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 26, 2013

2:18 PM

B E F O R E :

HON. SEAN H. LANE

U.S. BANKRUPTCY JUDGE

ECRO - MATTHEW

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

HEARING Re Doc #1197 Motion to Authorize/Motion of Official Committee of Unsecured Creditors for Entry of Order Under 11 U.S.C. 1103(c) and 1109(b) Granting Leave, Standing and Authority to Prosecute Turnover and Avoidance Claims

Transcribed by: Sheila Orms

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P R O C E E D I N G S

THE COURT: Good afternoon, please be seated.

All right. Our 2 o'clock now on the calendar is Arcapita Bank, motion to authorize the entry of an order authorizing the committee to have standing for certain claims, as well as I believe some cash collateral issues.

MR. ROSENTHAL: Good afternoon, Your Honor, Michael Rosenthal with Allen Moskowitz from Gibson Dunn on behalf of the Arcapita debtors.

MR. FLECK: Good afternoon, Your Honor, Evan Fleck of Milbank Tweed on behalf of the official committee of unsecured creditors.

THE COURT: All right. Who else is appearing?

MR. VENDITTO: Michael Venditto from Reed Smith on behalf of BNY Mellon, Corporate Trustee Services in opposition to the committee's motion.

THE COURT: All right. Thank you.

MR. ROSENTHAL: You're right, Your Honor, two matters, one is the debtor's cash management motion, the continuation of our interim budget. Hopefully it's one of the last ones we -- we just thought that it would -- made sense to continue that same process that we've been going through. And then the committee's motion for standing to pursue the turnover and Borden (ph) sections.

I think if we get the cash management motion out

of the way first, that would be helpful.

As usual, Your Honor, the debtor's budget is the product of discussions with the committee, and I think it's generally agreed it has been filed with the Court as the proposed 16th interim budget. Do you have a copy of that?

THE COURT: I have seen it, yes.

MR. ROSENTHAL: Okay. As with other budgets, there are so open items that are subject to additional discussions with the committee. And as we've said before, and as has been our practice, it's our intention to resolve those matters with the committee before we actually spend the funds in the budget.

I just want to highlight a couple of them. One is there's an item for reimbursement of Standard Charter for some expenses about $1.3 million that the committee is reviewing for reasonableness. There's an item for about four and a half million dollars related to our -- what is called our AGUD investment, again the committee is reviewing that.

We have some money budgeted for wind down expenses for some of the non-debtor entities in Singapore and the Cayman Islands and Hong Kong that the parties are -- I think there's a general view that that money would be spent, or some portion of it would be spent, but everybody wants to take a closer look at what it's going to be spent for.

There is about $600,000 that may be owed for some work that was done on the headquarters, and there's about $2.4 million in tax liabilities, withholding tax liabilities that relate to what we call our IIP and IPP Programs. These are employee stock programs, that are resolved as part of the plan, and the Court has previously ordered an order on, and again we're all thinking about how best to do that.

And then finally, there's an amount budgeted for an increase in accounting fees for one of the accounting firms, Ernst & Young in Bahrain. That's the subject of continuing discussions. The Court may well see a motion, an application on that in the next day or two. It has not been filed yet.

THE COURT: All right.

MR. ROSENTHAL: So, Your Honor, with that, those reservations, we would ask the Court to enter the 16th interim cash management order approving the debtor's budget.

THE COURT: All right. Anyone wish to be heard on this request?

(No response)

THE COURT: All right. I'm happy to grant it, consistent with the practice in this case of interim orders of this type, and again as I have said on other occasions, I appreciate the efforts of the debtors and the committee and their ability to work together on budget items, a process

that has become progressively more smooth as the case has gone on. So I again appreciate everyone's efforts on that regard, so I'll grant the motion.

MR. ROSENTHAL: Thank you, Your Honor. Now, I'd like to turn the podium over to the committee.

THE COURT: All right.

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

This is the committee's motion for standing, leave and authority to prosecute turnover and avoidance claims. One of the rare occasions in the case where we have -- the movant is the committee, and so I'll enjoy our time here at the podium, but mindful of other matters on Your Honor's docket, it won't take too much time. I did want to --

THE COURT: Take what you need.

MR. FLECK: Thank you, Your Honor. I did want to note at the outset that the one objecting party, Bank of New York is a member of the committee, Bank of New York did not participate in any discussions at the committee level with regard to this matter. That was at their request, at the committee's request. Certainly that was consensual, and I just -- that's in our papers as well, I just wanted to make sure that was clear for the record.

Your Honor, the committee seeks standing to

prosecute certain turnover and avoidance claims on behalf of the debtors, in order to significantly increase recoveries to holders of allowed unsecured claims under the plan.

First, Your Honor, the committee seeks authority to pursue claims against three Bahraini banks. The names might be familiar to Your Honor. They've been the subject of some updates and discussions on the record. They're Albaracka, Tadhamon and Bahrain Islamic Bank for a total turnover claim of approximately $33 million. Those are proceeds that we believe those banks owe to Arcapita under certain prepetition short term investments that were made between Arcapita and those banks.

The second category of actions that are subject to the committee's motion are constructive fraudulent transfer claims to avoid a guarantee that was issued by one of the debtors, IAHL in connection with a 2011 Sharia compliant bond issuance. The defendant in this action, as I mentioned, and is clear from the pleadings is the Arcsukuk trustee, Bank of New York, which is in its capacity as delegate to the Arcsukuk trustee and the certificate holders for that issuance.

The last of the suite of actions that are the subject of the motion is a preference claim, this is for $1.3 million that the Arcsukuk defendants, the same defendants that were the subject of the second matter that I

just described received within 90 days of the petition date.

And, Your Honor, one objection has been filed with respect to the motion, that was by Bank of New York. They've objected to the committee's request for standing to prosecute the avoidance claims against the Arcsukuk defendants. Bank of New York does not object to standing with respect to the placement actions, and as such, that request of the committee is unopposed.

Your Honor, the committee requests that the Court overrule the objection that was filed by Bank of New York, and grant the motion in its entirety. The committee satisfies the relevant standards for standing under the 2nd Circuit with respect to each of the claims, and specifically each claim is colorable, and if successful, would result in significant benefits to the estate at relatively small cost.

Your Honor, I'd first --

THE COURT: Well, let me ask you, you're applying the Commodore test, which deals with consent, and I certainly saw in the objection a dispute about that. And my question deals with sort of the details of consent here.

I saw in footnote 39 a reference to the placement claims. And then in footnote 48, a reference to the Arcsukuk claim the second of the claims. And I didn't see any specific language that I thought went to the third of the claims.

So that was my sort of initial question before we find ourselves dealing with Commodore under all three of those claims. So what's your argument as to consent on that third claim?

MR. FLECK: Your Honor, the debtor's position with respect to each of the categories of the claims is the same, and I don't think that is in dispute, at least with respect to Bank of New York. I know it's not a dispute with respect to the debtors. There was a modification to the plan that was made to address what was a technical issue, and it was discussed at the confirmation hearing that the debtors indicated that they do not object to the committee seeking standing, and then if standing is obtained, pursuing that third category of claim, the preference claim as well.

THE COURT: All right. Thank you. So none of these are differently situated, they're all essentially the subject of the same kind of language that -- I could only locate the first two, so that's why I wanted to get out of that way from the very get go. All right. Thank you, that's helpful.

Just for the record, where is that language? Again, I have in front of me, and I know there are just a dizzying number of versions of documents, so I don't profess to have the right one, but I know in looking at footnote 39 and page 108, and then looking at footnote 48 on page 185.

So maybe you can just for the record.

MR. FLECK: Yeah, if I may, Your Honor, if I can do that perhaps after Mr. Venditto makes his presentation --

THE COURT: That would be fine. That would be fine.

MR. FLECK: -- I'll clarify that for the record.

But I think that is the appropriate place to start, Your Honor, with respect to what is the standard. I think Bank of New York takes the position that the standard is STN. We believe it's Commodore, and the 2nd Circuit did expand the standard and making it easier for official committees to obtain standing for these types of actions where the debtor consents.

Under Commodore, a committee should be granted standing if three things have been satisfied. The first is that the committee's proposed claims are colorable. The second is that the litigation in the best interests of the bankruptcy estate. And third, the litigation is necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings.

So I think Bank of New York raises the issue and brings into question which standard applies. In the committee's view, we think we satisfy both standards; however, we do think that Commodore is satisfied, and Commodore is the applicable standard to look to, because in

this case, the debtors are not opposing the motion.

Bank of New York takes the position that agreeing not to object is different than providing consent for Commodore purposes. In our view, agreeing not to object is tantamount to consent, as far as standing is concerned, and I think some relevant context for the case is appropriate.

In the course of the discussions, pursuant to which the debtors and the committee reached a consensual approach with respect to the plan, there were discussions regarding numerous causes of action and potential causes of action. And as is reflected in the cooperation plan term sheet, which as Your Honor knows, was the -- reflected the -- all of the agreements, or at least the principle agreements that had been reached among the parties. There is a section that deals with the claims that -- at least categories 1 and 2 -- 3 really followed from a broader discussion of avoidance claims and preference actions.

But categories 1 and 2 were specifically addressed in the cooperation plan term sheet, and it was discussed as between the committee and the debtors that the committee would seek standing to pursue the actions, and we simply reflected in the term sheet that the debtors would not object to the committee's pursuing standing for the actions.

This is quite different than what Judge Gerber was dealing with in Adelphia, and he didn't deal with the issue

on the merits in the end, because the moving party just actually pursued the standing under STN, but Judge Gerber said that when a party is simply absent, in that case, the debtor, in response to the equity committee's motion, it's fair to question whether they really were at the table, and looking at the matter. Here the debtors are here --

THE COURT: Well, that's why I asking whether there was specific language as to the third category, because I think it indicates a consideration by the debtors in an active way, as opposed to simply a passive not weighing in at all, which you could derive several different messages from potentially.

MR. FLECK: Understood, Your Honor, and I'll get you that citation.

In addition, it's clear that the committee does need to meet a standard with respect to the claims themselves and their viability. To find that claims are colorable under the relevant standards, the Court does not need to conduct a detailed assessment of the merits, or evaluate the defenses. The Court needs to determine whether the claims would likely survive a motion to dismiss for failure to state a claim.

And again in Adelphia, Judge Gerber said that he was noting that a colorable claim is a relatively easy showing to make. Similarly defined that the litigation is

necessary and beneficial, and in the best interests of the estate, the Court need only find that there is a fair chance that the claim -- that the claims benefits would exceed their costs. We think, Your Honor, that we've plainly satisfied that standard, based upon our representations in the motion.

THE COURT: Well, let me ask you about that. In Judge Glenn's decision in -- it's unpublished, but it's nonetheless electronically published, Dewey & LeBoeuf which was from November, he talked about litigation costs, and he cited other case law for the proposition that, you know, what are the arrangements that have been made. And there I think he said, well, I've been told enough details that I'm satisfied, and I think the details were that it was either going to be done in whole or in part on a contingency fee basis.

So I saw the statements that were made by the committee, and I was wondering if you could put more details on it. Because if I'm supposed to determine whether something is, and I forget which case uses the term, a sensible expenditure, that sort of presupposes you have some idea what the scope of the expenditure is, even though obviously it's not a precise calculation. So I think the way I read Judge Glenn's opinion is that he's looking for some indication, he wants some parameters. And once he got

some parameters, he felt that criteria was satisfied.

MR. FLECK: Your Honor, with respect to the cost, the -- a lot of the work for these claims has already been done. The committee viewed it as part of its statutory mandate to investigate the claims, and in order to be in a position to file the standing motion, the work of counsel and financial advisors to the committee needed to be invested.

So that before we got to this stage, the committee effectively has claims that are trial ready, and as a result, believe that the additional expenditure at this point to be able to move forward with the claims would not be significant.

Furthermore, in connection with the -- based upon the actual nature of the claims, we would expect that there would not be a significant amount of discovery that would be required from either party. We think that many of the facts would not be in dispute, but that obviously can change over the course of time. But we think the claims are fairly straight forward. Of course, with the placement actions, there's the overlay of jurisdiction. Those are legal arguments. There may be difficulty enforcing with respect to those parties, although as we addressed I believe in the motion, but it is the committee's view, in consultation with Bahraini counsel, that we would be able to satisfy

requirements to have any decision of this Court enforced there.

So overall, looking at the litigation, we don't think that this is the type of matter that would significant -- additional expenditure of attorney or financial advisor time. I'd also note that with respect to the committee, the professionals that are working on this in part, are not on an hourly basis, and are billed on a monthly basis.

Lastly, Your Honor, depending on the course of litigation, there may be separate arrangements that need to be worked out between the committee and its advisors to make this an economically efficient endeavor, but given the size of the claims, the committee believes that it's important.

THE COURT: No, I understand that, although the things you just said in the last two minutes I think are the kind of details that I'm asking you about. Again, I think he cited, and I just found the reference, he cited STN Enterprises for the quote, that the terms relative to attorney's fees on which a suit might be brought, are relevant to evaluation of whether a prosecution of the claims is in the best interests of the estate.

So that's why it would be helpful to get a little bit of flesh on the bones. And again, I think in that case, he found the explanation to be satisfactory, talking about essentially the attorney's fees arrangement, even though

there hadn't been something on the record as to exactly who was going to be retained.

So if you have details about essentially sort of the monthly arrangement, and how long you expect it to last, that might be helpful in me making that kind of evaluation.

MR. FLECK: Your Honor, the committee has had discussions with its financial advisors, and the expectation would be that the monthly arrangements that are in place would be reduced after the effective date of the plan, reduced in terms of the economics, to support certain wind down matters with which -- in which the committee is still involved at that point. But those discussions have not been finalized, but I will --

THE COURT: Right.

MR. FLECK: I can report to the Court that the committee has throughout the cases, and I think the record is clear on this, been keenly aware of costs and making sure that there are benefits to the estate, and has been focused on the fact that when you look at the economics of pursuing claims or certain action or even motions before the Court, there needs to be a benefit that would flow to unsecured creditors. And clearly if the costs of pursuing the claim would even nearly approximate the recoveries or potential recoveries the committee has in the past determined, and I expect would continue to determine not to move forward. It

also manages budgets.

THE COURT: No, I understand that. The awkward thing about it, is that the standard seems to impose a requirement of the Court, that the Court spend some time thinking about that, and everyone thinking about it beforehand, which is a bit uncomfortable and certainly in litigation, it is difficult also to, although it's certainly something that folks do, to say, well, you're authorized and then go, and then I don't know that I have a mechanism to revisit. So once the case has been confirmed, what is my mechanism for any oversight, I don't think there really is any.

So I think that may be something that factors into the policy reasons of why the standard is this way. So that's why I'm asking those kind of detailed questions. I realize that it's always difficult, but I think it's just sort of called for in the standard.

MR. FLECK: Understood, Your Honor. And I guess all that I can say more on that, is just that, given the size of the potential recoveries in each of these matters, it's the committee's view that the standard is satisfied. I understand that doesn't give you the facts perhaps to put more meat on the bones there, with --

THE COURT: All right.

MR. FLECK: -- with respect to that element.

Your Honor, with respect to the placement claims, as I mentioned, those have been before the Court on previous occasions, or at least in updates to the Court. I'm happy to go into the claims, but noting that there has been no objection to that part of the relief, I can either abbreviate that for you --

THE COURT: No, I think given that there's no objection, and that I've been hearing about these claims for some time, I don't think I have any questions about this and the colorability of those claims.

MR. FLECK: Okay. Thank you, Your Honor.

With that, I'll move on to an overview of the avoidance claim with respect to the IAHL guarantee.

The committee, as you know, Your Honor, seeks authority to pursue the claim against, on account of the guarantee that was issued for the Arcsukuk facility. The debtors entered into the Mirahabi (ph) and Wakalla (ph) agreement dated September 7, 2011, among the trustee IAHL and Bank of New York as delegate. And in connection with this facility, IAHL issued the guarantee in favor of the Arcsukuk trustee and Bank of New York.

Arcapita and IAHL entered into the facility to satisfy obligations under a prior facility which was from 2010. That facility matured when the Arcsukuk facility closed.

Under the Arcsukuk facility, the issuer issued certificates in the aggregate amount of $100 million to third party investors, and used the proceeds to make available $100 million to Arcapita under the Mirahabi agreement.

In the committee's view, that transaction, the issuance of the guarantee was a fraudulent transfer. We believe that IAHL was insolvent at the time, it was not made in exchange for reasonably equivalent value.

Avoidance of the guarantee, Your Honor, would benefit IAHL's unsecured creditors that hold allowed claims against IAHL. These creditors would include, but are not limited to the holders of approximately $1.1 billion syndicated Mirahabi facility that's been the subject of a fair bit of discussion on the record.

Your Honor, the claim to avoid the IAHL guarantee as a constructive fraudulent transfer is colorable. Bank of New York does not contest the fact that the claim is colorable. There are other bases for its objection.

As Your Honor knows, to prevail on a claim for fraudulent transfer, we must establish that the debtor did not receive reasonably equivalent value in exchange for the obligation incurred, and that it was insolvent to satisfy the standard under 548(a).

First, Your Honor, IAHL did not receive reasonably

equivalent value for what was an upstream guarantee, that it issued in connection with the facility. When determining whether the debtor guarantor has received reasonably equivalent value for an upstream guarantee, the Courts subject that guarantee to heightened scrutiny to look to whether there was actual benefit. Here, the guarantee was upstream pursuant to which IAHL guaranteed a hundred percent of Arcapita's $100 million obligation under the facility.

In the committee's assessment, Arcapita -- rather IAHL did not receive anything in return, or at least anything close to $100 million in exchange for issuing that guarantee.

Second, Your Honor, the committee expects to be able to establish that at the time of the issuance that IAHL was insolvent, was left with unreasonably small capital, or left with debts beyond its ability to pay.

The committee's claim to avoid the guarantee is in the best interests of the estate, Your Honor, moving to the next element that we need to satisfy, because it has the potential to reduce significant claim burden on the IAHL estate, up to $100 million. Bank of New York has objected to the motion on the grounds that the pursuit of the claim is not in the best interests of the estate, and now moving to specifically the objection.

Bank of New York argues that the claim would

improperly benefit one group of creditors, and they cite the syndicated facility holders, at the expense of others, would be unnecessarily costly to litigate, and lastly, should instead be transferred to the reorganized debtors to let the new board evaluate and potentially pursue the claim.

The committee disagrees with Bank of New York's arguments as follows.

First, Your Honor, the committee disagrees with respect to the point of whether the claim would improperly benefit one group of creditors over others. We addressed this in the reply. If there are less claims against the IAHL estate, all the other creditors would benefit. There is no effort here to direct the benefits from an avoidance to any particular class of creditors, it's the class of unsecured claimholders of IAHL.

I think it's also important, at least for the committee to have it noted on the record, that the committee represents the interests of all unsecured creditors. The committee reached a decision to pursue standing on this motion on behalf of unsecured creditors, and takes issue with the characterization that perhaps it would be seeking to pursue an action to benefit one creditor constituency, at least the suggestion is, over another one.

The committee conducted an independent analysis of this claim, decided it was in the best interests of

creditors generally to pursue the claims.

And as we noted in our reply, Your Honor, only two of the five committee members who participated in the decision-making process actually have claims in the syndicated facility, which we think lends additional credibility to the position that this was a decision taken by the committee as a whole in its fiduciary capacity for creditors.

Second, Bank of New York argues that the claim to avoid the guarantee would not -- they argue that it would be unduly expensive. We've discussed that Your Honor a bit. The benefits of pursuing the claim will at a minimum, have a fair chance of exceeding the claims' cost, and that that is what at least one of the Court, it wasn't Judge Glenn's articulation, but that is what Courts have looked to in some cases, to decide whether the costs would exceed the litigation, or at least as it applies to whether the Court should grant standing.

Contrary to Bank of New York's assertion, the claim is not too costly to pursue, simply because the committee will need to collaborate closely with the debtors on the litigation.

And I think that on this point, Your Honor, there appears to be some misapprehension of how the debtors will look as of the effective date. The committee will need to

work with the debtors if it has standing to pursue this claim.

As of the effective date, at least the current contemplation, is that there will be no employees of the debtors. RA Holdings Corp, which is the name of the top co entity, will not have employees. And if it does have employees, they may not be employees that actually worked at Arcapita prepetition. The reality of the arrangement that was reached is that the -- many of the employees who were debtor employees will be employed by AIM and many others are going to move on to other pursuits.

So the fact that the committee or the movant, or the plaintiff in this action will need to work with the debtors is really of no moment. The committee has already -- has been working with the debtors throughout the cases, and specifically with respect to these claims, in order to conduct its investigation.

Third, Your Honor, there is no merit to Bank of New York's contention that to avoid the IAHL guarantee, that that avoidance action should be moved over to the board of directors and somehow the committee, as a result of the board structure should lose the opportunity to pursue the claim, or that it would be better suited for the board to do it.

The committee has already spent considerable time

investigating the claim, is well positioned to pursue the claim. The type of claims that are at issue here are very much of the type that committees do pursue during the course of Chapter 11 cases, or at this stage of cases. And in our view, it would actually be inefficient to have the board look fresh at the claims and make a decision. And the board does not have the benefit of the work that the committee members have done on the claim, the board does not have the advisors who have been working on it. So in terms of efficiency and cost, we think it actually cuts the other way.

I just have a couple of more points, Your Honor. I think for record purposes it's also important that Your Honor understand that, there are -- there is at least a representation that's relevant, that we believe is incorrect. In Bank of New York's objection, paragraph 29, they indicate that the debtors concluded that the Arcsukuk fraudulent transfer claim lacks factual support and concluded that the Arcsukuk preference claim is subject to one or more complete defenses.

The disclosure statement simply does not say that, Your Honor. It doesn't say at the cited pages, it doesn't say it at all. It doesn't say that the debtors believe that avoidance lacks factual support. What it says is that the debtors have agreed not to object to the committee's

pursuing the claims. And with respect to other preference claims, the debtors do speak to the fact that they believe that there are defenses available.

Lastly, Your Honor, I'd just look again to what Judge Gerber said in Adelphia, in light of some objections to a motion that is similar to this one for standing. And he said, perhaps significantly, neither of the committee's motions is opposed by anyone other than the defendants in the litigation to be prosecuted. Those with an interest in maximizing the value of the estate, as contrasted with those with an interest in defeating the claims to be asserted here, do not seem to be troubled by the committee's proposed use of the estate resources for the litigation, the committee wishes to prosecute.

And then he concluded, the Court necessarily must take the defendant's prostrations as to what is in the best interests of the estate with a grain of salt. Your Honor, that's the committee's position here at bottom. We understand that Bank of New York would prefer that the action not be pursued, that perhaps the board would reach a different conclusion. We think the efficiencies are present, and that the committee should be granted standing to pursue the action. And we believe that the relevant standard, whether it be Commodore or STN had been satisfied.

Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. Let me hear from anybody else who is not the objecting party before I hear from them, and they clean-up, so to speak.

MR. ROSENTHAL: Your Honor, I have very little to add.

THE COURT: I expected you would have very little to say in this particular motion.

MR. ROSENTHAL: You know we have, as part of the cooperative term sheet agreement, as Mr. Fleck indicates, we've agreed we would not object to the committee's request for standing here. And that's why we have taken the position that we have.

There -- these were issues that were considered as part of the overall discussion, so that was the -- in part, the agreements that were reached.

THE COURT: All right. And in your mind does the not object material -- materially different in your mind than the consent language, that the cases talk about? I know that's probably the uncomfortable question you'd hope I had -- would not ask, but.

MR. ROSENTHAL: There was a discussion about how that would be framed, and it was deliberately framed as would not object.

THE COURT: All right. Thank you. That's what I

thought your answer would be.

MR. VENDITTO: Good afternoon, Your Honor, Michael Venditto --

THE COURT: Good afternoon.

MR. VENDITTO: -- from Reed Smith on behalf of BNY Corporate Trustee Services, in opposition to the committee's motion.

Your Honor, as you're well aware, nowhere in the Bankruptcy Code is there a provision for a committee to derivatively prosecute causes of action, which properly belong to the bankruptcy estate and they're normally to be prosecuted by the estate's fiduciary.

However, starting with the STN case and a series of cases including Commodore and Housegraft (ph), the 2nd Circuit has crafted sort of a judicial process by which a committee can be granted derivative standing in very particular circumstances.

In doing so, the 2nd Circuit has emphasized that the Court is to act as a gatekeeper in ensuring a process where the claims that are prosecuted are appropriate and colorable and in the best interests of creditors. The Court is not to act as a rubberstamp for an agreement between the debtor and the committee, as to moving over a responsibility for prosecuting claims.

As a result, the case law has developed with some

very specific requirements for the showing that's necessary before a committee is granted derivative standing. It's our position that in this case, the committee has failed to satisfy those standards.

First and foremost is he issue of whether or not we're dealing with the STN standard, or the more lenient Commodore standard. The significant difference between the two is that the consent of the debtor eliminates the necessity for the committee to demonstrate that the decision not to prosecute the claims was unjustifiable.

THE COURT: Right. Well, let me -- on that point, that's why I went looking for specific language in various documents, including the disclosure statement, which seemed to be more than the mere failure to show up or make any comment at all, that was contemplated in the case before Judge Gerber.

So what is your take of what that language means?

MR. VENDITTO: I think, Your Honor, that the debtor has not consented, for whatever reason, it doesn't want to give its consent. It does not want to put its imprimatur on the prosecution of these claims, and so it is deliberately withheld its consent, although it is for other reasons, agreed with the committee that they will not oppose the committee's attempt to satisfy the STN standard.

I think it's significant because in the disclosure

statement on page 108, we read that the debtor has made a determination that if there were no viable fraudulent conveyance claims.

THE COURT: Well, but won't that always be the case? I mean, one of the arguments in your -- sort of thing that permeates your objection is essentially that they made these determinations, they're not going to pursue them because they made a decision not to pursue them. And that's always going to be the case in one of these motions, right?

So if I adopt that standard, then you never grant one of these motions. I mean, if a debtor says in a disclosure statement we think these things are meritorious and should be pursued, there are going to be a lot of questions about why the estate is not pursuing them.

MR. VENDITTO: I think that's precisely why in the STN case, the standard is unjustifiable refusal. And the question is whether or not the determination by the debtor here was an unjustifiable refusal to prosecute claims.

THE COURT: Well, I agree with you to the extent that we're talking about the STN standard, but if we're talking about Commodore, Commodore does not have that requirement.

MR. VENDITTO: True.

THE COURT: All right. I didn't mean to interrupt your train of thought.

MR. VENDITTO: Well, I think that there are a number of issues which permeate the committee's motion. Essentially, I think the problem is a lack of support or evidentiary support for the findings that the Court is required to make under the STN line of cases, including Commodore and Housegraft. You're not supposed to merely exceed to the committee's desire to overtake the prosecution of the causes of action. You're supposed to make certain very specific findings.

If we're dealing with the STN standard, you have to make a determination that the decision by the debtor not to prosecute the claims was unjustifiable. If, however, we're dealing with the Commodore standard or under the STN standard the unjustifiable standard has been met, you now have to look at whether or not the claims are colorable, whether or not prosecution would be in the best interests of the estate, and whether or not the prosecution of those claims is necessary and would produce a benefit.

So let's place to one side the issue of whether or not the debtor's decision not to prosecute the claims was unjustified, because there's nothing in the record that would permit the Court to make any finding whatsoever on that issue.

The only way you could proceed to the rest of the consideration of this motion, would be to say, STN doesn't

apply because I'm going to assume that the failure to object is tantamount to consent. That would be a decision of first impression, because no other cases specifically held that a failure to object equals consent.

And I think for the reasons that the debtor has chosen not to consent, means that there's a difference, and whatever that difference is, is meaningful, at least in the debtor's view.

THE COURT: Well, I do distinguish this situation from one where a party is absent and has -- there's no evidence that they've thought about the issue, considered the issue, there being discussions on the issue. And certainly I agree with you that there's been a conscious decision to use a particular terminology here, but it does appear that the agreement and the language that's in various documents, including the disclosure statement is struck with the understanding that the committee would go forward, absent a denial of their -- of a request for standing.

MR. VENDITTO: And I would submit that that does not equal consent, particularly when we know that the debtor which is, of course, a fiduciary and the one with the statutory obligation to prosecute the claims, made a determination according to what they said in the disclosure statement, that there are no viable fraudulent conveyance claims.

So when you put --

THE COURT: I think that's almost always going to be true in dealing with this issue, right?

MR. VENDITTO: Well, no, I disagree. Because that's exactly why the standard, that the 2nd Circuit has articulated uses the word unjustified. I would submit to Your Honor that what we have here are two preeminent law firms, two preeminent sets of professionals, apparently looking at the same facts, doing the same legal research, and coming to different conclusions.

Now, whether or not the decision by one set of professionals over another set of professionals to prosecute a cause of action or claim that the other group of professionals doesn't think is viable, I don't know that you can characterize that as unjustified. And I certainly don't know if as a result of that, you can just on -- without further articulation or evidence make a determination that the resulting claim to be prosecuted is colorable.

I think the fact that the committee --

THE COURT: Well, I didn't see anything -- I saw your pleadings to challenge consent, I also saw them to challenge the second part of the test dealing with, you know, whether it's a reasonable exercise. I didn't see anything that challenged the colorable nature of the claims under that specific prong. I saw your argument really to be

more of a cost benefit analysis given all the factors. Am I understanding your argument right?

MR. VENDITTO: Well, not entirely, Your Honor. Because it's the committee's obligation to prove the elements, and you have to make a factual determination based on the proof that's submitted. It's not my obligation to disprove whether or not the claims are colorable. I could tic off a number of legal impediments to the --

THE COURT: Well, I know, but I also look to see what people have objected to, so if you don't have a section entitled, the claims are not colorable, then I certainly take from that a certain message that you're not specifically teeing up a challenge to that part of the standard. But that's fine.

MR. VENDITTO: Quite frankly, Your Honor, the articulated legal standard for what constitutes a colorable claim is so low, that --

THE COURT: And that's why I suspected you did not choose that, to fight on that particular turf.

MR. VENDITTO: I mean, as far as I'm concerned, the committee has read Section 547 and 548, put the appropriate words in their brief. We haven't even seen the proposed pleading, and I guess that may meet the standard in this district for what constitutes a colorable claim.

THE COURT: All right.

MR. VENDITTO: Your Honor, that takes us then on to the best interest and the benefit issues.

First and foremost, I think we need to understand it, because I was very, very surprised to hear Mr. Fleck say that the work necessary to prosecute these claims has been substantially completed. As I look at what the claim is, according to their papers, they want to set forth that IAHL was insolvent on two specific dates, September in 2010 and September of 2011.

Now, you know that the portfolio of investments held by IAHL was substantial, varied, and there's been a lot of work put in to determine values. I don't know that any work has been done to determine values in 2010 and 2011, which would be the necessary predicates to move forward with this claim. But I'll take Mr. Fleck at his word that they have done that work.

I can't imagine that as a result of that work, that the preparation of the expert reports that would be necessary to get by a motion for summary judgment, or to come up with a colorable claim at trial could not far exceed the potential recovery into the estate.

Remember, Your Honor, that --

THE COURT: Well, are you telling me they're going to spend more than $100 million on litigation?

MR. VENDITTO: Your Honor, they're not recovering

$100 million. The potential recovery is only $1 million, which is the preference claim, for which they don't have to do any of that work. All of the heavy lifting with respect to the fraudulent conveyance claim in 2010 and 2011, has to do with the avoidance of the guarantee.

The result of victory, absolute victory for the committee in the prosecution of that fraudulent conveyance claim is that the Arcsukuk's claim in Class 4B goes away, and they're only a creditor in Class 4A. So it results in a redistribution of distributions under the plan. It doesn't bring dollar one into the estate.

So every dollar essentially that's spent in the prosecution of the fraudulent conveyance claim is a dollar tossed out the window of the debtor's estate. And that's why I suggest to Your Honor that they have not demonstrated that the prosecution of the claims is in the best interests of the estate, or is it necessary or beneficial for the estate.

You could -- and you're unfortunately going to have to read a little bit between the lines, because there is no evidence before you, that the debtor has made some similar type of analysis as how much are we going to spend in the prosecution of this fraudulent conveyance claim, and what is the benefit coming back into the estate.

There's been no demonstration or showing by the

committee in that area. We have some again repetition of some of the words that you see in some of the cases, but no evidence on which you could make that determination.

I can't imagine that they could possibly --

THE COURT: Well, I don't see anything in the cases that made this particularly an evidentiary matter, and I -- given my background, and I think anybody who's appeared in front of me knows that I certainly am probably a bit obsessed with evidence in its proper form, but there are times when I look at the cases and don't really see that it's an evidence driven inquiry, and this doesn't seem to be. This essentially seems to be, people come in, they say here are what our allegations are, and here's what we can tell you about the benefit, including the costs. But I -- it certainly doesn't look something that is driven by detailed evidence here.

So when you use that term, what do you contemplate?

MR. VENDITTO: Well, in the STN case, the 2nd Circuit talked about affidavits or evidence. And if you're going to make a determination that the prosecution of this cause of action is in the best interests of the estate, you're going to have to have some sense what this will cost, and I think you begin to get into that inquiry with Mr. Fleck, but you didn't get very much in the way of specifics.

And what is the resulting benefit into the estate? Now, the creditors who are dependent on distributions out of the estate under this confirmed plan for their recoveries are going to be very, very much concerned about whether or not money is being properly spent. I know there's been concern about budgets and how much is being allocated for overhead, and these expenses and that, litigation expenses --

THE COURT: Well, but I don't have any objections from anybody else, so I certainly would expect if that was a concern motivating other creditors, that I would have seen them in here in the courtroom.

MR. VENDITTO: Well, perhaps they would have if there were numbers in the motion on which they could have formed some determination.

THE COURT: I actually think it's the opposite way. The lack of numbers always scares people more than the actual numbers, but we can -- I beg to differ on that.

MR. VENDITTO: Your Honor, the complexity of the underlying issues for the fraudulent conveyance claim are so substantial, the type of expert testimony that will be necessary, the number of people who are qualified to provide that type of expert analysis on insolvency, of all of these investment portfolios over a two-year period, are going to be very limited, and I think that is going to be extremely

expensive.

The benefit to the estate of that expenditure is not obvious on the record before you, and I don't know on what basis you could make a determination that it's beneficial to the estate to prosecute this.

Yes, there are certain creditors who would benefit if the guarantee claim were extinguished because then one group of creditor pool would be smaller than another. But for the overall group of creditors, I don't think it's necessarily beneficial.

Now, obviously, you look at me with a jaundiced eye when I make that argument, because we're the ones who have a direct economic interest in defeating the committee's motion, but I also think your obligation is to act as the gatekeeper, you're responsible for making that determination that there's sufficient basis on which the committee has established that it's in the best interest of the estate to prosecute this claim.

Now, just because the motion is denied doesn't mean that the claim will never be prosecuted, because as we pointed out in our motion, under the terms of the plan, the debtor, the reorganized debtor retains that cause of action and claim, a determination can be made by the board of directors of the reorganized debtor.

THE COURT: But I think that's always true in

these -- in all these motions, right, so if that --

MR. VENDITTO: Not necessarily. Not necessarily. Because there could be circumstances where for whatever reason, a board of directors will not act, or that the board of directors as you control of people who are the subjects of causes of action, so it's not necessarily true to say that this is a common circumstance. I think this is a highly unusual circumstance for this type of a SDN motion.

In reality, what we have here is odd dynamic, and unfortunately that odd dynamic isn't really fleshed out for you in the motion papers to understand exactly why the debtor's professionals decided not to prosecute the cause of action. The committee's professionals have decided to, and want to, even though the board of directors that is going to be taking over from management post confirmation is going to be responsible for prosecuting the claim if its viable. And they're the ones obviously are going to have to account for the expenses. The committee would be disbanded on the effective date or shortly thereafter when the remaining conditions to effectiveness are satisfied.

So essentially what you're being asked to do is to prolong the life of the committee and its professionals to pursue this cause of action, rather than to allow it to sit with the reorganized board of directors, who have the best ability to control the expenses.

I think Your Honor yourself noted in response to your colloquy with Mr. Fleck that once you approve this motion, you're sort of letting the cat out of the bag, and you're not going to have the ability to control the expenditures that get incurred.

In my view, this will be a ferociously expensive litigation if it moves forward. I believe that we have substantial defenses. We may be able to knock it out on a 12(b)(6) motion, but if not, and the cause of action moves forward, there will be incredible amount of discovery in countries around the world.

I mean, in fact, the connection of this litigation to the United States is questionable. The payments were made from Bahraini entity to a Cayman entity through a bank in London, and the certificate holders were all non-U.S. citizens. So the discovery will be taking place outside the U.S. and around the world.

The discovery -- the expert work, same thing, will take place around the world. The cost to the estate of prosecuting that litigation, let alone the cost of the Arcsukuk of defending that litigation will be substantial. And I think before the Court authorizes or permits that type of expenditure of estate funds or creditor funds, that it needs a better developed record, and better substantiation for the merits of the claim, the benefit to be received by

creditors.

THE COURT: All right.

MR. VENDITTO: Thank you, Your Honor.

THE COURT: Thank you.

MR. FLECK: If I may, Your Honor, Evan Fleck again for the committee. I'll be brief. I just want to respond to a couple of points, but before I do that, I wanted to -- I apologize for having my Blackberry, but that's the way technology works, and to give Your Honor the cite.

The disclosure statement reads on page 185, and I can read it to Your Honor -- well, if you have it there, I'll just start the section as described in Section 6(b)(10) above, the committee believes there may be a viable fraudulent conveyance claim against the Arcsukuk trustee related to the Arcsukuk guarantee. The plan preserves the right of any party withstanding to pursue such an avoidance action against the Arcsukuk trustee.

Footnote 48, the debtors have agreed that will not oppose any attempt by the committee to obtain standing to pursue such avoidance action against the Arcsukuk trustee.

The avoidance action is defined as including the preference action that's the subject of the motion.

THE COURT: All right. That's -- because when I looked at this without reference to that definition, it seems on its own to relate simply to the Arcsukuk guarantee,

which I know is the thing you're trying to avoid in the second claim. So you're saying that essentially the definition of avoidance action includes the preference claim dealing with the transfer of -- alleged transfer of cash for Arcapita to the Arcsukuk trustee within 90 days of the filing?

MR. FLECK: That is my understanding, Your Honor. I know the facts to be correct and Mr. Rosenthal has confirmed that it's the same -- the debtor's position is the same with respect to both actions. It's been confirmed to me but I don't have the document unfortunately in front of me that confirms that the defined terms are the same.

THE COURT: All right.

MR. FLECK: I think it's important, Your Honor, that I just clarify a couple of things for the record. First of all, Mr. Venditto referenced a number of times the committee's professionals are looking to pursue this action. I think it's important that Your Honor hear from us directly again that this is an action that the committee, after considered, based upon considered judgment, believes to be in the best interests of the estate.

The fact that again the avoidance of the guarantee will result in a reallocation or an appropriate allocation among creditors is really of no moment with respect to the colorability, and the standard here, Your Honor.

The committee has an obligation as do the debtors, in fact, to be sure that appropriate claims are allowed against the estate. It's our view that the Arcsukuk guarantee should not be an allowed claim against the estate.

The committee could certainly file an objection to that claim but there's no -- we don't need to satisfy a standing requirement. Certainly any part in interest could file an objection to that claim. We're approaching this more openly that we believe that there's an avoidance action here, and what backs up the objection to the claim has been put before the Court in our motion. But certainly we have that right, as does every party in interest to object to the claim, and we think it's appropriate, and it's consistent with the charge and the mandate of a committee and our duties to be sure that only parties that have appropriately allowed claims should receive a distribution from the estate. So if we approach it --

THE COURT: I understand that. I understood that point to go the upside of the potential monetary gain, so that even though it's a $100 million guarantee, what I understood the position of New York Bank Mellon to be is that it can only net out as a million dollars' worth of benefit to anyone, because it's a reallocation rather than any sort of influx of funds or something else.

MR. FLECK: Well, what I heard them to say is that

there's the million plus of the preference claims, that's the actual money back into the estate, and that I think their position would be that there's no economic benefit to the estate of avoiding a $100 million guarantee, and therefore, whenever you have an action where a committee is actually seeking to pursue an avoidance claim where one creditor group might benefit from it, another one may be harmed, it could never satisfy that prong of the standard because there will actually be costs that the committee would need to incur. And they wouldn't be, for lack of a better of word, recouped, or you couldn't actually kind of have a ledger sheet, look at the costs, and then look at the actual dollars into the estate.

This is a different type of matter, and I think the Courts should be flexible enough to recognize that distinction. There are certainly dollars into the estate that we're talking about, at least potentially, with respect to the placement actions. And as Mr. Venditto, I think he was referring to the preference action with respect to the Arcsukuk trustee, where there would be dollars in the door.

The last point I wanted to make, Your Honor, is to clarify again. I think the suggestion was made repeatedly both in the papers and then again in the oral presentation, that there was something that was not put before the Court with respect to an agreement between the debtors and the

committee on this action.

And I don't think it was deliberate in Mr. Rosenthal's statement at all, but I think it's important that Your Honor know. The difference between when the committee and the debtors were deciding how we were going to characterize this action really went to whether the debtors wanted to be a cheerleader for this action, and wanted to be out front, or wanted to -- as opposed to recognizing the allocation of responsibilities, and that the committee had spent the time on this action to move forward and pursue it.

So the distinction, it's not as though there was a long debate between Mr. Rosenthal and myself, as to whether the language should be consent, because we knew the Commodore -- and we should have, but that wasn't the case at all, Your Honor. We weren't looking to the standard in trying to make the question more difficult for Your Honor. And I think perhaps had we been focused on the standard, we probably would've used the word consent because certainly in our view, when you look at the definition of consent, that's really what -- that's what the debtors are doing here.

They are certainly not opposing it, they're not standing on the sidelines, and they are openly recognizing the fact that the committee would be pursuing this action or this collection -- these collection of actions for the benefit of creditors of the estate. And I believe with

that, I'll cede the podium.

THE COURT: All right. Anybody else wish to be heard on this motion?

MR. VENDITTO: Your Honor, if I may just clarify that one point that you just discussed with Mr. Fleck.

My point was, that the cost of the litigation has to be balanced against the potential recovery into the estate. There is two claims, the $100 million guarantee claim and the $1 million preference claim. So the potential for a dollar recovery into the estate from the prosecution of claims against the Arcsukuk is limited to the million dollars.

The $100 million avoidance claim doesn't produce any dollar benefit into the estate. It results in a benefit to creditors in Class 4B, but doesn't produce any benefit to the estate.

And so when you look at the determination of -- one of the required determinations is the benefit to the estate. You have to look at the cost of the litigation, which so far is unknown to the potential benefit of the prosecution of that claim.

THE COURT: All right. Although doesn't that circumstance help explain why the debtors would be less excited, and this would be something that a committee in trying to figure out who should get the appropriate share of

the pie would -- is not surprisingly a party that's interested in bringing the action?

MR. VENDITTO: Obviously, the creditors who benefit from the litigation have the most interest in it. We can't read into what the other committee members were thinking, probably listening to the advice of counsel, in terms of what their duties were, et cetera.

We don't know how much of a cost benefit analysis they went through. But ultimately, that obligation is yours, Your Honor.

THE COURT: All right.

MR. VENDITTO: Thank you.

THE COURT: Thank you. Anyone else wish to be heard?

(No response)

THE COURT: All right. What I would like to do is the following. I do think it is incumbent upon me to get before me, as I think my first or second question to Mr. Fleck was, some evidence of the litigation costs here and the parameters. Because for better or worse, I think that that's the inquiry, and I know that there is certainly cases that talk about a fair chance of litigation exceeding the cost, but again, that presumes that we have some idea of what the cost is.

And I think the reason why I reference Judge

Glenn's decision is because I think it shows that it doesn't have to be, you know, an exacting budget necessarily, although certainly more details make it easier, rather than less to determine the appropriateness of it. But I do think it means you have -- a Court has to have some sense of what is going to happen going forward.

So what I'd like to do is get that information, and then I'll give folks a chance to address it at another hearing, and then I'll make my decision at that time. That I do think is sort of the missing piece of the puzzle from my point of view.

Obviously to the extent that you're getting me that information about costs, and costs are obviously on one side, and benefits obviously on the other, I'm perfectly fine if you want to take the opportunity to talk about the benefits as well, in terms of whatever declaration you're going to give me. And then I'll give the objectors or anybody else a chance to respond to that. But I do think that that's something I feel like I need some additional information, and I'll leave it to your professional judgment as to how detailed that information should be.

Obviously, Mr. Fleck as you mentioned, there are times when you can make life easier for a Court, and there are times when you say, well, here's what we have. So I'll leave it to you to say what you think is appropriate to say

under the circumstances. But I do think that the teachings of the case law are that the 2nd Circuit found STN to be a bit too narrow. But in opening up the standard, is still very concerned about cost versus benefit in some meaningful way, and so that's what I would like parties to do.

So if you all want to work out some schedule for that, I'm happy to defer to your professional judgment to figure that out, and contact chambers for -- to take this up at an adjourned hearing.

MR. FLECK: We'll do that, Your Honor, we'll work together and come up with a schedule.

THE COURT: All right. Thank you.

MR. FLECK: Thank you, Your Honor.

THE COURT: Anything else we need to discuss today?

MR. ROSENTHAL: Your Honor, I have one scheduling matter to raise with the Court, and I know we're running over.

We have a status conference on -- a status hearing on -- or I'm sorry, a monthly hearing on July 18th, at which also set for that day are the Eurolog fee matters.

THE COURT: Yes.

MR. ROSENTHAL: We have heard from Linklaters that they have a potential conflict on the 18th, and were -- and we've consulted with the committee, and we're wondering

whether we could move that hearing from the 18th until the 25th. It's just a request, but we -- I thought we'd take it up with the Court now.

THE COURT: Yeah, I have no problem. Obviously, I can't magically produce somebody if they're in another spot on the globe. My only problem in addressing that request right now is just this morning, I had a request in another matter that was the 17th, 18th to move to another date, and we may have just put them on the 25th. And I also am informed by people who are paying more attention in the details of this than I am, is that I have an American Airlines hearing on the 25th, and I'm never quite sure exactly how long those are going to go. They start at 11, and can last several hours or longer, depending on circumstances.

So hold on one minute.

(Pause)

THE COURT: Yeah, and I think I also have another mega case that got moved from the 17th to the -- yeah, so let me do this. I'm happy to reschedule that date, but let me not do it here, because if I do it here I'm going to do it wrong, and you'll have to talk to somebody who's the right person later.

MR. ROSENTHAL: Let me modify my request. The only date that the Milbank litigator who's handling this

said that he could do it other than the 18th would be the 25th. If the Court cannot do it on the 25th, and it sounds like it would be difficult, then we will move heaven and earth to get Linklaters who said that if they absolutely have to do it, they would do it -- they could do it on the 18th. We don't want to give up the 18th, you know, unless we get the 25th.

So rather than searching for another date, if it seems -- it seems as if that's not a doable date, so let's just stick with the 18th and I'll --

THE COURT: And I will tell you, absent sequester, I'd be happy to put you on the 25th and we get it done for however long it takes. I no longer have that option, which is something I avail myself of numerous times until somebody told me I had to stop doing that, so.

MR. ROSENTHAL: Well then forget I made the request.

MR. FLECK: There -- I just wanted to mention just for ease of scheduling, our litigators can -- there are other dates in July that work, it was just that the request was -- the proposal was made, can you do it the week after the 18th, so I think the only date is the 25th that works for the trial, and I think just to remind Your Honor, this is going to take a bit of time, there at least will be some evidentiary presentation.

THE COURT: How long do you anticipate? I was figuring at least half a day and maybe --

MR. ROSENTHAL: Yes. Your Honor, there's one witness, we have one witness, and we think -- we were estimating two hours is what I -- Mr. Millet who's probably going to handle it, and I think Mr. LeBlanc had talked.

THE COURT: All right.

MR. ROSENTHAL: But I don't think our direct witness I would suspect --

THE COURT: Yeah, see it's witnesses, I'd hate to bring somebody in and then essentially we all turn into a pumpkin at 5 o'clock, because we have to turn off the lights figuratively speaking.

MR. ROSENTHAL: I think that's the only witness, though.

THE COURT: All right. I would assume right now that the 25th is not going to work. If in consultation with everyone you say well, there's more flexibility and we really do want to avoid the 18th, just contact my chambers. I'm happy to move it. I just -- it is -- it would be unfortunate to bring somebody in as a witness on the 25th, and then mid-sentence at 5 o'clock ask them to stop talking and come back the next day.

MR. ROSENTHAL: Understood. We're going to leave here with the 18th.

THE COURT: All right. That's fine. And again, write your local congress person and senators, we have often in this courthouse, we've had hearings to all hours of the day and night, somebody viewed that as a bad idea, but generally the idea is to get people the service they need as quickly as possible, and it is frustrating to not have that option available, or otherwise I'd just put you in the afternoon the 25th and we'd get it done.

So my apologies, but again, if you come up with a more creative solution, feel free to call chambers and we'll do the best we can, subject to funding restrictions.

MR. ROSENTHAL: Thank you, Your Honor. Frustrating for everyone.

THE COURT: Yes, it is. All right. So that concludes the Arcapita Bank hearing for today, and I will wait to hear from the parties to this motion when you want to tee the adjourned date up, and you can either submit that by letter. I scarcely think it's worth the effort of a stipulation, but I'll leave it all to your professional judgment what you'd be most comfortable with.

MR. FLECK: Thank you, Your Honor.

MR. VENDITTO: Thank you.

MR. ROSENTHAL: Thank you.

(Proceedings concluded at 3:27 PM)

I N D E X

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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 28, 2013

Shelia G. Orms

Digitally signed by Shelia G. Orms
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