UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

ARCAPITA BANK B.S.C.(C), et al, CASE NO. 12-11076-shl

Debtors.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

June 11, 2013

11:39 AM

B E F O R E :

HON SEAN H. LANE

U.S. BANKRUPTCY JUDGE

ECRO - MATTHEW

HEARING Re Confirmation Hearing

HEARING Re Doc. #1225 Motion to Authorize/Debtors' Motion for an Order Authorizing and Approving a Settlement and Plan Support Agreement with Standard Chartered Bank

Transcribed by: Sheila Orms

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P R O C E E D I N G S

THE COURT: Good day. Consistent with yesterday's proceeding, please be seated.

We are here today for Arcapita Bank B.S.C. and other debtors.

MR. ROSENTHAL: Good morning, Your Honor, Michael Rosenthal and Jeremy Griggs on behalf of the Arcapita debtors.

MR. DUNNE: Good morning, Your Honor, Dennis Dunne from Milbank Tweed on behalf of the official committee of unsecured creditors, and I'm joined my partner Evan Fleck.

THE COURT: All right. Anybody else who anticipates speaking here this morning?

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

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

MR. SEIDER: Good morning, Your Honor, Mitchel Seider of Latham & Watkins for Goldman Sachs International.

MR. WOOD: Good morning, Your Honor, Trey Wood on behalf of the Tide parties.

MS. VULPIO: Good morning, Your Honor, Amy Vulpio of White and Williams LLP on behalf of Ace American Insurance Company.

THE COURT: All right. Thank you to all, and a

good day.

MR. ROSENTHAL: Your Honor, before I start, also with me today on behalf of the debtors, and in support of confirmation of the plan, I'd like to introduce a couple of people that are in the courtroom --

THE COURT: Certainly.

MR. ROSENTHAL: -- and on line.

With us in the courtroom is Henry Thompson, the head of legal of Arcapita Bank. He's -- Mr. Thompson has been here before. Matthew Carvada (ph) who's a managing director of Alvarez and Marsal, from the debtor's financial advisors, he's also one of the declarants, as well as Mr. Thompson. Bernard Doughton (ph), another declarant who is managing director of Rothschild, as well as Jeffrey Stein (ph) who's the national solicitation consultant for Garden City Group, which is the Court approved claims and noticing agent.

THE COURT: All right. I'm happy to have them all here this morning.

MR. ROSENTHAL: On the line with us, I would be remiss if I didn't mention that we have with us today from Bahrain, the CEO of Arcapita Bank, Atif Abdulmalik, as well as some other members of the senior management team.

THE COURT: All right. Good day to them as well.

MR. ROSENTHAL: Your Honor, we are very happy to

be standing here today approximately 16 months from the date we filed the Arcapita Chapter 11 cases, and to be presenting for confirmation, a plan of reorganization that has the support of the UCC, the JPL's, Standard Chartered bank, the ad hoc group, and virtually every single voting creditor and 78 percent of the shareholders of Arcapita Bank.

Furthermore, the plan and its provisions related to IAHL have been recognized already and validated by the Grand Court of the Cayman Islands, and we filed that Cayman order with the Court several days ago.

While I'm sure that everyone here would like to take credit for the plan and where we are today, the reality is, that this has truly been a cooperative effort among all of the major constituencies.

This effort has led to a plan that maximizes the value of the debtor's assets, resolves co-investor issues, and provides an efficient mechanism for the management of the debtor's assets on an ongoing basis, and for the disposition of those assets, and a value maximizing in orchestrated fashion.

Who would've known when we started this case with a strong objection from certain IAHL creditors including a virtually unprecedented objection in most courts, but not to Your Honor, of course, to joint administration, that we would be here with a hundred percent support from every

voting IAHL creditor, and who would've guessed the immense level of support, not only from the bank's creditors, but also its shareholders.

As a preliminary matter, Your Honor, as you know from discussions we had yesterday, now that we've commenced the Falcon hearing, we are not going to go forward with that hearing. We would like to adjourn that hearing until a date in the future after the Court has had an opportunity to consider, and rule on the subordination issues that were before you at a hearing yesterday.

In connection with that, and it's my understanding that Mr. Wood will confirm this, that Tide has agreed to withdraw its objection to the Arcapita Bank plan, and it's also agreed that it will withdraw its rejecting Class A votes, eight A votes, which are the votes with respect to the bank plan, and will agree that the Tide claim against the bank will be treated in Class 10A.

I would ask Mr. Wood to confirm that that's acceptable to him, and then I believe he's trying to make an airplane.

THE COURT: Yes, let me hear from Mr. Wood, with the understanding that it's going to be a brief appearance and then headed towards the door after that.

MR. WOOD: Thank you, Your Honor. Troy Wood on behalf of Tide.

That's correct, Your Honor, as we announced on the record yesterday, we are withdrawing our objection to the Arcapita Bank plan, and obviously that's without prejudice to our objection to the Falcon plan. We are also withdrawing our vote in the Arcapita Bank plan, again without prejudice to our vote in the Falcon plan.

They have -- debtor's counsel has been kind enough to provide me with some proposed language that they're going to add to the confirmation order, that essentially carves out the Falcon plan, and I've already signed off on that language.

THE COURT: All right. Thank you.

MR. WOOD: Thank you, Your Honor. May I be excused?

THE COURT: Absolutely.

MR. WOOD: Thank you.

MR. ROSENTHAL: Thank you. Your Honor, I'm going to spend a little time walking the Court through the plan and its implementation, turning to spend a little time on the confirmation standards. I'm going to turn it over to Mr. Graves to address the objections, all of which hopefully I think have been resolved. And then we'd like to walk the Court through some revisions to the plan, and glossary made since the filing of the second amended plan right before the disclosure statement hearing.

THE COURT: All right.

MR. ROSENTHAL: Your Honor, the declarations of Henry Thompson, Matthew Carvada, Bernard Doughton, Jeffrey Stein, and Matthew Banono (ph), represent the direct testimony of our witnesses in support of confirmation, and I would request the Court to admit those declarations into evidence.

THE COURT: All right. Are there any objections to me taking those declarations as evidence for confirmation?

(No response)

THE COURT: All right. Hearing no objection, those are received.

MR. ROSENTHAL: I'd also ask the Court to take judicial notice of the entire record in these cases, including our confirmation brief, which demonstrates in far too many pages, some would argue, the compliance of the plan with the Bankruptcy Code's confirmation requirements.

THE COURT: All right. I'm happy to do that.

MR. ROSENTHAL: Your Honor, the Court is, of course, aware that Arcapita and its affiliates operated as an international Sharia compliant investment bank based in the Kingdom of Bahrain. For over 16 years, Arcapita has engaged in Sharia compliant investments, primarily on behalf of Middle Eastern investors. These investments have run the

gamut with respect to the type of industries involved, and have also been geographically located around the world.

In most instances after Arcapita purchased a portfolio company, it syndicated out a majority of the interests, and retained a minority. There's some notable exceptions, such as the transaction involving Lusail (ph) in which Arcapita retained a majority of the interests, as opposed to a minority.

Generally, Arcapita retained control over the syndication companies through revocable proxies, administration agreements, and Arcapita employee participation on the boards of these companies. And it held its long term interest in these portfolio investments through one of its subsidiaries, actually the subsidiaries of IAHL, which itself is a subsidiary of the bank.

When Arcapita filed its Chapter 11 case, it owed approximately $1.1 billion under a Marhaba syndicated facility, as to which the bank was the borrower and IAHL was the guarantor.

At that time it also owed another $200 million of obligations on which both the bank and IAHL were obligors. The amounts owed with respect to the Arc Su Cook facility and other Islamically compliant facility, and the amount of approximately $100 million owed to Standard Chartered Bank, which is the only secured creditor in these cases,

prepetition secured creditor.

And then on the bank side, there was an additional billion and a half to $2 billion of general unsecured claims. Those creditors only held claims against the bank.

I give you that back drop because that's where we started and the plan essentially resolves the issues involving all of these constituencies. In its simplest form, the plan implements three key goals. A comprehensive settlement of the debtor's intercompany claims, and the debtor's most significant claims against third parties, a comprehensive restructuring of the debtor's capital structure, and perhaps most importantly, a comprehensive plan to manage the debtor's portfolio assets, with the assistance of AIM, a management company formed by members of the debtor's current management team, to manage those assets until they can be monetized cooperatively with the syndication companies and their co-investor owners, at a time, and at a price that maximizes value and is in the best interests of all parties involved.

Those are the three basic tenants in my view of this plan.

The plan incorporates a variety of settlements, that drive not only individual treatment, treatment of individual creditors, but that also drive the value allocations.

These settlements include allocation among the debtors of the value that will be derived from future exit of portfolio companies, recognizing that some of that value would come from direct ownership, equity ownership interests, that comes through the IAHL chain and some of that value may derive from management fees owed on the bank side of the house.

Allocation of administrative claims incurred during the cases, how were those allocated. Resolution between the debtors, principally Arcapita Bank and IAHL of issues related to significant transactions that occurred prior to the filing of the case, the Lusale (ph) transaction, which was a transaction where the shares in the entity that owned Lusale were financed and transferred to Cotter Islamic Bank (ph) in exchange for $200 million, and an option to repurchase those shares. And another prepetition transaction involving the headquarters building, the plan resolves those issues.

Resolution of possible claims related to substantive consolidation. Resolution of the treatment of intercompany balances, again primarily between the three lead debtors. The bank had a $450 million intercompany claim against IAHL, Arcapita Long Term Holdings had a 300 plus million dollar claim against the bank, those issues are resolved.

Resolution of the value that is -- that could be ascribed potentially to bank control over the portfolio investments, as opposed to whether the other Arcapita entities had control. Other critical settlements are also integral components of the plan.

I just mentioned the headquarter settlement, which in terms of allocation of value, was a settlement between Arcapita Bank and IAHL because IAHL owns about 39 percent of the headquarters building. And theirs was an issue, as between those two entities, as to whether that transaction was appropriate.

But there was also an issue between the debtors as a whole and the other 61 percent owners of the headquarters building. This plan incorporates not only the settlement between the debtors, but the settlement between the debtors and the other HQ investors.

That settlement results in those investors agreeing to a limited administrative expense claim, and an agreed prepetition claim. And it's as a result of that settlement, that we will not have prolonged protracted litigation over the amount of the administrative claim, which those investors could assert, and we can move forward on the headquarters transaction.

It also embodies a settlement of the issues involving Standard Chartered Bank. As the Court will

recall, and we filed a separate motion on this as well to be heard today, Standard Chartered Bank, it was the only secured creditor of the debtors at the time we filed the case. When the debtor in possession financing were put in place, there were certainly agreements reached with respect to Standard Chartered Bank, and this was also in connection with the Eurolog (ph) transaction, at that time, the committee retained the right to challenge some of the adequate protection payments that were due to Standard Chartered Bank.

Over the past six or eight weeks, we've been working very diligently with the committee and with Standard Chartered Bank to resolve, not only the issues related to that continuing challenge right that the committee had, but also to try to resolve an issue involving a Standard Chartered affiliate, its bank affiliate in the Far East, which had financed, coincidentally, one of the debtor's portfolio investments, the Honnington (ph) investment.

The SCB settlement that's before the Court today is a settlement which resolves not only the claims related to Standard Chartered Bank's claim against the estates, but also a restructuring of the Honnington facility.

There is a -- just for the sake of completeness, there is in effect a toggling in the settlement, we all have provided that the Honnington settlement would be

effectuated, the Honnington term sheet and structuring -- term sheet has been agreed, the Honnington restructuring agreements out in the Far East are now being circulated. And if the Honnington transaction closes, Standard Chartered Bank will receive under the settlement, everything that they are owed from the debtors' estates less $2 million.

If for some reason by the time we get to the effective date, the Honnington settlement does not close, the Honnington restructuring does not occur, we will still have a settlement with Standard Chartered here in the U.S., but the settlement will be slightly different under the terms of the settlement agreement.

Standard Chartered will receive everything they're entitled to receive under the Court's prior order related to Standard Chartered, that is undisputed. And the disputed amount, that amount that would still be subject to the committee challenge right will be put in escrow, and there will be a litigation before the Court on the ownership of that.

So through this settlement, whether or not the Honnington restructuring goes through, and we fully anticipate that it will, we have a resolution, a plan resolution of the treatment of Standard Chartered Bank.

Another key element in this settlement, of this plan, as the Court knows, is the settlement and the series

of settlements embodied by the corporation settlement term sheet.

We've spent a lot of time talking to the Court about that, but I want to spend just a little more today. This is a comprehensive settlement that was reached in negotiations between the committee, the debtors, AIM, the syndication companies, their principal investors. And it has four principal characteristics that make it extremely attractive.

One, it ensures that after the effective date the debtors and the syndication companies will be managed by a skilled experienced management team that has the confidence of the co-investors in those companies. And this is all accomplished by a highly negotiated management services agreement between the reorganized debtors and AIM.

Secondly, it resolves critical issues and potential disagreements between the reorganized Arcapita and its holder of either a majority or a minority interest in a particular investment, and its co-investors who hold their interests through the syndication companies.

So that we've come up with a mechanism to try to ensure that dispositions of those portfolio assets can be done in an organized orchestrated fashion.

Thirdly, it provides key minority protections to whoever is the minority interest holder in each of the

portfolio investments. Minority protections that had not previously been available.

And lastly, it sets the ground rules, if you will, that's a shorthand way of saying it, but it sets the ground rules for an orderly and value maximizing disposition of the debtor's portfolio assets. And these are ground rules that in effect are administered by what we call the disposition committees for each portfolio investment, that will consist of representatives from syndication companies, and representatives from reorganized Arcapita.

And, Your Honor, while each of the settlements that I've talked about can be justified in their own right, I don't think that's the proper perspective from which to measure the settlements.

The settlements to me have to be considered as an integrated whole, and from this perspective, there's no question in my mind that taken as a whole, they're well within the range of reasonableness. They were negotiated at arm's length by the debtors, the committee, the JPL's, the ad hoc group, the co-investors, AIM, and to the extent relevant, SCB.

The consensual resolution of all these matters means that we don't have to spend a lot of time and additional delay litigating all of these issues. The consensual resolution of all of these issues promotes the

debtor's ability consensually to emerge from Chapter 11, much, much sooner than would be required, if there were continuing litigation.

And the consensual resolution of all of these issues not only prevents costly asset value determination that could have occurred in the absence of a resolution, but also has a synergistic impact that creates supplemental value for the benefit of all stakeholders.

Testimony, Your Honor, to the reasonableness of propriety of these settlements can be found in the overwhelming and almost unanimous support for the plan by the debtors, creditors, and shareholders.

Your Honor, you have the declaration of Mr. Carvada and I want to go over that in just a second, but it clearly demonstrates that the plan provides significantly better recoveries than any alternative restructuring or liquidation. And you have the declaration of Mr. Doughton, which indicates that the plan will be funded by the $350 million exit facility, and that is sufficient to -- for the debtors to exit the cases, and satisfy the debtor's post effective date working capital needs.

As the exit facility is the only obligation that actually has a -- has to be repaid by some end date, the projections demonstrate that the debtors unquestionably will be able to make those payments, and therefore, the plan is

feasible.

I'd like to, at the risk of spending too much time, but I do want the Court to understand a little bit about what we've been doing over the past 15 months. May I approach?

THE COURT: Certainly.

MR. ROSENTHAL: Your Honor, just for demonstrative purposes, I want to go back to the first day of the case briefly, and then tell where we are when we emerge.

The -- this demonstrative exhibit that I've given you is basically a snapshot. If you look at the -- actually the simple diagram, and I know you put the other one on your wall, and it's probably still on your wall.

THE COURT: I was looking at it yesterday afternoon.

MR. ROSENTHAL: So this is the simple diagram where it says current structure of what the company looks like today. Arcapita Bank is the parent company, and you will see IAHL as a first tier subsidiary which indirectly owns the portfolio, the debtor's interest in the portfolio companies. Between IAHL, and this is on the left-side, and the IAHL portfolio company is long term holdings, or Capital Long Term Holdings, another debtor.

And then you'll see if you move over to the second column from the left, you will see that Arcapita Bank also

indirectly owns through another tier, the management companies that provide management services to the portfolio companies. The management companies are not in Chapter 11.

And if you turn the page, you'll see what this is going to look like on the effective date. The top company will be a newly created Cayman Islands company, that for purposes of the plan, we've called New Arcapita TopCo (ph). New Arcapita Topco is the entity that will issue the securities, the Class A stock and the ordinary shares under the plan, and it will issue them to the IAHL creditors, and the bank creditors in the percentages in amounts that are set forth in the plan.

As you will recall, the existing shareholders of Arcapita Bank have some out of the money warrants, which they will receive, and that's where you see participating shareholders as the third potential equity holder in the New Arcapita TopCo structure.

There are a number of companies in between, but I want you to focus on a couple of things. If you look at the chain that's at the bottom that says New Arcapita HoldCo 1, okay, you will see that that chain is 99.9 percent owned by New Arcapita in Madhahib, which itself is owned a hundred percent by New Arcapita CapCo. Do you see that?

THE COURT: Yes.

MR. ROSENTHAL: Find (indiscernible). Underneath

New Arcapita HoldCo are all of the portfolio assets that were owned by -- portfolio company assets that were IAHL, you'll see that in IAHL portfolio companies, and their WCF interest, those are the working capital facilities we've talked about. And then you'll see in the bottom series of boxes on the right, all of the management companies will be owned at that level.

So New Arcapita HoldCo will own New Arcapita HoldCo 2, which in turn will own all of the combined debtors' portfolio assets, hard assets that aren't being transferred to AIM, and management companies.

And then you will see that underneath New Arcapita in Madhahib, there's another entity that we have created, called New Arcapita Bank HoldCo.

When we asked the transferring shareholders to agree to transfer their shares voluntarily in exchange for the warrants, what we gave to them in exchange for transferring their shares to New Arcapita Bank HoldCo were these shareholder warrants.

Seventy-eight percent of the Arcapita shareholders transferred. This chart assumes that only 50.1 percent transferred, that's because that's a threshold that we had to meet in order to have the warrants go effective.

THE COURT: So what's the actual number?

MR. ROSENTHAL: Seventy-eight percent.

THE COURT: Seventy-eight.

MR. ROSENTHAL: And I will mention to you that not only is there 78 -- there's 78 percent today, which is in excess of the 50 percent threshold, but transferring shareholders still have until one year after the effective date to transfer. So it's conceivable that a hundred percent of the shareholders could transfer an exchange for the warrant.

There are some reasons for this, but effectively Arcapita Bank at the end of the day ends up with a very, very small share that remaining share of New Arcapita HoldCo that is not otherwise owned by New Arcapita TopCo. That's the structure that emerges on the effective date.

In terms of who gets what, I'd like to hand you another demonstrative exhibit. Again, I'm just trying to simplify, you know, a complicated plan so the Court understands it.

This demonstrates what the unsecured creditors get, in terms of percentages of the distributable securities. The Standard Chartered Bank is paid in full. So if you look at consideration to unsecured creditors, Standard Chartered Bank is paid in full. Then the exit facility gets paid in full, and what do we distribute to general unsecured creditors.

You'll see here that we're distributing to them

$550 million of Su Cook obligations, this is another form of Sharia complaint instrument. And you'll see the allocation is between the IAHL creditors and the bank, 15 percent to the -- 85 percent to the IAHL creditors, 15 percent of the Su Cook to the Arcapita Bank creditors.

Remember, Your Honor, also that the -- as some of the IAHL creditors, the IAHL creditors have claims against the bank, too, so some portion of that 15 percent will go to the IAHL creditors as well.

Now, you've seen after the Su Cook obligations are paid, you see the new Arcapita Class A shares, which have a redemption preference of $810 million. Again, you see the allocation is between the IAHL creditors, and the Arcapita Bank creditors. These are part of the allocations that the committee, in their discussions with their members and with the ad hoc group, came up with.

After the shares are redeemed, after this redemption preference is paid, $810 million, we have ordinary shares that will be issued. And those ordinary shares will be issued 97 and a half percent to the bank creditors, and 2 and a half percent to the IAHL creditors.

So this is essentially what the capital structure will look like on emergence. There will be -- SCB will be paid off, the exit facility will be in place for $350 million, that exit facility is going to come in at the new

Arcapita HoldCo 2 level. The Su Cook obligations will be distributed to creditors of the bank in IAHL. The Class A shares will be distributed to the creditors of the bank and IAHL, and the ordinary shares will be distributed to the creditors of the bank and IAHL.

If you turn the page, you'll see that there are a couple of classes of warrants that are being -- that are contemplated under the plan. One class of warrants will go to the IAHL creditors, as part of the overall deal that was struck, and these warrants will allow them after the Class A shares are redeemed, and after this dividend threshold for the ordinary shares that was on the preceding page is satisfied of 1.4 or so billion dollars, allow them to exercise their warrants to purchase shares for 50 percent of the equity. And they were also issuing the new Arcapita shareholder warrants, those are the warrants that the existing shareholders receive in exchange for the transfer of their shares in the bank, and those shares could be diluted to all creditor interest by up to 80 percent.

And one of the things we've been working on over the past several weeks is under what circumstances the shareholder warrants themselves could be diluted. And in the documents that we filed either last night or the day before, whatever, we have reached an agreement that there may be some dilution of those shareholder warrants, but the

dilution has to be not only of the warrants of all shareholders, and the dilution must be through the issuance of fair market value of stock at fair market value, and that stock must also be offered preemptively to the other shareholders and warrant holders. We believe that that's a fair treatment of both the shareholders, the warrant holders, and the company's potential need to raise new funds.

Next, Your Honor, I'd like to hand you a --

THE COURT: Thank you.

MR. ROSENTHAL: This is taken from the -- from a Doughton, it's an exhibit to the Doughton declaration, but the only line to focus on here is the line third from the bottom, cash sweep. This reflects the projected funds that will be available over the period between now and June of 2018 to pay the various obligations that are coming out of the plan.

You'll see year one, $492.8 million, 400 million, and that is -- you add those up -- I think if I did my math correctly, it was about a billion 4, a billion 450, something like that.

Only a couple more.

THE COURT: Thank you.

MR. ROSENTHAL: So I've now handed you a chart that reflects the liquidation analysis. This was the chart

that was attached to Mr. Carvada's declaration. If you look at page 1, it deals with the liquidation analysis for the Arcapita Bank creditor classes, and page 2 deals with the liquidation analysis for the IAHL classes, and so on.

Looking down at the bottom right, you'll see in a liquidation as opposed to the billion 4 or whatever that will be available under the plan for the Arcapita Bank estate, there would only be total recoveries of $157 million. You'll see under the recovery percentages that net would result in unsecured creditors receiving something in the neighborhood of 3.3 percent, whereas under the plan, they're receiving 7.6 percent.

If you turn the page, you'll see a similar analysis for IAHL, and again focusing just on the recovery percentages, you see a recovery percentage under the -- in a liquidation of 15.4 percent, and under the plan a 58.9 percent.

The reason neither one of these show recoveries for Standard Chartered Bank, is because Standard Chartered Bank if you look at the following pages, Standard Chartered Bank is effectively paid off through its -- through realization of its claims. It is effectively assumed that Standard Chartered Bank was paid off through realization of its claims from the other portfolio companies, or are otherwise factored into this analysis.

We believe, Your Honor, that that demonstrates that the plan recoveries, or at least as great, in my view, significantly better than recoveries in a Chapter 7 liquidation.

And the final thing I want to show Your Honor is the vote, because I think it's very interesting.

THE COURT: Thank you.

MR. ROSENTHAL: So we have this chart that indicates the voting details. And I want to point out a couple of things to you. Standard Chartered Bank has voted to accept, so it's the only claim in Class 2, it's voted its $96 million to accept. That acceptance represents the only impaired accepting class in four of the cases, Rail and Best Wind Turbine (ph), AEID 2 and Arcapita Long Term Holdings, it satisfies the confirmation requirement to have an impaired excepting class in each of those entities.

Class 4 in both the bank case, and the IAHL case, represents the claims of the holders of the syndicated facility, that's the 1.1 billion and the Arc Su Cook 100 million, and you will see that 64 percent or $773 million of those creditors voted a hundred percent of those voting voted to accept.

If you look at Class 5, that's the general unsecured class, claims class, both in the bank, and in IAHL. There are very few unsecured creditors in IAHL, but

the two that exist for $3,000 voted to accept.

Now, the more important figure is the acceptance in bank Class 5. So these acceptances by 590 creditors holding $1,028,000,000 in claims represents 99 percent of the creditors who voted. And, in fact, as a class, roughly 67 percent of all creditors entitled to vote actually voted. There were nine rejecting votes that totaled $9 million.

The only other thing of interest on this chart is Class 8. You'll see that there were 65 claimants in Class 8. All of the claimants in Class 8 other than Tide voted to accept, and you just heard Mr. Wood withdraw the Tide rejecting ballots. So all of the creditors in Class 8, all 63 that actually voted have voted to accept.

THE COURT: And Tide is the two listed in the ballot count for rejecting in the amount of 50 million?

MR. ROSENTHAL: 50 million, they had two $25 million ballots.

So, you know, I think there's no question the creditors are supportive, and this is in addition to the 78 percent of the shareholders who agreed to transfer their shares.

Your Honor, just a couple of more points. First, we have -- we filed a list of six of the seven directors that the committee has designated to be the directors for New Arcapita TopCo. They have indicated, and I'm sure Mr.

Dunne will indicate that there's one additional director to be named, but he or she hasn't been named yet. And the compensation of those directors under the articles that have been negotiated will be set by the board.

There are -- as you know the plan incorporate --

THE COURT: Is there a requirement as to when that additional director will be named?

MR. DUNNE: We expect to have that done shortly, but in terms of the requirement, we obviously need to get it done before the effective date, but we're in negotiations with that candidate right now, we just don't have his authority to release his identity yet, until he gets satisfied with certain issues.

THE COURT: All right. Thank you.

MR. ROSENTHAL: The plan also, Your Honor, proposes to assume certain agreements. And in some cases, to modify those agreements. The -- we submitted a technical modification that clarifies that all of the inter -- all of the existing management and administration agreements would be assumed. There are a couple of them with some parties that I want to talk about that will be modified, and then I want to talk about relief sale agreements.

We have a series of agreements with Harbor Best (ph). We had received a limited objection from a reservation of rights from Harbor Best as to the plan, and

we've been in negotiations with Harbor Best. We have reached an agreement of the Harbor Best issues, and have filed a term sheet with the Court resolving those issues.

As a result of that, the Harbor Best agreements will be assumed, assigned to one of the new holding companies, and modified as provided in those term sheets. The modifications essentially recognize, you know, that Harbor Best is an owner of four or five portfolio companies, has an interest in four or five portfolio companies, and wants to make sure that its interests are adequately protected.

I believe Ms. Sugvoisk (ph) is here, and she can talk about whether Harbor Best is in agreement.

MS. SUGVOISK: Your Honor, with the amendments that are specified in the term sheet that was filed last night, Harbor Best has no further objections. Also, has no objection to the assumption amendment and assignment of the contracts.

THE COURT: All right. Thank you.

MR. ROSENTHAL: We also have several agreements with another significant investor that is the State General Reserve Fund of the Sultanate of Oman. We've again been in negotiations to resolve the SGRF issues, and we have reached an agreement with SGRF. We have not yet filed a term sheet because we just received confirmation this morning that SGRF

has agreed to the proposed treatment, but we will be filing it. It's similar to Harbor Best, SGRF had concerns about the assumption and assignment that we've resolved through the modifications to the agreements with SGRF.

And by the way, Your Honor, the agreements with Harbor Best and SGRF were reached with the full consent of the committee.

I have the terms of the assumption assignment with SGRF if I may approach.

THE COURT: Yes, please.

Thank you. And has this been or will this be filed, or --

MR. ROSENTHAL: It will, Your Honor.

THE COURT: -- are you going to place it on the record?

MR. ROSENTHAL: It will be filed. Basically SGRF has agreed that no cure amount is due, it will not object to the plan, it will waive all defaults, and we have provided a limited, you know, a limited role for SGRF in the disposition committee process, and the benefit of the minority protections that we've negotiated in connection with the cooperation and settlement term sheet.

THE COURT: Just give me one second, if you would.

(Pause)

THE COURT: Thank you.

MR. ROSENTHAL: In the third agreement, important agreement, a series of agreements that will be assumed, but slightly modified are the agreements related to the Lusail transaction and the arrangements with Cotter Islamic Bank and QRE related to that transaction.

We have been in discussions with QIB, which is the bank that provided the financing, and their counsel Weil Gotshal. We received, again we didn't have it last night, but we received this morning, confirmation that the agreement -- that we are seeking from them a consent to the assumption and assignment to a particular new holding company that that's acceptable to them. They've made some comments in the proposed modification. We have reviewed them this morning before court, and I believe they're satisfactory. We will be filing that after the hearing as well. And I think that Mr. Gore may be on from Weil Gotshal, I'm not sure.

THE COURT: All right. Is there anybody on from Weil Gotshal who wants to add anything to that particular resolution?

(No response)

THE COURT: All right. Hearing no one, I assume that answer to that question is no.

MR. ROSENTHAL: Okay. Your Honor, the next thing I want to discuss, I have only a couple of more things, are

the releases in the plan. There are two releases in the plan, two basic forms of releases, the debtor releases and the third party releases.

The debtor releases were heavily negotiated with the committee, and preserved certain causes of action that have been negotiated with the UCC. We have -- we've done a couple of things in the latest revision that we can go over with you. One is we've added the exit lenders to the debtor releases, consistent of course with the exit documents that we're going to sign.

And we've -- there -- while avoidance actions are generally not preserved, there are many avoidance actions that are generally not preserved, there are also categories of avoidance actions that are preserved. And so you will see in the technical modifications as we go through them, we've added some additional parties as -- against whom avoidance actions would be preserved.

The second category of releases, Your Honor, relates to third party releases. We were mindful of the Court's comments at the disclosure statement hearing, and so although the plan does provide for third party releases, each voting party had the opportunity to opt out of the release. And, in fact, we did receive some opt outs.

A couple of things have happened since the vote, however, and are reflected in the technical modifications,

and I want to bring those to your attention.

One is that we have voluntarily carved back the third party release because, and this came to some extent at the -- after discussions with Mr. Morrissey, when we were looking at the language we realized that it was just too broad. It was a release that covered transactions that didn't have anything to do, that arguably didn't have anything to do with the debtors.

So I'll walk you through the modification when we get to the plan itself, but we've carved it back so that that release essentially relates to transactions that relate to the debtor.

THE COURT: All right. I'm happy to hear that.

MR. ROSENTHAL: The second thing we've done, at the request of the exit lender, is to expand the third party release parties to include the exit lender. And our intent here, Your Honor, is not to seek resolicitation of the plan, we don't believe that that would be necessary, but at the same time, we believe that the exit lender should receive this, the benefit of this release for several reasons.

First, the release is an important requirement of the exit lender. Second, the exit lender has agreed that it would be bound by the same opt out, so if somebody opted out with respect to the original release parties, that that opt out would be effective as to the exit lender.

Now, I can understand that that may not be a perfect solution, but it's hard for me to imagine someone who didn't opt out, who would now want to opt out, because the exit lender, who has never -- wasn't even on the scene before has suddenly come onto the scene.

We also believe, Your Honor, that courts in this circuit have recognized that third party releases are appropriate even non-consensual ones, where the party is either provided substantial consideration or the enjoined claims would impact the debtor's reorganization. And we're looking at the Chemtura cases, and the Metromedia case and Motors Liquidation, and we believe that the exit lender has, in fact, demonstrated that it has provided substantial contribution, and is providing the $350 million, and that failing to provide the third party release to the exit lender would have a deleterious effect on the debtor's estate; in that, the debtors have agreed to indemnify the exit lender from certain claims under the terms of the credit facility.

Because of these indemnity obligations, if a claim remain against the lender, the lender would turn around and sue the reorganized debtor and the new holding companies, and that would in effect be a claim against the debtor's estates that we are trying to eliminate those claims. Therefore, we believe it's appropriate for the Court to

authorize the release to include the exit lender.

The next and final thing I want to address, Your Honor, is the request and our agreement to pay the ad hoc group fees. As we discussed at the disclosure statement hearing, and as you know from the many hearings before the Court --

THE COURT: Let me just back up one second.

MR. ROSENTHAL: Uh-huh.

THE COURT: I'm sorry to do this to you. But is that release that's proposed for the exit lender have a carve out for willful misconduct or gross negligence, consistent with sort of exculpation?

MR. ROSENTHAL: It does, Your Honor. In fact, we have -- we received comments from Mr. Morrissey, and we'll go over those with you. It already had those carve outs, but he had some additional ones that he wanted included --

THE COURT: All right.

MR. ROSENTHAL: -- which we have also included.

THE COURT: All right. Thank you.

MR. ROSENTHAL: As we've discussed many times, the ad hoc group has provided a very valuable benefit to the debtor's estate. It's been a voice of the IAHL creditors, and as a result of the participation of the ad hoc group, we believe that the negotiations have proceeded more smoothly, we had more certainty about our plan. And as a result of

that, we think and believe it's appropriate that the ad hoc group should be compensated for their efforts through reimbursement of their reasonable counsel's fees.

We believe the correct standard is a reasonableness standard, as Judge Gerber said in Adelphia, but if the Court decides to apply a substantial contribution test under 503(b), we believe that the ad hoc group can readily meet the standard for substantial contribution.

We have agreed with the committee and the ad hoc group that the fees that would be reimbursed would be limited to those that are reasonable and documented and capped at $1.2 million.

Now, the ad hoc group has submitted the affidavit of Mr. Benano (ph), who's in court today. And I have one addition. We didn't have time to make this change before but Ms. Greenblatt, in consultation with Mr. Benano determined that one of the references in a paragraph of the declaration was improper, so I'd like to correct it on the record.

THE COURT: Yes, please.

MR. ROSENTHAL: We're fine correcting it.

In paragraph 16, Mr. Benano said he personally met with --

THE COURT: 16?

MR. ROSENTHAL: 16.

THE COURT: All right.

MR. ROSENTHAL: He said he personally met with certain co-investors in the Middle East. It was not supposed to be co-investors, it was supposed to be prospective board candidates. And I believe they will be filing an amended declaration.

THE COURT: All right. Thank you.

MR. ROSENTHAL: Your Honor, I have nothing further in a main presentation unless the Court has any questions about particular confirmation elements?

THE COURT: No, I don't. I may once you finish going through some of those other items you mentioned, but I don't at this time.

MR. ROSENTHAL: All right. Should I let Mr. Dunne stand?

THE COURT: Please.

MR. DUNNE: Thank you. Good afternoon, Your Honor. For the record, it's Dennis Dunne from Milbank Tweed on behalf of the creditor's committee.

I will be very brief, I have only a couple of points that I wanted to call to Your Honor's attention.

First of all I echo I think all of Mr. Rosenthal's comments about the characterization and the arc of the case, and the committee does support fully the plan, and urges entry of the confirmation order.

I'd say for the most part, you know, this case has been a model of cooperation among the debtors, the committee, the ad hoc committee, and the JPL's. While there have been some moments of acrimony or contention and some of those disagreements bubbled up to Your Honor for adjudication, it was as a result of those heated negotiations, get the Court involvement, and your guidance on some issues that led us to where we are today. I think we all kind of looked at the alternatives here given the structure that Arcapita had formed prior to any of our involvements, and the legal rights and remedies associated with it, and it all drove to a path where consensus was the best outcome. And the alternative would've been years of litigation and litigation that likely would've gotten mired into the thorn thicket of limits of bankruptcy court jurisdiction, extraterritorial effect of avoidance actions, and other statues in the Code, which we know from other cases, can take years and years to fully litigate, and then you're not sure whether you've actually resolved it when you go to try to enforce that in another country.

So we're very pleased that we managed to avoid that. And you saw the plan has obtained overwhelming creditor acceptance.

Some of the other points that I wanted to note for the Court is the committee has spent a lot of time and

worked hand and glove with the ad hoc committee in terms of identifying, interviewing, and selecting the board of directors. I think that we have a top shelf board. Mr. Rosenthal mentioned that as part of the plan supplement, we've disclosed the identity of six of the seven. We hope to have the seventh identified and disclosed in the very near term, but obviously in no event, later than the effective date.

I think that all those board members are getting ready to do the preparatory work so that they can hit the ground running post effective date, and manage these assets to the collective benefit of the creditors of the estate.

Lastly, the committee supports the releases as amended to include the exit lender, and supports the payment of the ad hoc committee's fees.

And with that, Your Honor, unless the Court has any questions for me, I'll yield the podium.

THE COURT: All right. In your view, the ad hoc committee satisfies the requirements for substantial contribution under 503?

MR. DUNNE: We do, and I'll resist the temptation to make the argument, which I argued in front of Judge Peck in Lehman, that I think in the context of a consensual plan where it's been voted on by the creditors, I think that you have the authority under 1129(a)(4).

THE COURT: I'm aware of that. My -- as I think I had mentioned before, certainly there are lots of interesting legal issues, and not just in this case, but some other cases where those come up. But my view is that if it satisfies the requirements for substantial contribution, we don't need to address those --

MR. DUNNE: I think --

THE COURT: -- interesting legal issues in this case.

MR. DUNNE: It's appropriate under either standard, Your Honor.

THE COURT: All right. Thank you.

MR. ROSENTHAL: Your Honor, may I mention just two things before we leave. First, I want to -- Mr. Stein, who's here from Garden City has submitted his declaration in support of the mailing of the solicitation packages.

One thing that I inquired about because I was looking at the declaration and it said -- if the Court recalls, the Court said -- we asked the Court if we could, and you mentioned this yesterday, if we could provide e-mail notification and the Court said, you can certainly provide e-mail notification if you want, but I want some other form of accepted notification to go out.

And so what Mr. Stein's declaration says, which was true, is that we provided for all voting creditors, we

provided notice by overnight courier service, and unfortunately there was some significant expense to the debtor's estate, but we thought it was important to use overnight courier service.

What his declaration doesn't now say, but will be amended to say, is that in addition to that, we provided notice by e-mail to the extent that we had e-mail addresses, and that we provided notice by mail as well. So we tried to cover the waterfront in terms of providing people with notice of this hearing, and of the confirmation process.

THE COURT: All right. Thank you. And that's consistent with I think what you've said earlier about your intent to use e-mail where available to provide that extra notice.

MR. ROSENTHAL: And the second point that I failed to make, and I think it's obvious in the papers we filed is, we have all accepting classes except 10A, which is the most junior class. Remember, this goes back to the super subordination argument. And without prejudice to Mr. Wood's right to make the arguments in the Falcon case, in this case, he's agreed that 10A, which is the super subordinating class that his claim is 10A, as to 10A, the -- which is the most junior class, the plan -- there's no acceptance of the plan by votes, but the plan can be crammed down under the 1129(b) standards, as no junior class will receive any

distribution.

THE COURT: Right. All right. Thank you.

MR. GRAVES: Good afternoon, Your Honor. For the record, Jeremy Graves of Gibson Dunn and Crutcher on behalf of the debtors.

I'm here to walk the Court through the various objections, limited objections, reservations of rights, and objections to the proposed assumption of certain executor contracts that have been received. And if it's okay with Your Honor, I think I'm going to walk through each of the objections one at a time, and then give the relevant objecting, reserving rights party, the opportunity to correct any misstatements I may make with regard to --

THE COURT: Sounds like a sound approach.

MR. GRAVES: -- resolution.

The first limited objection I would like to address is the limited objection of May Hula Foreign Investment USCP (ph), that was filed as Docket No. 1165.

In essence, May Hula objected to the plan because May Hula wants it to be clear in a confirmation that the plan does not prevent May Hula from naming Arcapita Bank as a nominal defendant, so that May Hula can benefit from whatever it's able to obtain from debtors, directors, and officers insurance, or from filing suit against certain officers and directors, as a result of a direct claim that

May Hula may have that is not released pursuant to the debtor release of the plan.

In its objection, May Hula suggested some specific language that it believed would resolve its objection, and we engaged in discussions with May Hula regarding some slight tweaks to the language as proposed to the limited objection, and May Hula has agreed to the revised language, which was reflected in our reply to the confirmation objections, and was also filed in the proposed order that was filed last night. So in light of it already being in the record, I don't propose to read it again now, if that's okay, Your Honor.

THE COURT: All right. Anybody from May Hula that wants to be heard?

MR. SALZBERG: Excuse me. Your Honor, Mark Salzberg, (indiscernible) agree with debtor's counsel. There was one little tweak of -- there was an extra word that was in the black lined confirmation order. I spoke with counsel earlier today and they've removed it.

THE COURT: All right. Thank you.

MR. GRAVES: That's correct, Your Honor. And the finalized confirmation order will reflect the revisions we discussed on the record today.

The next limited objection we received was filed by ACE American Insurance Company and the Westchester Fire

Insurance Company which was filed at Docket No. 1178. ACE filed an objection that we think principally related to insurance neutrality of the Falcon plant. And that portion of ACE's objection is not before the Court this morning, Your Honor, in light of the adjournment of the confirmation hearing with respect to the Falcon plant, and we, of course, agreed with ACE's counsel that their rights to make any arguments they have with respect to the Falcon plant are reserved, for the adjourned confirmation hearing with respect to Falcon.

ACE's remaining objections, as we understand them related to issues that might be created by a potential rejection of a certain guaranteed contract that Arcapita Bank had entered into with ACE with respect to a surety bond that was issued in connection with a construction development that's ongoing.

The debtor's intent actually all along had been to assume this particular executor contract with ACE, and we've corresponded with ACE's counsel, and we believe that the assumption of this agreement, which is identified on the assumed executor contract and unexpired lease list that was filed with the Court last night, does resolve ACE's objection to confirmation, subject to some language that ACE's counsel requested in the confirmation order, that clarifies that their rights, pursuant to this particular

contract, are preserved, just as they always would, with any assumed executor contract. But counsel is here to --

THE COURT: All right. Anyone from ACE who wants to be heard?

MS. VULPIO: Yes, Your Honor. Yes, Your Honor, Mr. Graves has I think accurately described the resolution. There were a couple of provisions, one in Section 9.3 of the plan and I believe it's restated in paragraph 67 of the proposed confirmation order relating to successor liability.

And I think in the debtor's confirmation memorandum they had clarified that obviously as with respect to an assumed contract that those provisions would be inapplicable, because they're agreeing obviously to perform all the obligations under the assumed contract.

So, you know, if we're able to have language reflected in the confirmation order that our objection has been resolved by virtue of the assumption of the relevant contract, that would certainly resolve our concerns.

THE COURT: All right. Thank you.

MS. VULPIO: Thank you.

MR. GRAVES: And, of course, Your Honor, we'll work with counsel to make sure that the language proposed to Your Honor is acceptable.

The next objection, limited objection that I would like to address is the objection of Monzur Nasser (ph),

which was filed as Docket No. 1182.

As we understand it, Mr. Nasser was concerned that the discharge provision of the plan could be read very broadly to prevent Mr. Nasser from pursuing an argument that he may or may not have that certain property held by the debtors is not, in fact, property of the debtor's estates, but is in fact, property of Mr. Nasser.

In his objection, he filed a certain slate of expected language that he said would resolve his objection. We've engaged in discussions with Mr. Nasser's counsel, and have reached an agreement on a more limited slight of language that I think it may be appropriate under the circumstances to read into the record, if that's fine with Your Honor.

THE COURT: Certainly.

MR. GRAVES: The language we'd agreed upon says, "Nothing in the confirmation order, the plan, or the plan documents shall prejudice or impair the right of Monzur Nasser or of Beatrice (indiscernible) Nasser collectively the Nassers to argue, 1) That any property held by the debtors or the reorganized debtors is not property of the debtor's estates, or has been or is being improperly or wrongfully withheld from the Nassers "the title disputes"; and 2) That the Nassers have timely preserved their right to assert title disputes, and for the Nassers to be granted a

remedy with respect thereto, nor shall anything in the confirmation order, the plan, or the plan documents prejudice or impair the rights of the debtors or the reorganized debtors to object to the title disputes with timeliness of asserting the title disputes for any reason whatsoever.

Mr. Nasser's counsel has confirmed that this language does resolve his objection, and in light of the debtor's agreement to include this language in the confirmation order, I do not believe his counsel is in the courtroom or on the phone.

THE COURT: All right. I think your representation is more than sufficient to resolve that issue.

MR. GRAVES: Thank you, Your Honor.

The remaining two objections that were filed with respect to the plan, that were titled as such, were filed by Tide. As has been well noted for the record, the Tide objections relate, at this point, only to the Falcon plant, and the Tide rights to prosecute those objections in connection with the Falcon confirmation have been or will be fully preserved in the confirmation order.

We received two reservations of rights from two -- from different parties. One of the reservations of rights was filed by Harbor Best, and Mr. Rosenthal has already gone

through the resolution of the issues related to Harbor Best with Your Honor. And I believe that obviates any need to discuss the reservation of rights with respect to Harbor Best.

The additional reservation of rights was filed by Ahlem Imtiaz Investment Company, and at this point, the debtors are not aware of any actual objection that this party has. And trying to be in touch, I believe Mr. Abramowitz is in the courtroom and he'll be able to speak on --

MR. ABRAMOWITZ: Yes, Steven Abramowitz, Vincent Elkins on behalf of Ahlem Imtiaz, that is correct, the concern raised in our reservation of rights has been satisfied, and we do wish to pursue an objection.

THE COURT: All right. Thank you.

MR. GRAVES: Thank you, Your Honor. In addition to the limited objections and reservations of rights with respect to confirmation of the plan, we received one formal objection and two informal objections to the proposed assumption and assignment, in some cases, the executory contracts pursuant to Section 6.1 of the plan. The first of these was filed on the docket by Oracle American Incorporated at Docket No. 1177.

Oracle objected to the debtor's proposed assumption of contracts as set forth in the cure notices

that were mailed to Oracle, and the debtors are going to resolve the objection by not assuming the contracts. They're not on the assumed executory contract and unexpired lease list that was filed with the Court last night.

THE COURT: All right. Is there anybody here from Oracle who wants to be heard on that issue?

(No response)

THE COURT: All right. So I will assume that the decision not to assume that contract resolves that objection.

MR. GRAVES: Thank you, Your Honor. And for the sake of completeness, I will note the two informal objections that were received by debtor's counsel with respect to the proposed assumption of contracts, one of them came in from an entity called Computer World. And Computer World's concern as we understand it was to the proposed cure notice.

Just by way of background what happened with this particular cure notice was that at the time the cure notices were mailed, nothing was owned under the contract. In the interim, an amount came due under the contract, so they objected because the amount was due. The amount has since been paid, and we believe that resolves the cure amount dispute with respect to the contract with Computer World.

THE COURT: All right. Is there anyone here from

Computer World?

(No response)

THE COURT: All right. I'll assume that that resolves that issue as well.

MR. GRAVES: Finally, Your Honor, we received an informal objection from an entity called JK Cement Limited. It was I think fairly characterized as an objection to the proposed assumption of the executory contract, it's a little difficult to discern, but in light of the potential objection to the assumption of the contract, the debtors have withdrawn their proposed assumption of the particular contract, and the contract identified in the letter received by debtor's counsel is not on the list of assumed executory contracts and unexpired leases that was filed with the Court.

THE COURT: All right. Is there anyone here from JK Cement who wishes to be heard on that issue?

(No response)

THE COURT: All right. I will similarly assume that the withdrawal of the intent to assume that contract will obviate the need to address it any further.

MR. GRAVES: Thank you, Your Honor. I believe that finishes the walk-through of the objections that were filed, and the reservations of rights, although I think I will cede the podium. Mr. Morrissey may have something to

say about the release provisions that have been added to the plan. I don't know if this is an appropriate time or --

THE COURT: All right. I'll ask you whether this is the appropriate time in the dance card to address the U.S. Trustee's issues.

MR. ROSENTHAL: Well, Your Honor, that's fine, Your Honor. I was going to go through the modifications to the plan which would include the modifications to those release provisions.

THE COURT: Why don't we do that first. That may make it a little easier for Mr. Morrissey to tenor his comments to what you've included.

MR. ROSENTHAL: Your Honor, I have a copy of what we filed last night, a notice of filing, a black line of second amended plan, the first --

THE COURT: All right. Give me one second to catch up to you.

MR. ROSENTHAL: Do you have that?

THE COURT: Notice of filing, black line, second amended joint plan I have. Thank you.

MR. ROSENTHAL: With first -- so let me try to walk you through these changes. Fortunately Mr. Graves who spent most of the night making them is right to my left in case I stumble.

Your Honor, we made a change on page 3 to Section

2.2 to clarify that any amounts funded into the professional claims escrow, compensation escrow will be remitted to the borrower if they're not needed to pay the professional claims as finally allowed by this Court.

And we also added in this same paragraph the concept that if insufficient funds are in the claim -- to pay the allowed claims that the unpaid portion would be paid by the new holding companies.

THE COURT: All right.

MR. ROSENTHAL: Okay. Section 2.4 has been -- eliminated the concept of the new facility distribution procedures, which are no longer necessary due to the SCB plan settlement.

Section 2.6 clarifies that, you know, all of the new holding companies will be obligated to pay the ad hoc group fees, that the Court approves.

Section 4.2 which is on page 9 has just been revised to reflect that we have the settlement with SCB, so instead of the treatment it's -- the treatment of SCB is the treatment shall be as set forth in the SCB plan.

Under Section 6.1, which is the treatment of executory contracts, there are a couple of things going on here. First, we clarified -- we didn't want -- we wanted to make sure that all of the existing management administration agreements were assumed, so we -- you'll see in the

glossary, we added a defined term, existing management administration agreements. And we -- if you follow this section, you'll see that it says that contracts are rejected, generally -- if you look at the first lead in on 6.1, shall be rejected, on page 15, except for any such contract that, and now you go to the top of 16, is an existing management administration agreement.

So we've effectively said that these are all assumed. Then we have added the language about six lines down that entry of the confirmation order is the Court's approval of the assumption and assignment that are identified in the preceding subparagraphs.

And then we've clarified that the obligations of the debtors under the previously entered employee program and global settlement order are to be assumed as well. So these are obligations that you imposed on the debtor, but they also -- it's been agreed, and it's part of the cooperation term sheet in the management services agreement, that those obligations would be assumed by the new holding companies as well.

We have then again at the bottom revised the language to reflect that the QRE letter agreement is in substantially the form that we filed in the plan settlement -- supplement. Now, there will be a couple of changes as a result of the recent comments from Weil Gotshal on behalf of

QIB to the QIB letter.

And then we've clarified in this language, we've really just cleaned up this section to clarify that what is being assumed, what is being rejected, and that in most cases, the assumed contracts are being assigned to the new holding companies.

THE COURT: All right.

MR. ROSENTHAL: Section 7.2.2 has been deleted because it's no longer necessary. It was the section that dealt with the new SCB facility, it's not necessary because we are paying SCB off pursuant to the --

THE COURT: That's 7.2.3?

MR. ROSENTHAL: 7.2.2. Ah, I'm sorry, I'm sorry. 7.2.3 is what I was talking about.

THE COURT: Yeah, I didn't want you to get rid of 7.2.2 which is your exit facility.

MR. ROSENTHAL: No, no, no. I'm sorry. 7.2.2 we've just added the word investment agent, because that's the term, that's the defined term.

THE COURT: Right.

MR. ROSENTHAL: You're right, we do not want to get rid of the exit facility.

The next change, Your Honor, is at 7.12. And we've just confirmed this to reflect that the members, only the members of the new boards were identified in the plan

supplement. It's not contemplated that the reorganized debtors will have any officers, and the schedule of compensation will be as determined by the directors after the appointment.

7.14, Your Honor, has been changed to clean up some language in the third full paragraph there. But also to reflect that the treatment of the -- the agreed treatment of the existing senior management team under the senior management global settlement, as I mentioned in my opening, part of the negotiations related to the cooperation settlement term sheet dealt with the senior management global settlement, and what obligations would be imposed on the reorganized debtors and the new holding companies.

And as part of that settlement, the senior managers are getting the settlement that they proposed, except that they have waived all rights to employment related benefits from reorganized Arcapita and the new holding companies. And that's reflected in the actual term sheets that form the senior management global settlement.

The next change, Your Honor, is to 7.18, preservation of causes of action. To reflect, and this was a request of the exit lender that the causes of action are being -- actually being transferred not to New Arcapita TopCo but to New Arcapita HoldCo 2. As you remember, I told the Court that the exit facility was going to be at the New

Arcapita HoldCo 2 level. And then there are some corresponding changes at the bottom of that right before 7.19 relating to preservation of the attorney/client privilege.

There's also some provisions here that deal with Falcon, because we're not considering the Falcon plan and I don't think the Court needs to address those.

THE COURT: All right.

MR. ROSENTHAL: 7.22, the sentence was added at the end, it was contemplated in the original term sheet that the management services agreement would itself contain the agreements for the transfer of certain intellectual property and certain fixed assets.

As that document was negotiated, however, it became clear that it was cleaner and more appropriate to put the transfer of the intellectual property and the transfer of the fixed assets in separate agreements. And that's what the language in -- added 7.22 does.

7.23, it just makes explicit that the plan constitutes approval of the SCB plan settlement.

The next change is to 8.3.3, that deals with the exercise of issuance of partial shares, which would not be effective. Would not be terribly economical to have to issue partial shares.

8.3.4 deals with the same issue as it relates to

the new creditor warrants. So this deals with new creditor warrants in 8.3.4 and new shareholder warrants in 8.3.3.

8.11. Actually the change to 8.11 is again not applicable, because it deals with some language we had added to deal with Falcon, but as that plan is not up for confirmation today it's not relevant for today's hearing. And by the way, Your Honor, what we've proposed to do as we started the hearing is to add, and as Mr. Wood said, is to add a paragraph to the confirmation order that says, in effect, the provisions of the plan as they relate to Falcon, I'm paraphrasing, are not up for confirmation today, and you know, this Court's confirmation order does not, you know, does not approve the plan insofar as it relates to Falcon and the Falcon hearing has been adjourned. So we intend to handle it globally.

THE COURT: All right. I think that's cleaner.

MR. ROSENTHAL: The next change, Your Honor, is to 9.1 to make explicit that the discharge applies to SCB only as set forth in the SCB plan settlement. That's the first change to 9.1.1. And then we've added that the discharge -- it doesn't discharge the debtors from claims that arise from the exit facility. We think it'd probably be very hard to get the exit facility if we didn't agree to repay it.

9.1.2, same kind of change to add SCB, that they only received the injunction to the extent of the SCB plan

settlement. And now we get down to some of the provisions that people may want to weigh in.

9.2.1 deals with the releases, and the first release is the debtor release. We -- as you'll see, it had already provided a -- that omitted from the release was this willful misconduct of gross negligence. We've added some additional omissions at the request of the United States Trustee's office, fraud, which we thought had been covered anyway, but malpractice, criminal conduct, unauthorized use of confidential information that causes damages or ultra vires acts.

And then at the end of that -- so these are just additional bad boy carve outs from the debtor's reliefs. And we've also clarified that their release doesn't apply to the -- you know, to the obligations arising under the exit facility.

The final sentence is one that I understand that the U.S. Trustee's office has added to many plans recently related to professionals, professional responsibility obligations.

The next section, Your Honor, is the avoidance section. And you'll see that the general context of the section is that the debtors have released avoidance actions against certain categories, specifically negotiated by the way, categories of parties, and this was the subject of

intense negotiations with the committee and the ad hoc group and the like. There are some exceptions, though.

If you look at Romanet three in the whole, there isn't -- and then look at the clause there, that other than the placement banks or their affiliates, this preserves -- you know that we've been talking about the amounts paid to the placement banks immediately prior to the filing of the case. This preserves the action against the placement banks.

And there are some -- the addition here of these other names are other preserved actions that have been negotiated to be pursued by the debtors or the committee.

Then when you look to Romanet 4 in the whole, we have made clear, and this is part of our agreement with QIB and QN Best (ph), that the release of the preference actions or avoidance actions is just not with respect to payments received, but with respect to the transaction itself.

THE COURT: All right.

MR. ROSENTHAL: 9.2.4 is the third party release. So let's talk about what we've done here. You will see that in 9.2.4 we have added all of the additional bad boy carve outs that the U.S. trustee had requested, fraud, malpractice, criminal conduct, et cetera.

We have added the last sentence dealing with the compliance by the professionals with their professional --

with their obligations to their clients. And we have -- remember I told the Court that we had carved back some of the release.

So if you look at the fifth line on page 35, at the end, this is in effect a release by holders of claims or interest of any claim that could have been asserted by holders of claims or interest against the third party release parties. As drafted, it didn't relate to claims against the -- claims related to the debtors. So we added the parenthetical, in their capacities as holders of claims or interest.

THE COURT: Okay.

MR. ROSENTHAL: Now, the -- we might as well get to the -- to Mr. Morrissey's issue now. The way Mr. Morrissey's issue comes up, if you go to the glossary, is that in the definition of third party released parties, as well as in the definition of people who are covered by the release that's -- the release party in 9.2.1, we have added the exit lenders and entities affiliated with the exit lenders. So this is the manner in which the exit lenders have been added to those releases.

So I think it's now appropriate if we just stop and deal with any objections to the third party release.

THE COURT: All right.

MR. MORRISSEY: Your Honor, once again for the

record, Richard Morrissey for the U.S. Trustee. First, I'd like to make a general statement about this case, which has Mr. Rosenthal has said, has been before the Court for about 16 months now. As both Mr. Rosenthal and Mr. Dunne have said, this has been characterized by cooperation right from the start. There was -- obviously parties have had issues along the way, not only different issues, but also in different places around the world, and I think that in some respects, getting everybody together was akin to herding cats, sometimes far flung cats as well.

But the spirit of cooperation not only related to the issues, but also keeping the focus on what is required here in this court. There's a lot of discussion that has taken place regarding Sharia law that this case is sort of a pioneer, in that it's the first case that has grappled with such issues. But still, I remember imploring counsel early on to make sure that even though we have Sharia law issues, that we have to make sure we're in compliance with the law that applies here with the bankruptcy law.

And I think that as a result of the parties' efforts in that regard, the documents filed with the Court notably the DIP financing documents look like documents that we see every day in other cases, where Sharia law is not present at all. And as a result of that, I think that the cases have gone much more smoothly than they otherwise might

have.

Now, getting to the issues raised today by Mr. Rosenthal. First of all, with respect to adding the exit funders to the release provisions, the problem here, Your Honor, is not so much a question of the merits of having Goldman added to the released -- the list of released parties, but as the sequence of events.

The creditors were allowed to vote on the plan, and they were allowed to vote to opt out of the release, the third party releases. They were not, however, allowed to opt out with respect to Goldman simply because Goldman --

THE COURT: It's a notice issue in your mind?

MR. MORRISSEY: Yes. And that's all that issue is, Your Honor, and I don't think I have to elaborate any further.

Regarding the other issues, I think that the corrections made somewhat at my behest by Mr. Rosenthal and his colleagues, were appropriate to scale back some of the release language, so that it applied to, as one court has put it, the res, r-e-s, of the estate, as opposed to a situation where something that happens between two parties that's totally unrelated to the Arcapita matter, so that something like that would not be released by operation of this plan.

Your Honor, while I'm here on the substantive

consolidation, I'm sorry, substantial contribution, I'm reading my notes wrong, on substantive contribution to the case under 503(b), Mr. Dunne made a comment regarding the Lehman case, and I don't want to let that go by without saying we don't share his view of the world with respect to that case, but we do see that there is a cap put on the fees of the ad hoc committee. And also we're at the end stage of -- we're at the end game here, we're not at the beginning of the case, so we know what the answer to the question substantial contribution to what is.

Your Honor, as far as exculpation is concerned, what I tend to do, Your Honor, is fuse together exculpation, release, discharge, and injunction provisions, but specifically exculpation is related to Section 1125(e) of the Bankruptcy Code, having to do with solicitation of acceptances or rejections, and a few other things.

Mr. Rosenthal has agreed to limit that to the extent permissible under 1125(e) and the U.S. Trustee is fine with that. I think our concerns are resolved. The case law for the third party releases was actually provided to me upon request well in advance by Mr. Rosenthal and his colleagues, and I certainly appreciate that, because it obviated an objection from the U.S. Trustee, based on the grounds that they hadn't made their case for the third party releases.

So all in all, Your Honor, I think this has been a difficult, sometimes physically demanding for Mr. Dunne and Mr. Fleck and Mr. Rosenthal and others flying back and forth to various places around the world, and I do give them credit for allowing us to reach this day. Thank you, Your Honor.

THE COURT: All right. Thank you. I'm just going to make sure I get the take away right, is it safe to say then your issues are resolved, or is there one issue that is not resolved, that was --

MR. MORRISSEY: The only issue that's not resolved relates to the newly arrived --

THE COURT: Right.

MR. MORRISSEY: -- position of Goldman.

THE COURT: Am I correct in saying that if there's a finding under Metromedia, given the contribution of capital here that's necessary for the exit at better terms than what they had before, that that would solve the problem, because it would solve any objection to them being entitled to the release under Metromedia?

MR. MORRISSEY: Yes, Your Honor. In fact, if the -- if Goldman's name had been added originally or at least sooner than it was, the U.S. Trustee would not have an objection.

THE COURT: That's fair, you're interested in

notice and process issues, and that's fine. That's why I asked the question. All right.

MR. MORRISSEY: That's correct, Your Honor.

THE COURT: Thank you.

MR. MORRISSEY: Thank you.

MR. ROSENTHAL: Should we go on, Your Honor, or --

THE COURT: Let's go on. Well, let me -- I think we've addressed as much as we need to or as much is going to come up. I don't think the exit lender being added to the releases comes up in any part of the plan; is that correct?

MR. ROSENTHAL: It does not.

THE COURT: So I understand Mr. Morrissey's concern, and I think that it can be resolved by making an explicit finding under Metromedia, and I think one of the bases for doing that is the contribution of capital that is adding something to the case, and I think that's an appropriate finding to make here, and I make that finding.

So I will allow it in this circumstance, given that it satisfies Metromedia, and therefore would -- I would overrule any objection to the release based on the law, because I think it does -- it's one of those cases that fits into the narrow band of circumstances that the Second Circuit considered such release is appropriate.

MR. ROSENTHAL: Thank you, Your Honor.

Moving forward, a couple of more changes to the

plan. 9.4, and we've just tied to the release of the liens to the requirements under the SCB plan settlement. As a matter of fact, there have been discussions I know between Ms. -- between SCB and the exit lender, making sure it's all going to occur on the effective date when SCB gets paid. So the liens are going to have to be released in order to get the money, and we just wanted to make that clear in the plan.

THE COURT: All right.

MR. ROSENTHAL: 9.7, just a slight change to the language, to clarify that the committee is not dissolved, you know, until it has decided to abandon any or is successful in any avoidance claims that has been given permission, sought permission, or been given permission to pursue.

9.10, just to reflect the SCB deal, the committee challenge right expires or is modified to the extent set forth in the SCB plan settlement, if you recall, if the Honnington restructuring goes forward, the SCB challenge right goes away, and SCB takes a $2 million reduction, and if it doesn't go forward, we might be litigating before you about adequate protection.

THE COURT: All right.

MR. ROSENTHAL: Then we've got 10.1 -- you know, the last condition precedent to confirmation we just added,

and one of the settlements we're asking the Court to approve is the SCB plan settlement. Then if you move down to another -- a condition precedent to the effective date, we've removed the condition precedent that the new SCB facility be executed as that will not be necessary because of the SCB plan settlement.

And 12.1, we struggled with this one. We tried -- there are 25 people in this courtroom who tried diligently to get the plan supplement documents into final form so it could be -- we could have them ten days before the confirmation hearing. As a practical matter, because of the complexity of this case, the hundreds and hundreds of documents that will be necessary to implement the plan, you know, we have comprehensive term sheets, including the cooperation term sheet that includes, you know, a 40-paged draft of the management services agreement, we have comprehensive equity term sheets and the like.

But the underlying documents that will have to be used to put in place, all of the arrangements just haven't yet been finalized and filed. We filed a ton of documents in a plan supplement, and a supplement to the plan supplement, but as a result of that, we revised 12.1 to reflect reality.

THE COURT: All right. Can -- that has not later than ten days prior to the confirmation hearing, so I

understand why you took that out, and there was a need to take that out. But I see the 12.1 now doesn't have a date, so can we put some sort of a date in there just so that parties who are interested will know when all those things will be finalized, just so they have a sense of that?

MR. ROSENTHAL: Can we put no later than ten days prior to the effective date?

THE COURT: All right. Anyone have any objection to that time frame?

(No response)

THE COURT: All right. I hear no objection.

(Pause)

MR. ROSENTHAL: Okay. So if -- the exit lenders asked us to go back just to make one point clear. If you look at page 39, Your Honor --

THE COURT: All right.

MR. ROSENTHAL: -- and you look at 10.1.2.5 at the top --

THE COURT: I'm sorry, 10.1.2.5, okay.

MR. ROSENTHAL: Right. There was -- there is no intent, and actually if we had given you a clean copy, it would show that the end of 10.1.2.5 says "shall have been executed and delivered by the respective parties thereto."

THE COURT: All right.

MR. ROSENTHAL: So we didn't delete the --

THE COURT: I got you.

MR. ROSENTHAL: -- trailing language, that's just a black lining issue.

THE COURT: No, that's a good clarification. All right. Getting back to plan supplement, I don't see anyone objecting to your proposed language of not later than ten days prior to the effective date. In other cases, certainly the answer to that timing question might be very different, depending on the facts and circumstances. Given the factual circumstances here, and the lack of objection to the very complicated settlements and arrangements that have been discussed, I don't have a problem with that language.

MR. ROSENTHAL: All right, Your Honor, thank you.

So if we go on to the glossary, a few changes here. Let me get myself oriented.

Okay. So if you look at definition 4, we have -- we've talked about administrative expense claims, but we've excluded an SCB claim, and that's because SCB's administrative expense claim has been rolled into the SCB plan settlement.

If you then now look at the definition of AIM, I would just clarify that that's a Cayman Island's company.

In the definition of committee challenge right, it's just -- again just a clarifying change that it's -- the challenge right is defined in the SCB settlement.

THE COURT: All right.

MR. ROSENTHAL: The change to the definition of DIP facility, and DIP facility participants is just to reflect that the existing DIP facility is going to be replaced by the new facility. The original definition referred to the current Fortress facility, and the language -- the definition 69 is any replacement.

The definition of disbursing agent, and the same thing for 71. 71 makes clear that the DIP facility participants means, you know, the participants under the defined term DIP facility.

73 is the definition of disbursing agent, and disbursing agent agreement. And we've just clarified that we're not going to identify -- we haven't -- we didn't identify it in the plan supplement, because there's still negotiations with several parties to act as disbursing agent. Now, that we have the new definition, we will disclose that in the plan supplement, so we can actually -- now that we have the change to the plan supplement definition -- provision, we can add that back in.

THE COURT: All right.

MR. ROSENTHAL: Exculpated party, there is -- you know, there are some changes that you see in the black line, which are continued, and some changes that are -- that have been changed. So we've added the exit facility arranger to

the list of exculpated parties, but if you look back up to 6 in the whole, it dealt with SCB, and as a result of a discussion between SCB and the committee, that language has now been changed. So it now says exculpated parties means, and I'll -- unfortunately we didn't have this last night, we just got it this morning.

SCB provided that SCB shall not be an exculpated party, and I can't read Jeremy's handwriting.

And he can't read his own handwriting.

THE COURT: I hazard a guess at what time that was written last night.

MR. ROSENTHAL: Turning to Mr. Greer. Do you want to read it, Brian, to provide some clarity?

MR. GREER: It should be "that provided that SCB shall not be an exculpated party, solely with respect to the committee challenge right, if and to the extent that an SCB termination event occurs on or prior to the effective date." The concept here is if the committee challenge right survives, that the settlement doesn't go effective.

THE COURT: All right. Thank you.

MR. ROSENTHAL: Thank you. And then we've added at the end of exculpated parties that it includes their directors, officers, employees and the like.

89 is what I mentioned to you before, that we've added a defined term for the existing management

administration agreements.

THE COURT: Right.

MR. ROSENTHAL: Exit facility has -- you know, these changes are necessitated by the fact that we have a new exit lender who wanted to change slightly the way that we referred to the exit facility.

Then going to the next -- and that whole series of definitions from 91 through 96 relate to that. The next change, Your Honor, that I would point out is on page 12. Again, remember I said the fixed assets are being purchased pursuant to a separate agreement, that's the reason for the new definition there, which required a definition of hard assets, which is at the bottom of the page, so that's what one -- the new 110 is.

If you flip the page to page 13, intercompany contracts has been taken out because it's been replaced with the existing management administration agreement definition. Top of page 14, this is the change required to implement the intellectual property, IP, asset transfer agreement. And there's a corresponding change to add a definition of the transferred IP assets, which is what this refers to.

The bottom of 14, numbered definition 132 for tax and regulatory reasons, there will not be just one management services agreement, there will be two, perhaps three or four, and we've just made a change here to reflect

that it will not be one, it'll be two or three with different entities depending on where the services are provided, whether it relates to U.S. assets or non-U.S. assets.

THE COURT: All right.

MR. ROSENTHAL: We've clarified that the -- in definitions -- the definition of New Arcapita ordinary shares, and New Arcapita Bank Class A shares, and New Arcapita IAHL Class A shares, and the basic point of the clarification is that the share rights and entitlements will be consistent with the equity term sheet, and with the -- you know, the form of definitive documents in the plan supplement, and we filed some of those, but we're still working on them.

THE COURT: All right.

MR. ROSENTHAL: The next change is we deleted the definition of new facility distribution procedures, because it's not necessary because it related to SCB.

THE COURT: All right. And I guess you also -- there's one on 151, which is new boards.

MR. ROSENTHAL: I'm sorry?

THE COURT: I -- my black line has something that -- a deleted paragraph 147. Oh, I see, it's a new facility distribution procedure. I got you.

MR. ROSENTHAL: Right. Those are SCB procedures.

THE COURT: I thought that was under new boards, but it's not. All right.

MR. ROSENTHAL: Black lined.

Plan supplement, you'll see that we -- this definition has been changed to be consistent with the change we made in the plan. We had said prior to the effective date, but we're happy to put in with no less than ten days before the effective date.

THE COURT: All right. Under professionals' definition, we made a change to reflect that the professionals' definition does not include any person employed by the exit facility, arranger or participants or -- and this is not in your copy, it was just handed to me, or SCB. To reflect reality, which is that this definition is meant to include estate retained professionals.

THE COURT: All right.

MR. ROSENTHAL: Okay. And moving on to QRE letter agreement, we've just clarified that it's -- you know, that it's -- that that agreement is in the form substantially consistent with what we file with the bankruptcy court now. We'll be filing a revised one to reflect the agreement we reached this morning. Oh, actually that's not changed, right, QRE is not changed? I'm sorry, Your Honor. I don't think this agreement has changed. I think it is in the form filed with the bankruptcy court as NX-19.

MR. GRAVES: Although there will be certain modifications to the agreement consistent with the representations made on the record, but they're not particularly material.

THE COURT: That's probably covered by substantially consistent.

MR. GRAVES: Yeah.

MR. ROSENTHAL: Let me just consult with Mr. Graves.

(Pause)

MR. ROSENTHAL: All right. So I -- Mr. Graves is right. So this is -- it will be substantially in the form filed with the Court, this is the letter agreement with QIB that we talked about earlier.

The definition of released parties, 6 deals with SCB, and we would make the same change to the language as Mr. Greer read into the read in terms of the definition of exculpated parties. And you'll see we've added at the end, the provisions that add to the release party definition, the exit facility arranger and various other parties affiliated with the exit facility arranger, and their officers and directors.

MR. MORRISSEY: Your Honor, may I have a minute to speak with Mr. Rosenthal and Mr. Seider about this last provision?

THE COURT: Sure, if that would be productive.

(Pause)

MR. ROSENTHAL: Okay. So we'll clarify here, Your Honor, this is -- you know, this is intended to cover the exit facility participants arranger investment agent and their officers, directors, and et cetera. And Mr. Morrissey's comment was that he would like this to be a tighter definition and narrow the release to --

THE COURT: Just to their activities in this case.

MR. ROSENTHAL: -- matters related to this case.

THE COURT: Yeah.

MR. ROSENTHAL: And so we will put some language in that specifically ties the relationship to matters related to the debtor's -- to the exit facility, and something to address that concern.

THE COURT: All right. I think that's a good point.

MR. ROSENTHAL: 189 is a revision to the SCB claims definition to make sure that we include in the SCB claims, any claims that they have for expense reimbursement or administrative claims and the like, and that we exclude any claims that they might have by virtue, for example, of their ownership of a piece of the syndicated facility. We understand they own a small piece of that, and there's an unrelated -- there's a guarantee at a portfolio level, so

this is just to tidy up the SCB claims definition, consistent with the SCB settlement.

192 is SCB expenses, which just to add that defined term, which is important for the settlement. And then 196 is actually the definition of the SCB plan settlement, which factors into the treatment of SCB.

You'll see the same thing with SCB termination event, again tied to the plan settlement, so we -- these are conforming changes for the plan settlement.

And that brings us to the definition of number 214, new 214 of the Su Cook facility. And there are series of definitions here about the Su Cook facility that we've just changed the definitions to reflect the fact that documentation hasn't been finalized, and you know, we're still deciding who would be the Rela Mahl (ph) and the trustee, and the particular -- who would serve the particular functions that are required for a Marhaba Arc Su Cook obligation.

Release, we talked about release issues prior I believe. And then finally we added -- the last thing is, if you look at the -- two more things. Third party release parties, we made the same addition as we had made to released parties, we'll make the same narrowing language, add the same narrowing language. And then we added a definition which was picked up in the plan, and which is

relevant for the disposition committees about transaction HoldCo, and transaction HoldCo, just so the Court knows, transaction HoldCo is the entity through which the debtor owns this interest in certain portfolio companies and syndication companies own their interest.

All right. Those are -- that's all the changes in the glossary. So, Your Honor, with all of that, we're happy to go over the confirmation order with you. We believe, though, that we have satisfied all of the standards for confirmation of the debtor's plan, and would respectfully ask the Court to confirm the plan.

THE COURT: All right. Is there anyone who wishes to be heard on the request for confirmation who has not already voiced their views?

(No response)

THE COURT: All right. I will -- I'm very happy to confirm the plan. Let me just go through what I need to go through for purposes of making that finding.

As the plan proponents, the debtors bear the burden of proof on all elements necessary for plan confirmation, and that must be by a preponderance of the evidence that the plan complies to the applicable provisions of the Bankruptcy Code. I find they have satisfied that burden.

The plan complies with the applicable provisions

of the Bankruptcy Code as required by Section 1129(a)(1), and in considering that inquiry, the Court must also consider Sections 1123(a) of the Bankruptcy Code, which sets forth certain elements that a plan must contain, and Section 1122 of the Bankruptcy Code which governs classification of claims.

As to classification, a plan proponent is afforded significant flexibility in classifying claims under 1122(a), if there's a reasonable basis for such classification scheme, and all claims within a particular class is substantially similar, in fact, Courts frequently interpret that section to permit a separate classification of different groups of unsecured claims or a reasonable basis exists for the classification. Here, there is such a reasonable basis. There are separate Chapter 11 sub-plans for each debtor, and they provide for the separation of claims and interest, it's ten classes, based on differences in the legal nature and/or priority of the claims of interest.

No party, other than Tide, has objected to the classification of its claims, and the Tide objection has been withdrawn as to all debtors, other than the Falcon sub-plan, and that Falcon sub-plan is not going forward today, as confirmation on that plan is being adjourned to a later date after the Court issues its rulings on the subordination

issue.

As to Section 1123(a)(2), that section of the Bankruptcy Code requires that a plan specify any class of claims or interests that are not impaired under the plan. Section 1123(a)(3) requires that a plan specify the treatment of any class or claims, or interests, that are impaired under the plan. Here, the plan identifies all classes of claims and interest that are impaired or unimpaired, and thus satisfies those sections.

The Court also finds that the plan satisfies the requirements of 1124(a)(4), that all holders of claims and interest within a particular class are receiving identical treatment under the plan, unless such holder has agreed to accept less favorable treatment.

The plan also satisfies Section 1123(a)(5) because it provides adequate means to procedurally implement the transactions contemplated by the plan, and to also financially implement such transactions that are required by the plan, including, but not limited to the entry into the exit facility, the issuance of New Arcapita shares, New Arcapita creditor warrants, New Arcapita shareholder warrants, payment in full of all unimpaired claims, and the ongoing management and operation of the reorganized debtors.

The Court also finds that the plan satisfies 1123(a)(6) because the plan provides for the inclusion in a

debtor's charter of specific provisions prohibiting the issuance of non-voting equity securities and providing for the appropriate distribution of voting power among the securities possessing voting power.

The plan also satisfies Section 1123(a)(7), which requires that a plan provision -- excuse me, with respect to the manner of selection of any officer, director, or trustee or any successor thereto be consistent with the interest of creditors, and equity secure holders and public policy. Here, the plan provides for the choosing of a new board of New Arcapita TopCo, among other things, that will be ultimately responsible for the management of New Arcapita TopCo, the new holding companies and the reorganized debtors.

I also find that there are various permissive provisions contained within the plan that are appropriate under Section 1123(b)(6). These include provisions regarding modification for the rights of holders of claims, plan's treatment of executory contracts, which include other things such as subordination of claims, such as the right offering claim, and the Thornson (ph) claims. Again, I do not pass today on the subordination of the Tide claims, as that issue pertaining to Tide is sub judice with the Court and will be decided before the Tide -- I'm sorry, before the Falcon plan proceeds with confirmation.

Other permissive provisions of the Code contained in the plan are also approved, including the provision regarding retention enforcement and settlement of claims held by the debtors pursuant to Section 1123(b)(3), as well as the release exculpation and injunction provisions under 1123(b)(6). These include the debtor release that is part of a settlement that the Court approves consistent with the requirements of Section -- I'm sorry, Rule 9019.

These settlements have been discussed in depth here today, and are addressed in detail in the debtor's memorandum in support of plan confirmation. Suffice it to say, they memorialize the debtor's reasonable judgment on the appropriate path forward, and obviate the need for no doubt years of litigation in this case and around the globe.

Consistent with that, there are also various releases that are part of that settlement, and there are also various releases that the Court approves consistent with the opt out release contained in the plan, thus providing folks voting on the plan with adequate notice that they would be granting a release, by not opting out, which is consistent with, among other cases, the In Re DBSD case, 419 B.R., the applicable language is at page 218, a bankruptcy case from the Southern District of New York of 2009, which cites the In Re Calpine Corporation case, 2007 West Law 4565223, a Bankruptcy SDNY of New York from

December 17th, 2007.

The Court also approves the exculpation clause that is contained in the plan, Section 9.2.5. The Court finds that the exculpation provision including its carve-out for gross negligence and willful misconduct, as well as other carve-outs that have been added is consistent with established practice in this jurisdiction and applicable law.

The Court also finds that the conditions for receiving distributions are appropriate, consistent with Sections 1123(b)(6). The authorizations contained in Section 7.16 of the plan are found to be appropriate, as are the payment of the ad hoc group fees.

The Court approves the ad hoc group fees consistent with the substantial contribution requirement of the Code in Section 503(b) of the Bankruptcy Code. It's not a term that's defined in the Code, but is largely found to be "an actual or demonstrable benefit to the debtor's estate, its creditors, and to the extent relevant the debtor's shareholders." See In Re Granite Partners LP, 218 B.R. 440 at 445, a bankruptcy SDNY 1997.

Here, those fees have been identified for contributions already made. They are agreed that they must be reasonable and demonstrated, and are capped at an amount, all of which I think is appropriate. There has been no

dispute by any party that the ad hoc group has made a substantial contribution to this case.

The Court also finds that the debtors have complied with the applicable provisions of the Bankruptcy Code, as required by 1129(a)(2). This includes compliance with Section 1125, which prohibits the solicitation or acceptance or rejections of a plan under certain circumstances. I also find that there's been compliance with Section 1126 of the Bankruptcy Code, which provides that only holders of claims in interest, an impaired class, that will receive or retain property under a plan may vote to accept or reject such a plan.

I also find that the plan was proposed in good faith, as required by Section 1129(a)(3). I find that the plan complies with the provisions for payment of services and costs and expenses, as required by Section 1129(a)(4).

I also find that it complies with 1129(a)(5), which requires that the plan proponent disclose the identity and affiliations of any individual proposed to serve, after confirmation of the plan as director, officer, or voting trustee of the debtor, or successor to the debtor under the plan, and that such appointment or continuance in such office of such individual is consistent with the interests of creditors and equity shareholders, and public policy.

The Court agrees that Section 1129(a)(6) does not

apply, as it regards rate changes of the government. I do find that the plan satisfies the best interest test of the creditors under Section 1129(a)(7), that is each impaired class of claims or interests has accepted the plan, will receive or will retain under the plan on account of such claim or interest, property of value as of the effective date that is not less than the amount that such holder would receive or retain if the debtor entity is liquidated under Chapter 7 of the Bankruptcy Code on the effective date, or has otherwise agreed to less favorable treatment. In this regard, the Court relies on the updated liquidation analysis prepared by the debtor's financial advisors, Alvarez and Marsal North America LLC, which is attached to the Carvada declaration as Exhibit B.

The Court also finds that the plan complies with Section 1129(a)(8) regarding the acceptance of plan by impaired classes. And also that it satisfies the requirement for appropriate treatment of priority claims under 1129(a)(9).

The Court finds that the debtors have obtained the acceptance of at least one impaired class under Section 1129(a)(10), and that they've demonstrated that the plan and sub-plans are feasible under 1129(a)(11) and feasibility is defined as confirming where it is not likely to be followed by a liquidation or the need for further financial

reorganization of the debtor, or any successor to the debtor under the plan.

In this regard, the Court notes that Courts have interpreted this to mean that a debtor need only demonstrate a reasonable assurance of commercial viability, and not a guarantee of success, and that must be proved by a preponderance of the evidence, and the mere prospect of financial uncertainty is not a basis to deny confirmation based on feasibility.

Here, the debtors will undergo an orderly wind down of their business operations, in a way that maximizes value to the stakeholders.

And in this connection, the Court also relies on the Thompson declaration, which is provided with assistance from the financial advisors, A&M, Rothschild, Inc. and M. Rothschild & Sons Limited, which prepared financial projections of the reorganized debtor's annual performance from June 1st, 2013 through June 30th of 2018.

The Court also finds that Sections 1129(a)(12), (a)(13) are satisfied, and that Sections (a)(14) through (a)(16) are not applicable. The plan also satisfies the cram down requirements with respect to non-accepting classes, and does not discriminate unfairly against holders of claims of interest in non-accepting classes.

The Court further finds under 1129(b)(2) that the

plan is fair and equitable with respect to holders of claims and interest in non-accepting classes.

1129(c) is also satisfied, and the Court finds that the principal purpose of the plan is not the avoidance of taxes, which would be prohibited by 1129(d). The Court notes that all objections have been resolved, and I'm happy to see all the parties working together to do so in a reasonable fashion.

The Court notes that the ruling today addresses the plan, as has been modified up to this very moment, by various filings that have been made over the last few days, including last night and any today, as well as has been modified by all of the presentation presented here today, and agreements reached and memorialized on the record of this hearing.

And so for all those reasons, I am very happy to confirm this plan. This has been a fascinating case for me, and I had the luxury of -- and being fascinated by a case where the performance of counsel was exemplary. This case could've easily been bogged down in litigation for the foreseeable future, and I shudder to think of how long that would be. And it's by virtue of the voting that's recorded on the record here today, folks are uniformly happy with the results, as they should be, and I commend all involved for an excellent result.

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

THE COURT: Thank you.

MR. ROSENTHAL: Would you like to go over the confirmation order, or would you like us -- we can either go over it now, and you can give us your comments. We do have a number of changes to make as a result of the statements on the record.

THE COURT: Well, let's do this, let's go through the changes briefly, and then if I have any other issues, I'll have chambers reach out, and we'll do it that way. That way, you can just give me an update on the changes obviating any questions that I might have.

(Pause)

MR. ROSENTHAL: So, Your Honor, the first time we filed the order was last night, and since then, we have the changes that we talked about on the record that haven't been implemented here. I'm just looking through what I have that -- let me hand to you -- does he have this?

THE COURT: Well, there's several ways to do it. Certainly one thing you can is just narratively explain the changes that have been made, and I certainly will see them in the black line that you'll send me. So whatever is the easiest and most efficient way to communicate what's changed between what you filed and --

MR. ROSENTHAL: Yeah.

THE COURT: -- what I will be receiving.

MR. ROSENTHAL: If you look at page 17, we made some changes that reflect, I think that support, the releases, the third party releases and the like, particularly as they relate to, for example, the exit facilities. So these were all changes, and they were all changes that relate to the exit facility inclusion in the third party release, but they also, you know, relate to third party releases generally, so.

THE COURT: All right. They're conforming changes to what we've discussed today.

MR. ROSENTHAL: They are.

THE COURT: All right. And I would imagine just for ease of doing this once, it would make sense to send particularly that language to the U.S. Trustee's office, given their interest in that and any related language, so we can do it one stop shopping.

MR. ROSENTHAL: We fully intend to do that, and I would also probably, to the extent that it's not in here, do we have the Metromedia finding in here?

UNIDENTIFIED: (indiscernible)

MR. ROSENTHAL: Okay. So I would also add some findings consistent with the Court's ruling.

THE COURT: That would be great.

MR. ROSENTHAL: If you look at page 12, we've

added a sentence at the end of page 12 that you don't have, but it says, for the avoidance of doubt upon -- this deals with the sale of IAHL assets. It says, for the avoidance of doubt upon payment -- what?

Yeah. That upon payment of the cash payment, HoldCo shall have no obligations to SCB, and we're going to revise it a little bit, but the basic point here is, the Cayman court approved the sale of the IAHL assets in exchange for a consideration which will be distributed to the IAHL creditors.

One of the elements of the consideration was that HoldCo assumed the obligations of IAHL to pay the DIP, and to pay the SCB claim. And the -- not the problem, the reality is that that assumption will last for about, you know, a millisecond, because those will immediately in connection with the exit facility -- I'm sorry, with the effective date be paid off.

You know, the DIP will be paid off through the exit facility, it'll just roll into the exit facility, and the SCB facility will be paid off as part of the SCB treatment. So we just -- we're trying to work with language with the exit lender to make sure. I think everybody is on the same page as to what happens, it's just making sure that we have that in a document.

THE COURT: All right. Fair enough. Thank you

for the advanced notice.

All right. I don't know if anybody knows whatever that noise was that you have an open line at court, so either put it on mute or move along and hang up the phone, and go on with the rest of your life.

(Pause)

MR. ROSENTHAL: Ah. The next change, Your Honor, is to paragraphs 63 that's on the bottom of page 51.

THE COURT: All right.

MR. ROSENTHAL: We've just deleted -- we've deleted that entire paragraph, because it related to the Falcon plan.

THE COURT: All right.

MR. ROSENTHAL: And page -- yeah, at paragraph 65, there's some new language that was consistent with what Mr. Graves read into the record about the resolution of the Nasser issue, just some clarifying language that we've added to suggest that not only have they preserved their right to assert title disputes, but their right to be granted a remedy, and then of course, there's the reservation.

THE COURT: All right.

MR. ROSENTHAL: And 67, we made clear that the liens are only released to the -- it said -- it used to say, the liens were only released to the extent provided by in the plan, and the SCB plan settlement, and we've added, or

the exit facility, so they're not released to the extent they continue in the exit facility.

THE COURT: All right.

MR. ROSENTHAL: 69, dissolution of committee, just some clarifying language that the committee continues so long as the committee challenge right has not been waived and released, as provided in the SCB settlement.

And the last change that we have -- the last sentence we have, is if you look at the last -- the last change is the last sentence of paragraph 79, and it deals with the -- it deals with conflict between documents. So the exit lender wanted to make sure that the confirmation order doesn't supersede the interim DIP order, which the Court entered yesterday, so we've just added that in, shall supersede any orders other than the interim DIP order, that may be inconsistent, so.

THE COURT: All right.

MR. ROSENTHAL: And those are the only changes that we have since what we filed last night, we will likely have a few other things as we work through the results from today.

THE COURT: I would expect that you would.

MR. ROSENTHAL: We certainly appreciate your time, Your Honor. You've given us a lot of time over the past few days.

THE COURT: Absolutely, that's my pleasure. That's what I'm here for.

MR. FLECK: Your Honor, if I may, Evan Fleck on behalf of the committee. There are a number of paragraphs in the confirmation order that deal with the exit facility, of course, beginning with 23 and a number of others, I can go through. We had a discussion before we began with the debtors and counsels to the lender, just to deal with the fact that yesterday obviously the -- an interim order was entered, as opposed to a final order, and there are -- the -- there may be some changes. We expect the final will be entered, obviously, the committee is supportive of that.

If there are changes made in that order that would affect anything in this order, that order should control. I'm not sure if the language that was just mentioned addresses that, so that the final order with respect to the DIP exit will be controlling with respect to releases, approval, and so on and so forth.

THE COURT: All right.

MR. FLECK: I think that's acceptable to the parties, I just wanted to reference it now because I expect it will be in some -- in a modified version of the order that comes to chambers.

THE COURT: All right. That's fine, thank you.

MS. VULPIO: Your Honor, Amy Vulpio again for ACE

American Insurance Company. And we have also discussed adding a paragraph to the order that will memorialize the resolution that we described on the record earlier today.

THE COURT: All right. That's fine. Thank you.

All right. Anyone else? All right. I just wanted to make one clarifying comment, I just wanted to make it clear to all, to the extent that there are -- I think I said all objections are resolved, and I think that that's right, but to the extent that there are any objections that were not explicitly discussed here today or have not been resolved, those are overruled. And I'm thinking particularly of what was raised yesterday by counsel for Captain Honney (ph) which appeared to be a confirmation objection. I do not see counsel for that party here today, but it had to do with the fact that liquidation was a better option than a Chapter 11 reorganization, and it overlooks several things, including the liquidation analysis, and the fact that this is really a managed liquidation in any event, but just a very well managed one.

So that is explicitly overruled. And I actually did not see an objection to confirmation by Captain Honney, but it certainly was mentioned yesterday, so I want to make sure that's addressed.

So with that, I have nothing else. Anything else we need to discuss?

MR. ROSENTHAL: No, Your Honor.

THE COURT: All right. And I would imagine that given the various issues that you're going to tweak in the order, that I'll either see it late today or probably more likely some time tomorrow I would expect.

MR. ROSENTHAL: I think more likely tomorrow.

THE COURT: All right. And I'm here all week, so when I get it, I will take a look at it. Thank you very much.

(Proceedings concluded at 2:06 PM)

I N D E X

R U L I N G S

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

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

Dated: June 12, 2013

Sheila Orms

Digitally signed by Sheila Orms
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