

First, as Mr. Aradi said in the declaration, the debtors misstep the law, there's an exception to the extent disclosure is permitted or ordered by a court of competent jurisdiction. This Court undoubtedly is a Court of competent jurisdiction. Indeed, the Debtors affirmatively sought out Your Honor and availed themselves of this Court's competent jurisdiction.

Second, a number of the investors' names have already been given to Milbank and the Creditors Committee's advisors. They were given to us to facilitate at the beginning of the case our conflict searches so that our retention affidavits could be as complete as possible. They were given to us on a request that we not share them with our clients and we have abided by that request, so we have not shared that with our client but seek to do so now for this, you know, we're

ultimately the agents, the clients are the principal and the members need to see this and be advised of it. I raise this simply to say that to the extent Bahraini law prohibits such dissemination, the debtors have already crossed that disclosure bridge. And so what we're seeking to have that hasn't already been done at least with respect to the advisors is to have them map those investors to particular deals and particular percentage ownership and to ensure that we have complete information.

Fourth, and this is again a Bahraini legal point, the law applies to customers of the bank. As our Bahraini counsel opines in his declaration, the parties we are talking about today are not customers, they are co-investors. They are co-investors of an investment bank not a commercial bank. As a result, the law even if it's broadest interpretation does not apply.

Your Honor, the debtors filed for chapter 11, it's a voluntary case. They sought out the benefits of our bankruptcy process, the discharge that comes with it, they knew the disclosure obligations of such a filing, and they should not be allowed to shirk those burdens now when they believe it is inconvenient for them to do so.

Last point on this, and I mentioned this earlier. The debtors have invited the Creditors Committee to Bahrain to meet with co-investors. Clearly their identity would be made

known at the meeting during the exchange of business cards. The suggestion of a meeting with the co-investors shows us that the dispute is really not about local law or the identity of the co-investors, but about management's desire to regulate the process going forward to maximize the chance that they're perceived as indispensible vis-à-vis the co-investors. And then whatever price comes associated with new co will have no choice.

Your Honor, let me address another point they made, which is that we're somehow interfering with exclusivity. The debtors argue that the Committee is not entitled to complete [indiscernible] information regarding the debtors' assets and liabilities because it somehow violates exclusivity and may constitute an impermissible solicitation of votes on a plan. First, Your Honor, we believe that under the statute, Section 1103 and our duties, we're entitled to receive the information that relates to the assets of the company. These are valuable contractual rights. I think that ends it. What the Committee does with it is a separate matter, and I don't think is a basis for denial of the motion. Said another way, the Committee will comply with its duties and applicable law. It always has and always will. The debtors are asking Your Honor to posit a world where the Committee acts in bad faith or breaches some legal tenet, and once the Court accepts that conjecture as to future behavior as gospel to use it as a basis for denying the

motion. Under the Third Circuit Century Globe decision and others, this does not constitute a breach of exclusivity or impermissible solicitation. It would not even constitute a beach were we to talk with the co-investors.

Second, exclusivity and solicitation periods are a debtor's right, Your Honor, and not management. Here management says they are talking to the investors about leaving the Arcapita fold and creating Arcapita 2, notwithstanding management's noncompete agreements which may be a separate issue for Your Honor, and thereby stranding the debtors with only illiquid minority positions. And they'd like to cloak those actions under the guise of exclusivity. They'd like to use exclusivity to ensure there is no alternative or competition to their new co proposal. Exclusivity is not designed to entrench management or give them a leg up in discussions with their creditors. And in fact it falls to the Committee to make sure that that doesn't happen and to ensure the unsecured creditors at large that whatever ultimately does get into the plan comes either with our recommendation, or if it's our opposition saying we've investigated and we think there's a different alternative that's out there that's available and put that all into the disclosure statement and let the creditors vote on it. We're not there yet, Your Honor, because the plan doesn't even have this level of specificity with respect to corporate governance and who is going to manage

it.

One last point, Your Honor. The debtors also argue that this is procedurally infirm, that this motion should have taken place under the 7000 series of rules. That is not the case. We believe: a) we could have filed, we would have been within our rights to file this in day one of the case and try to do things on a friendly basis until we can no longer gather what we need. But it would have been perfectly appropriate early in the case given our statutory rights. And it does not have to do with what's particularly in the plan, because as we've said, there's nothing that specific in the plan with respect to asset management. We also don't think that the fact that the disclosure statement hearing is scheduled and the disclosure statement is pending changes that. We cited a case in our reply that the filing of a disclosure statement and setting a hearing does not create a contested matter. And it may not, we don't know whether we're going to object to it or not. You know, part of this whole process, Your Honor, is to become more educated. And as I said if it turns out that new co and existing management going to new co and then charging Arcapita back for managing a minority position, that may be the best alternative of those that are available. But we don't know right now. And unless we can find out what the co-investors think about alternative asset managers, we'll never know.

And I think that that's frankly, Your Honor, why we're fighting this. I was surprised to be here on this issue and not able to work it out. So unless Your Honor has questions, I'll yield the podium, but suspect I may need to reserve some time after the debtors' comments.

THE COURT: Well let me ask you one question as to the issue of local law, who has what burden between the Committee and the debtor in this procedural posture? Whose burden is it to show, is it to show that local law is not violated, is it to establish local law is violated?

MR. DUNNE: Well I, Your Honor, I believe that it's their burden, and it's their burden because my burden is to come in and show that I'm entitled to this information and that I've convinced the Court that I have cause generally for receiving review of this information. The law, Rule 2004 doesn't say unless it contravenes other, you know, local or non-U.S. law. They're interposing that as a defense on their own, and I believe they have the burden of proof to say that yes, it convinces Your Honor that there's an issue of Bahraini law.

THE COURT: All right. I don't think I have any questions for the moment, but I'm sure I will have some later.

MR. DUNNE: Thank you, Your Honor.

MR. MILLET: Thank you, Your Honor. For the record, Craig Millet, Gibson, Dunn & Crutcher on behalf of the debtors

responding to the motion.

Your Honor, we seem to have a moving target here in that we've got a sort of a bare bones motion that didn't ask much and then we have an order that asked for more, and then finally as we get to the point where we've got to reply today we're a great deal more to try to justify the motion that we were unable to respond to since it wasn't a motion to begin with, and still in their argument we've heard more. So I'm going to try to address some of these points to show how a lot of the assumptions or what are being asserted as actual facts just simply aren't facts. One thing we do have in common is we have a similar concern as to the control issues as to the issues of the ability of these investors to perhaps assert control both proxies terminate agreements or whatever that would otherwise allow them then to control their own fate, the debtor would not be able to control the fate altogether and they would have minority interest.

THE COURT: And do you agree that that's a valuable right for the estate?

MR. MILLET: We can agree that it's a valuable right, the disagreement is how best to protect that.

THE COURT: No, I understand that. This would be a less complicated situation if, -- well let me ask you about your view about new co, right, I'm hearing about this company that is essentially contemplated to take over these rights. Do

you agree or not agree with how it's been characterized by the Committee as to, as a factual matter what new co is, who is involved in new co and what new co would like to be able to do?

MR. MILLET: Absolutely disagree with the way it's been postured, Your Honor.

THE COURT: All right. So what -- give me your side of that.

MR. MILLET: Very well, Your Honor. It's true that the plan says that Arcapita, reorganized Arcapita under the control of the creditors will liquidate its assets. It needs to figure out a way how to do that. These are assets of course all over the world, a large percentage of which are in the Middle East and elsewhere, but also which are co-invested with these co-investors as we say. Now, it's true that the Committee could go hire a third party manager of some sort who could come in and do this, they could try to retain a certain number of existing management employees who could help them do it, or they could contract with someone who has the relationship with these entities who could be a new co. What Mr. Dunne is doing here is really trying to characterize the nature of negotiations that have been ongoing.

THE COURT: Well what is your understanding of the state of negotiations? I've heard his characterization, I want to get your characterization.

MR. MILLET: We have proposed those three

alternatives, Your Honor, and said we can do it this way, we can do it like you just simply hire a new complete third party manager, you could retain certain persons within management to help you do it within whatever structure you set up, or if you wish, if you wish, you could negotiate with a new co that persons could set up.

THE COURT: I mean it's the debtors' plan of reorganization, right, we've already --

MR. MILLET: Correct.

THE COURT: So it's not you, the committee. So I assume the debtors are not entirely agnostic about what it is they'd like to do.

MR. MILLET: The plan is agnostic. It says that the Committee will have to choose the way they want to do this.

THE COURT: The Committee gets to choose.

MR. MILLET: Well the new owners of reorganized Arcapita which will in effect be those creditors who are represented by the Committee.

THE COURT: All right. Well, explain to me how this all works then in your view of the world, and maybe it's very unclear in the plan as I certainly heard some hint to that.

MR. MILLET: We definitely think the plan should be flushed out more as to how a post governing system could work, and those are the negotiation we've been having. But at least at present it does provide that whoever takes over the

reorganized debtor, which will be the creditors, will have to come up with a system for dealing with these assets.

THE COURT: I don't know that hat means, takes over. It's sort of a colloquial phrase in a very non-colloquial context.

MR. MILLET: They will operate, they will have the decisions, they will be making the decisions as to what occurs with respect to the assets or the interest of the assets that is held by --

THE COURT: I can't imagine the debtors intend to leave the plan that way to say well we're, the plan says after this you will get to decide how to liquidate. I think if that were the case then we might not be here. So, is there any sense of what the debtors intend on doing.

MR. MILLET: We very much --

THE COURT: Again, the thing that makes this a little tricky, right, is the notion that there may be people currently involved in the debtors who would set up their own shop, would not be a new co in a bankruptcy sense, not a GM new co but rather a new company that would be providing services and the debtor then would be paying for them, so it would be outside of the estate. So I need to get some sense of what the debtors' intention is either now or in the near future as to that because obviously has everything to do with what the scope of appropriate discovery would be.

MR. MILLET:: I understand, Your Honor. The plan is very limited in that regard. Our hope is, our intent is that we would reach an agreement with the Creditors Committee and others including the ad hoc group with whom we've been talking and the JPLs as well to come up with an agreed upon structure for management or a post governance system that we could build into the plan.

THE COURT: Well what's being told, I sort of got a statement that folks are being told that this is, that investors are a little unhappy, maybe that's too strong of a word, but restless, concerned, whatever euphemism you'd like, and that therefore it's being proposed or the idea is out there that folks who in existing management are going to create this new company.

MR. MILLET: Investors have not been informed of any new company that is to be formed by anyone to go takeover anything.

THE COURT: I don't know how I decide this thing unless I get some traction on what the hell the debtors intend to do.

MR. MILLET: I understand.

THE COURT: I mean what, it's -- plan negotiations are plan negotiations, and that's fine and when I'm called to figure something out, I'll figure it out even if it's a pretty inexact science. But I don't know what to make of the debtors'

position at this point. If there are people who are insiders at the company who have suggested that they're going to set up a separate company and that they're going to, let's take an uncharitable characterization, export the business to this new company because they have a leg up -- now I'm painting it in the most uncharitable way possible, I'm just for the hypothetical -- you know, that obviously is of concern in the case and for the creditors. It could very well be, and I think Mr. Dunne said this, that it actually will turn out to be exactly the right thing to do, that you may have people say well we can do this better than anybody else, we have the relationships, we can do it as cost effective and we have the relationships to make it work. So that's the most charitable way to look at it. But I guess what I really need to know is, is it going to happen, is this something that is sort of the leader at the turn going down the stretch or is this just one of many options? Because there clearly is a concern of protecting the identity of the investors, but I can't really figure out how much so that that's in play or not --

MR. MILLET: I understand, Your Honor.

THE COURT: -- under the current proposal. And I understand there was a desire to file a plan, the allocation issues which obviously were considerable. But it seems also pretty clear that they were not the only significant issue to be addressed, and that this is certainly one. So in light of

all of that, what do you propose that we do here today?

MR. MILLET: What I would propose is that Mr. Rosenthal has been directly involved in these negotiations and that he can speak to the issue and bring clarity to it.

THE COURT: All right.

MR. DUNNE: Your Honor, am I going to get tag teamed here?

MR. ROSENTHAL: Sure.

THE COURT: Well, listen if somebody has a good idea, I'm not proud about where it comes from, so you'll certainly get a chance to say whatever you need to say.

MR. DUNNE: I reserve my right to call Mr. Fleck to the podium then.

THE COURT: I'll be happy to hear from -- I will draw the line at that, at the audience bar so that anybody who is on this side, so I see you also have other people, so there's at least three potential people we can hear from on each side. Fire away.

MR. ROSENTHAL: Good afternoon, Your Honor. First, I don't think the plan is a placeholder merely. I think what the plan contemplates is that the debtor has a series of interest, in some cases they're majority interest, and in some cases they're minority interest, that it has to manage and exercise judgment on the wind down of those interests the backbone of the plan or projections as to how that wind down will be

effectuated. Now there is an ancillary set of companies called the syndication companies, and in each investment own a portion of the investment, and in some cases it's the majority and in some cases it's a minority. One of the things that's been mischaracterized here is the control issue. Control is a valuable right if you actually have an irrevocable control right. We have something arguably short of that. The proxies are revocable -- this is all disclosed in the disclosure statement -- the proxies are revocable, and they don't allow, they do not allow Arcapita to appoint directors in the syndication companies. So if the syndication companies do something that Arcapita doesn't like, the investors could potentially -- Arcapita has no ability to change those directors to put in place people who will make decisions, so the proxies are limited and revocable. The administration agreements that we've heard much talk about, they are agreements pursuant to which Arcapita provides advice, information on assets, but again always subject to the control of the board of directors in the syndication companies.

THE COURT: Well, let me ask and I think that's why one of my earlier questions was is this right to, and I won't say control because it sounds like it's too strong a word, but to manage affairs to the extent that it is either to the fullest extent of its legal rights either in the documentation and/or combined with its powers of persuasion given the way the

corporate structures are organized and related entities and therefore give Arcapita a certain, certain, as a practical matter, outsized influence in managing things. I'm assuming you would agree that that right, that bundle of rights has some value.

MR. ROSENTHAL: It's a limited right and it has some value. So let me tell you how the plan handles that. The word we have from the syndication companies is that, and I'm trying to be frank with the Court, is that they don't want their investment to the extent they made decisions to make investments through Arcapita. They made it on the strength of not only the asset that was being sold, but the people who are selling them that particular asset. They don't want, whereas it was fine to take some advice from those same people after they made their investment, it's not fine is what we're hearing to take advice from those, it's not fine to take advice when Arcapita suddenly turns to ownership by the creditors of Arcapita. So here are the two options. One is for these individual, for these syndication companies to remain in their agreements with the Arcapita side, and for the proxies not to be revoked. We're being told that that's not a practical solution. The other is to have in effect an agreement where you put in place a series of agreements between the syndication companies for each portfolio company and Arcapita for that particular portfolio company to put in place a coordinated

process for the disposition of these assets over time. This is what we've been working on, this is what the term sheets that have been going back and forth. This is the term sheet that we sent over late last week we're still waiting for a response from. Now, here is the difficult issue. All of the, many of the portfolio investments have change of control provisions in them. Some of them are tied to whether the proxies are in place or not or whether the administration agreements are in place or not. So we're trying to walk a fine line, not as Mr. Dunne says to force these people to revoke their proxies or to cause them to terminate the administration. That's the opposite of what his management team wants, because that's a value destructive for everyone. The question is how do you calm this investor base that doesn't want to have to deal with the creditors as the owners of Arcapita, how do you calm them without their taking this, and causing them not to take this precipitous action? And that's were new co comes in. So some of the management, it's not so much the management team, some of the actual investors in these entities, one of which happens to be the co-chairman, the vice chairman of Arcapita were suggesting that one way to deal with this is to form a company and to say to these investors, don't withdraw your proxies, that's adverse to you, do not cancel the administration agreement, but we can provide some advice to you so that we can -- and again this is on a coordinated basis with this term

sheet –- so we can help walk between these two conflicting goals.

THE COURT: I understand that. And that what you just told me doesn't surprise me given the way personal relationships work. But if this was the plan for the reorganized debtor, right, it would be one thing because you wouldn't worry about value leaking out of the estate. And I use the word leak in light of sort of the lack of clarity as to how valuable these rights are and in the overall context of things. But certainly you would agree that to the extent that in your business judgment, I mean it's almost in some ways a business judgment issue, right. If someone says we want to, say there was no plan at all and someone said we want to hire these people as the new manager of our assets because, and some of them are insiders and they have the relationships and they're going to set up their own shop, and it's a good business decision, that might be right, but I think the Creditors Committee will then say well we need to sort of vet whether we agree with you that may in fact may be the right thing to do, but we still need to get some clarity on that. And so I'm not casting any aspersions about the ultimate wisdom or not of this course of action because I don't know. But I can certainly understand pretty much what everybody is saying here today, but it would seem to me that once new co is not new co in a reorganized bankruptcy debtor sense, but a separate

company particularly where it's made up of folks who are associated with the existing debtor, then you do have a concern that these folks are going to do what they have to do to benefit themselves as well. It may benefit everybody simultaneously but you can see the issue.

MR. ROSENTHAL: But the answer, yes, I can see the potential issue, but the answer is not to open the floodgates to investor, to the investor information and allow not only the disclosure of that information on an extremely confidential basis, but also the reach out to all of these investors who would get letters just out of the blue or communication out of the blue.

THE COURT: But what's the practical solution then to the problem --

MR. ROSENTHAL: -- the answer --

THE COURT: -- to get the information to the Creditors Committee so that they can make assessments of these things?

MR. ROSENTHAL: One of the things we had discussed with them is providing that information on a confidential basis on a professional eyes only basis, letting them evaluate it, letting them look at the investors by entity, make whatever assessments they want internally. If they have further reason that they can, we can come back to this Court, we can have further discussions about that. But we're trying not to create

a what we believe will be very value destructive actions that would occur in the Middle East if people just get communications. Now the other thing we're trying to do as Mr. Dunne suggested is, I was supposed to fly out tonight to go to Bahrain for meetings. We're trying to put, you know, the old 80/20 rule, well that's the answer to your question, not surprisingly. There's a small group of investors that have outsized interest in these underlying portfolio companies. So we're trying to put together a meeting with the key investors who have consented to meet. I mean it's not like we're sending out Joe Blow's name and saying well Joe Blow doesn't know that we're giving it to you, but we're giving the name out. These are key people who have in some cases four and five hundred million dollars invested here who do have the most incentive to try to address this issue, and that's the meeting we're trying to put together. Now I don't think we're going to, we're not going to put it together for Wednesday because we couldn't make schedules work, but --

THE COURT: Is this a meeting you contemplate having the Committee at?

MR. ROSENTHAL: Yes, we invited the committee and we invited the [indiscernible]. Now the Committee chairman is actually, as I understand it, in Bahrain for meetings and, but that's the only member who could get there, and there are going to be discussions on Wednesday afternoon, I think, he's coming

over to the company. But so sort of the two-phased approach that I think the Court should take -- one for you, one for us -- is to get around sort of what is improperly perceived as secrecy is allow, provide for the disclosure of the names on a pursuant to a protective order that protects the confidentiality of the information, ensures that it doesn't go anywhere, do not allow contacts of those parties. The order can say, if somebody has a need, you know, a need to contact the parties, you know, further down the road after reviewing this, you can come back. The second thing is to go forward with the meetings that we've planned. To some extent, those meetings are important to understand the relationship because there is because of this limited control, there, in some instances Arcapita has a minority position, and that's a reality that has to be dealt with. I'm not sure you deal with 1300 investors with that, you deal with the syndication companies who are actually the co-investors with Arcapita. And, you know, it is for that reason that we, you know, we're trying to come up with a framework and it really is I'm not sure what the Committee is, how the Committee is going to respond, but I think we have a framework, we may not have the right numbers, we may not have the right values, we may not have the right disposition period, these are all terms that are used there, you know, we may not have the correct rights of the parties, but we have the framework which would coordinate on an

organized basis the activities of the syndication company in Arcapita on these investments. And I have to say that we've done an analysis of what would happen if we ruffled the waters, and it's not a pretty analysis in terms of potential loss value for investors to start revoking proxies and all that. So I know Mr. Dunne said it, I don't really think he understands but the last thing anyone wants on the debtors' side is what he suggested, to have investors going out and revoking proxies and terminating --

THE COURT: I don't think anyone suggested that that's a good idea for anybody. I think it comes up in the contest of trying to understand the possible permutations in terms of control, change of control and who has what rights to dictate what outcomes.

MR. ROSENTHAL: Correct.

THE COURT: Let me hear from Mr. Dunne as to, with the focus on the practical here and your response to the comments.

MR. DUNNE: Yeah, let me actually agree with a lot of what they said and a lot I think was quite telling. They said they kind of disagreed as to how best to protect value of these rights, you know, limited or not. I don't think that's right. I don't think that we've been able to assess what is the best path forward and to posit a disagreement presumes a world where the debtors have already decided that this is the best path

forward. And I'm saying from all the, both fiduciary sides, we can't be there yet because we haven't explored the alternatives. And they said there's basically one of three alternatives and pick them, and I want to spend some time on this because this is where things are changing and they shouldn't have changed. There are basically three alternatives for Arcapita. One is status quo, that we reach a deal with existing management, we keep everything within the Arcapita house, they go out to the investors and say, you know, what, we negotiated with our creditors and we got enough of control here that you Mideast investors should get comfortable that this same group of people that was managing it before will manage it now. We've been told that's off the table, Your Honor, that only new co, management will only be at new co post emergence. So that's one of the alternatives that's already gone. The only remaining one is to keep it in house with a third party manager. That only works if that third party is acceptable or gets the confidence of the co-investors. And what's going on now is a race, and frankly the meeting this week was a meeting to sell new co to the co-investors. And that's getting way out ahead of ourselves. We should see if there's a viable alternative. I don't know why the status quo we've been told is off the table now. It looks like the whole process is being driven to give management a leg up and have us all conclude however hastily that it's the only game in town.

THE COURT: Let me get back to the motion because there are a lot of negotiations here, and again I think I've said this before, when I was in my former life I remember judges thinking they had a sense of what was going on in negotiations and pushing one party and in fact it was the wrong party to push. I have no illusions about the fact that I lack perfect information as to what's going on in negotiations which also have to be viewed over a continuum of time. So let me just turn back to the practical aspects of the motion. What I'm hearing are two things, is the debtors are willing to provide the identities and breakdowns by holdings of the investors on a confidential basis to the Committee's professionals and also have the Committee participate in this meeting with essentially the big investors, that is the ones who are, have an outsized impact of where things are. I assume from your point of view that is an improvement over circumstances when you filed your original motion.

MR. DUNNE: Not really, Your Honor, because we had the list of the investors from the beginning of the case when we did the conflict search, that was for professional eyes only.

THE COURT: You had all the investors at that point.

MR. DUNNE: I think it was complete. Yes. Mr. Fleck --

THE COURT: But did you have a breakdown of how much

they owed?

MR. DUNNE: No we did not have it mapped by deal.

THE COURT: And I'm assuming that what was just said is it would be tied to their holdings so that you would now know that information so essentially when somebody spoke at a meeting and say well this person, there's this kind of a player because they have this kind of an interest. So you essentially know who you want to be talking to and why you want to be talking to them. So I assume that that's an important piece of the puzzle here.

MR. DUNNE: That is. All right. But the gag order that's coming with it is not in terms of his suggestion that we can't tell our client about it; whereas, we're agents, Your Honor, the members are the ones with the fiduciary duties, they're the principals, we'd have to look at it and say, here's the material committee members, this is what we think you should do with it and let's move on. And I agree that we all have fiduciary duties and that we will, by definition, our clients are economically motivated not to destroy value, and fiduciary duties not to destroy value. But we are not -- we shouldn't posit a world where oh my god, they're going to call 1300 investors, therefore, don't let them even give it to their members and don't let them pick up a phone.

THE COURT: Let me ask whether the following would be a compromise that would at least work in the interim is to

provide to the Committee members also under a confidentiality order and to the extent that the debtors had any concerns that the debtors mentioned somebody being a competitor and going back and forth, and again, I don't know one way or the other, but if there was a concern about a particular committee member, that that would be identified, and just like you are doing 1113 proceeding, you might have that committee member sit this one out, and that that would give a chance for that issue to be resolved for purposes of considering how to move forward here. So is that an improvement in the current circumstances?

MR. DUNNE: That is an improvement to get that information and get it mapped by deals provided to the Committee members. I don't believe as I said before any Committee member has a conflict, there's no private equity competitor let alone --

THE COURT: Well I'm leaving open the process possibility that the debtors say well we've gone through the list and we haven't looked at it this way before, and look we have this concern and folks can work that out. So let me hear from the debtors whether that's something that they could live within the context of where we are. And again, I realize I'm a blunt instrument on discovery disputes, that's sort of the nature of what courts do, so I don't pretend to have this right in any empirical sense of platonic truth, but in terms of trying to be able to have the case move forward, that's really

what I'm trying to figure out.

MR. ROSENTHAL: Your Honor, obviously, I haven't talked to the client, but I believe that if the Court, that it would be something we could live with if the Court were to order it in an order with appropriate protective provisions. And again, with a restriction on the ability to contact theses parties.

THE COURT: Well I think a protective order contemplates that parties are using it to inform themselves and inform their analysis, but I think supposes that they are not going to start picking up the phone and say I have this information and I want to talk to you about it. So, Mr. Dunne? And let me just explain what I'm trying to do here. I'm trying to figure out what the next step forward is and what the idea that parties reserve their rights once some information is made available and people can do some analysis. It sounds like there is different views about how far new co is developed in the decision-making process and how close it is to fruition or not. And I would imagine some communications with this additional information as well as some meetings would help to facilitate whether that's something that is worth going to war over or merely this gives us all an opportunity to step back.

MR. DUNNE: It's a little of both, Your Honor, in the sense that the case is moving quickly, right. We have a disclosure statement hearing set for I think a few weeks from

now. Mr. Rosenthal said it's not a placeholder plan, so I'm presuming he intends to move forward.

THE COURT: Well, let me make it clear what I meant by that. It's not a, I'm not trying to be derogatory, but it clearly addressed a very significant and probably the most significant problem in the case which is how to allocate value. But when you don't know who is managing the assets that are being liquidated and it ain't in there, it's a placeholder plan for that purpose. I don't know how we could confirm a plan and I don't know how we have adequate information to go forward given what we're fighting about today only illuminates that difficulty. So --

MR. DUNNE: Here's my issue, Your Honor, which is if I thought that it was a level playing field which Your Honor suggests could be correct -- if Your Honor's order said that in the interim the debtors are not soliciting only a new co proposal to the co-investors all our hands are tied under a gag order. You know, because you're positing a world where new co may not be far along as I think it is, okay, well let's bake that in there and say, let's figure who the important investors are and present alternatives to them so that we know what the best path forward is in terms of what's acceptable to them.

THE COURT: Well, let me raise a couple of points. One is we're getting away from discovery, we're getting into the subject of negotiations and that's where I probably am the

least effective person in the room. And two, certainly at a certain point you can vote with your feet and say well you put that in there, I'm telling you how the Committee is going to vote which is we're not signing up for that because we have no assurance about how that's going to work. And again that's part of the discussions that everybody will have, but --

MR. DUNNE: Let me say it another way, Your Honor. I think that there's no basis to impose a gag order on the Committee because it's too late to vote with your feet, because at that point the investors who may or may not right now be interested in a new co or having management uproot themselves, go next door and manage the assets, they may be open to a lot of possibilities to allow management. Your Honor hit this, this may be a business judgment determination at the end of the day but it's entitled to heightened scrutiny because it's an insider transaction. The vice chair of the board of directors is the one that's in the vanguard of this initiative, and at a time when we should be stress testing it on all the alternatives every step of the way, we should be doing precisely that because we're having an affiliate transaction here because new co, whatever the possibility that that materializes, and it's been incorporated already, doesn't, actually is imposed upon as and we don't have time to vet the alternatives. And I think under the case law, I can call other creditors and investors and I can find out what they think of

management. We do that in all the cases to kind of get comfortable that they either like management or they don't like management. Now we're not going to send postcards to or letters or emails to 1300 investors, that's why we want to have them mapped by deals so we know preciously who the large ones are. In fact, many of them sit on the board of directors and we can talk to them as well. In fact I feel like we have a fiduciary duty to that particularly when this deal is being done with a, whatever the percentage is, it's a significant chance that's a new co with people who owe fiduciary duties to us are going to be on the outside looking in, and be a counterparty be getting dollars out of reorganized Arcapita. And not having that fully assessed and assayed by the creditors Committee I think is an abdication of our duties, and I don't see any case law for doing that. I know they'd like it for management, but I'm not sure it's best for the debtors either.

THE COURT: All right. Anybody else have anything to add?

MR. ROSENTHAL: Your Honor, we obviously disagree with Mr. Dunne. We think that balancing the harms and the benefits that the appropriate way to go is the way the Court suggested that we will disclose pursuant to this Court's order and we will, we will map the ownership interest and we're going to set up meetings with the key investors. And if that still proves to be insufficient, and I'm not sure it will be, because

we're at the same time discussing a term sheet, and to the extent that there's a term sheet between the syndication companies and reorganized Arcapita that comes out of all of this, then I really don't know, I don't understand how important it is to know, why it's important to know the names of the investors.

THE COURT: All right. What I'd like to do is take a short break and ponder the question. And so folks, do me the favor of hang around for a little bit.

(Break)

THE CLERK: All rise.

THE COURT: Please be seated. All right. Thank you for everyone's patience. We just had a short chat. Let me share with you where I find myself. I think that there are legitimate concerns on both sides here. I think the Committee, again, the reason why I mention this is sort of a request to conduct business outside the ordinary course of business judgment is because I think what the Committee is doing here is looking at this and saying well we need to vet this, it may ultimately turn out to be the best solution, it may not, but we can't make that assessment and discharge our duties without doing that. I think the debtors are the party on the ground and trying to be sensitive to the concerns of the investors both in terms of confidentiality but also in terms of the very real practical aspects of people's personal relationships and

trying to maintain value of the estate. I don't think these two things are mutually exclusive necessarily but I will not say it is easy to reconcile them in this particular circumstance.

For my part I have several concerns. One is I've been asked to interpret Bahraini law which is not the easiest thing to do in the world given the current factual record which I think may ultimately revolve around who has the burden of proving what. Secondly, I think as I said during the argument that new co is a bit of a game changer because it is folks who are currently associated with the debtors the prospect of setting up an outside shop to do something where they would offer services to the debtors but because they are now outside of the debtors they no longer have the estate's best interest at heart, and I don't say that in a pejorative way, I say it as a practical way, they can't have the estate as their primary concern or they would be in violation of their fiduciary duties to new co. So that is a significant issue. And that's something that I think the Committee is entitled to take a look at in a way that does not destroy value here.

So what I'd like the parties to do as parties who know more about the context of the case and how this fits in is to give a shot at having some discussions. As I say, in all discovery disputes, and this one is particularly apropos, I am a blunt instrument, I have a discovery dispute in front of me,

I don't have discussions about meetings and bargaining and disclosure statement, I have a very limited issue. And so I will give a thumbs up or a thumbs down, it may have certain shades of gray, but it's not really, I don't get the chance to make people do various other things outside of that in the context of this motion, even if that's the most practical way to solve the problems. So I'd like people to give it a shot to have frank conversations with their clients, from the Committee's point of view as to what the Committee actually needs, and from the debtors' point of view to think about what is a way for the Committee to discharge its duties as to new co without destroying value for the estate. And I have time tomorrow afternoon at 3:00 to, so I'm going to adjourn this hearing for now and pick it up tomorrow at 3:00. At that point you can let me know where you are, and if there's no resolution, I will make a ruling. And so I'd ask that the parties call in for Court Call, I'm happy -- it sounds like at least one party is going to be out of town, so if anybody who is here needs to participate on the phone, I'm happy to do that under these circumstances. All right. Anything else we should discuss?

ALL: No, Your Honor. Thank you, Your Honor.

THE COURT: All right. Thank you very much.

(Proceedings concluded at 2:51 PM)

I N D E X

RULINGS

CERTIFICATION

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

Theresa Pullan

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