Hearing Date and Time: July 18, 2013 at 11:00 a.m. (prevailing U.S. Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	**Chapter 11**
ARCAPITA BANK B.S.C.(c), *et al.*,	**Case No. 12-11076 (SHL)**
Debtors.	**Jointly Administered**

DEBTORS' COUNTER-DESIGNATION OF THE DEPOSITION TRANSCRIPT OF ANDY PYLE IN LIEU OF LIVE REDIRECT EXAMINATION IN SUPPORT OF THE DEBTORS' MOTION CONFIRMING THE DEBTORS' AUTHORITY TO FUND NON-DEBTOR EUROLOG AFFILIATES

In connection with the *Debtors' Motion for Order Confirming the Debtors' Authority to Fund Non-Debtor EuroLog Affiliates* (the "***Motion***") [Docket No. 872], Arcapita Bank B.S.C.(c) and its affiliated debtors in possession (the "***Debtors***") set for hearing on July 18, 2013, the Debtors hereby submit the following counter-designations of the deposition transcript of Andy Pyle of KPMG LLP (the "***Witness***") as the Debtors' redirect examination of the Witness in response to the designations of the deposition transcript of the Witness submitted by the Committee as its cross-examination of the Witness in lieu of live cross examination.

The Debtors reserve the right to use any deposition excerpts designated by any other party. The Debtors further reserve the right to counter-designate additional ranges in response to any excerpt designated by any other party. The Debtors expressly reserve the right to supplement these counter-designations as necessary and appropriate.[1] The deposition transcript of Andy Pyle is attached hereto as **Exhibit A**.

Deposition Counter-Designations for Andy Pyle (KPMG) – March 13, 2013

Tr.	Excerpt
17:2 – 18:21	Q. And in connection with your roles at KPMG, have you worked on initial public offerings before? A. Yes. Q. In how many occasions? A. Counting them up over the years, it would be a relatively large number. I would say north of 20, over 20. Q. And since you've been a partner, how many of those more than 20 have been since you've been a partner? A. Seven or eight, not all of which have been sort of fully successful, but on virtually all of those, we would have done all the work as we did on this one. Q. In those seven or eight, how many, if any, were you the lead KPMG partner? A. All of those seven or eight. Q. All -- A. The seven or eight. Q. How many of the seven or eight were successful? MR. O'CONNOR: Objection to form.

[1] These counter-designations are in response to designations sent to the Debtors by the Committee prior to the date hereof. Should the designations filed by the Committee differ from the designations that were previously sent to the Debtors, the Debtors expressly reserve their right to supplement these counter-designations accordingly.

	Q. You can answer, if you understand the question. A. How do you define success? Q. How many of those seven or eight IPOs actually went to market? A. Okay. So I don't remember the precise number, but as with this IPO, virtually all of them -- all but maybe a couple went out to market to test, and, therefore, in order to do that, we would have substantially completed all of our work. There were probably two that I can think of which did not reach the point of going out in terms of sort of marketing, and of the ones that have -- that went out to sort of pre-marketing that I was the engagement partner on, I can recall one that was sort of finally consummated and the entity completed the IPO….
40:23-42:5	Q. And you said that you had always understood that Arcapita Bank was where the funding would come from. What was that understanding based upon? A. Firstly, we were told that this was how -- how it would be -- how things worked in practice, and we were told that by representatives from Arcapita who were -- some of whom would be employees of Arcapita Limited, but in -- in some of the meetings, there would have been people who were not based in London or who would not have been -- not have been employed by -- by Arcapita Limited. And we were also told that by the CFO of PointPark Properties, who is a gentleman called George Aase, which is spelled, A-a-s-e. Q. Who from Arcapita Limited told you that? A. Okay. The people that we were dealing with -- and it would have been one -- one or more of -- of them – would have been Karim Si-Ahmed, Cherine Aboulzelof -- how do you pronounce the surname? Aboulzelof, which is A-b-z-o-u-l-z-d-f {sic}, I think. I need to check that. And the other person we'd been dealing with was Jamal, J-a-m-a-l, Dutheil, which is D-u-t-h-e-i-l. Those were the principal people that we were dealing with from Arcapita Limited.
54: 6-23	Q. I just want to look at paragraph 1. And it -- the paragraph 1 says, "In good faith numerous professionals worked to bring a transaction that this court approved to market. They did so with the reasonable expectation that they would be paid for their services." Do you see that? A. I do. Q. And do you agree with that statement? A. Yes, I do. Q. And did you have the reasonable expectation that Arcapita Bank would pay

	for your services? A. I absolutely had reasonable expectation that Arcapita Bank would pay for those services.
69:18 – 71:3	Q. At that time in August, do you recall having discussions with the individuals you mentioned from the debtors from Arcapita with respect to payment of your fees in the future? A. Around the time of the fee order, I don't recall. Q. And what about after into August or September? I'm just trying – the discussions that you referred to earlier, can you give us a time frame for when those discussions occurred? A. We had quite a lot of the discussions in late March and early April sort of immediately after filing and before we started work. And those discussions were around, as is normal practice for us, having a payment schedule put in place, whereby we would get paid for our costs as we go similar to the way that, you know, retained professionals would get paid through -- through a Chapter 11 sort of process. We typically have that form of monthly sort of payments on account when we do IPO work. So we were having discussions with them at that point. We were also having discussions with them over, you know, July and into August as the situation was sort of developing. After the Linklaters' sort of fee motion was approved, we would have had some other discussions with them, but not probably as many as we -- as we had earlier in the process.
86:11-21	Q. Do you have any understanding of whether P3 and Arcapita Limited could borrow funds from someone other than Arcapita Bank? A. I don't have any understanding on -- on that. I would be very surprised if they could. Q. And why is that? A. Because they have revenue streams that exceed their costs and their parent is in Chapter 11.
87:12-24	Q. Were you aware that they were entities that didn't own the entities with substantial enterprise value? A. Yeah. I mean, I think I already covered the discussions that we had sort of upfront about Arcapita Bank Bahrain funding these organization – Arcapita Limited and PointPark to pay the fees and we were aware of that because we have a relatively long-standing relationship with Arcapita. So we've seen that work in practice among multiple occasions prior to the EuroLog IPO.

121:9-25	Q. Does KPMG typically give a discount when IPOs are not completed? A. No, as I said earlier, we are prohibited under something called The Ethical Standards for Reporting Accountants from giving any formal fee arrangement that is contingent upon the outcome of the IPO. We're putting a public report in the prospectus to the investors that the financial statements, the accounts, give a true and fair view. And the relevant guidelines say it is inappropriate for us to have any form of our fees linked to the outcome of the transaction because the investors would perceive that to -- to impair our independence to do the work that we do.
132:20-133:13	Q. And so this is not a situation where you looked at the final set of fees and made some adjustment because the IPO didn't complete; is that right? A. We looked at the fees and the total level of discounts. As I said, we regard the level of discount that we've given here as very high in relation to other major IPO work that we have done both completed and non-completed IPOs. Therefore, our -- our belief based on the other engagements that we've looked at is that this is already a below-market fee level and we do not see why there should be a further discount when on both completed and non-completed IPOs, that the discount levels might be 20 percentage points lower than this.
138:9-14	Q. And that's, again, without applying any discount for the fact that the IPO failed; is that right? A. Exactly because as I've said before more than once, we're not allowed to do that and we are cheaper --
147:2-6	A. … We may, of course, be able to cut through that depending upon, you know, the circumstances at the time and the relationship that we have, but that would be one example.
149:15-152:3	Q. Just so I'm clear about it, is it your testimony that if there were a monetization event on the horizon, you'd be less willing to work unless you were paid your fees; is that what I understand? A. We would -- so if there's a monetization event and we're asked to do more work and we haven't been paid, we're -- for the work that we've done to date, then given -- given where we are now, in the situation where the court decides in the Committee's favor and we are not paid, we're going to think pretty carefully before doing anything else in respect of any of the EuroLog assets before we sort of -- before we pick up our pens again. We'd be nuts not to do that. Q. That was the first way that it would impair a monetization event. And I stopped you to get some more detail on that, but was there another way?

	A. I guess, secondly, you'd have a situation where, if it became publically known that an action was being taken against Arcapita Limited or PointPark SRO, you know, all of the stakeholders and other creditors and people that trade with those businesses today will obviously be aware of the fact that the parent is in Chapter 11. And so there's -- I think there's a risk that if any action that was taken by some creditors against those organizations became public, that you could get a domino effect and you'd have a whole bunch of other people, which would decide that they would soon cease to trade. And P3 -- I mean, both Arcapita Limited in terms of its employees and P3 are, in my opinion, very important if not critical to the value of the EuroLog assets because the level of knowledge that exists within those organizations and the people in those organizations about these assets, the tenants, the strategy for, you know, enhancing value is very significant. And, you know, again, in my opinion, the value of selling the individual assets without the management company with all of the knowledge would be. Less so there's a marriage value here and a value to the management company. And I think if that management company was either in or at significant risk of bankruptcy proceedings, then if I put myself in the shoes of advising a buyer, which is what I do, you know, in a large part of my work, you know, you would be very nervous about that situation as a buyer and you'd want to get -- you'd want to get the situation resolved, if it's at all possible. So that would be another way.
154:10-156:22	Q. Okay. And I just wanted to -- the management services that are provided by P3, those management services could be provided by a different manager; is that right? A. I don't think they could be provided by another manager to the same sort of quality, and -- as P3 is currently doing. Because in some cases these – the assets that are there were built by P3. So they -- and in other cases, they've managed them for a number of years. So the level of institution and knowledge about the assets is very high, and it would take anybody else, you know, a significant period of time to get up the learning curve with regard to, you know, those particular sort of assets. So while they might be capable of being replaced, I think, you know, our opinion is that there would be an impact on -- on the assets if P3 were not there to manage them. Q. What impact? Can you quantify it? A. It's difficult to quantify, but you know, there's -- the portfolio has got -- and it varies asset by asset, but, you know, each one of these buildings, you've got a relationship with the tenant so an understanding as to the likelihood of the tenant renewing or not renewing its lease. So what you would see is if there would be a greater chance of a tenant's leaving. There would be, I think, a slowdown in the rates at which the vacant space would be -- would be leased up, and I think that would have a negative impact on the value of the assets. Quantifying it is pretty

	difficult considering it's a hypothetical question, but, you know, it wouldn't be a positive. It would be negative, and that would just be a question of degree. Q. And the relationship you're talking about, those are between human beings, right, people, and the knowledge is the manager of a particular facility? A. Yeah, well, you've got – but not just one person, you know. You've got multiple individuals in P3. I think that now we've got about 50 or so people in the organization, most of whom are involved in something that touches these assets sort of one way or the other. So you've got quite a lot of institutional experience that you'd have to go and replace. It's not an impossible job, but, you know, it's not something that you can just click your fingers and hope that it's all going to be fine.
158:18-25	Q. When you said earlier it would clearly be a negative effect that you haven't quantified it if something happened to P3, it would clearly be a negative effect on P3, right? A. And I think it would be a negative impact on the value of the asset companies as well.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: New York, New York
July 10, 2013

Respectfully submitted,

/s/ Craig H. Millet

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ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
- - -

IN RE: :
: Chapter 11
ARCAPITA BANK : No. 12-11076 (SHL)
BSC(c), et al. :
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:

DEPOSITION UNDER ORAL EXAMINATION OF
ANDY PYLE, MA ACA
March 13, 2013
New York, New York

- - -
REPORTED BY: DANA N. SREBRENICK, CRR CLR
- - -

TSG REPORTING

JOB NO. 59265

Transcript of the deposition of ANDY PYLE, MA ACA, called for Oral Examination in the above-captioned matter, said deposition taken pursuant to District Court Rules of Practice and Procedure, by and before DANA N. SREBRENICK, a Federally-Approved Certified Realtime Reporter, a New Jersey Certified Court Reporter and a Certified Livenote Reporter, Notary Public for the State of New York, at the offices of MILBANK, TWEED, HADLEY & MCCLOY, LLP, One Chase Manhattan Plaza, New York, New York, commencing at 11:15 a.m.

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Testimony of:

ANDY PYLE, MA ACA

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EXHIBITS

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DEPOSITION SUPPORT INDEX

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Directions to Witness Not to Answer

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Request for Production of Documents

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Stipulations

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Question Marked

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none

A. Pyle

(Exhibit Pyle 1, Declaration of Andy Pyle in Support of Debtors' Motion for an Order Confirming the Debtors' Authority to Fund Nondebtor EuroLog Affiliates, marked for identification.)

(Exhibit Pyle 2, Notice of Debtors' Motion for Order Confirming the Debtors' Authority to Fund Nondebtor EuroLog Affiliates, marked for identification.)

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ANDY PYLE, MA ACA, 15 Canada Square, London E14 5GL, after having been duly sworn, was examined and testified as follows:

\- - -

DIRECT EXAMINATION BY MR. LEBLANC:

\- - -

Q. Good morning, Mr. Pyle. We met briefly a moment ago, but could you just state for the record your full name?

A. Yeah, my full name is Andrew John Pyle.

A. Pyle

Q. And where are you currently employed?

A. I'm a partner at KPMG, LLP in the UK.

Q. Have you been deposed before?

A. Not in the U.S. courts.

Q. Okay. Let me just give a couple of ground rules that we'll follow throughout the day and it will make it easier for the court reporter who's sitting here. She can only record what is a verbal answer to a question. She can't record, for example, a nod of the head. Do you understand that?

A. Yes.

Q. So I would just ask that you respond to my questions with a verbal response, okay?

A. Okay. Yep.

Q. She also will have difficulty if you and I speak over one another. So if you start answering a question before I'm finished -- so I'll try not to step on your answers if you do the same for me.

A. Pyle

Do you understand that?

A. Yes.

Q. And if you need a break at any time, feel free to take as many breaks as you want. We talked a little bit before the deposition started about what my expectations on timing are, but if you need a break, just let me know. I would just ask that you answer the question, any question that's pending before we do so.

A. Yeah, that's fine.

Q. And if at any time you don't understand a question that I've asked, feel free to just let me know that you needed it to be rephrased or you don't understand it and I'll be happy to do that. Do you understand that?

A. Yes.

Q. And so if you answer my questions, I'll assume that you've understood what I've asked, and you'll tell me if you don't, okay?

A. Okay, yeah.

Q. Great.

A. Pyle

I put before you, and we premarked two exhibits. The first is listed -- identified as Pyle Exhibit 1. Do you recognize Pyle Exhibit 1?

A. Yes, I do.

Q. And what is it?

A. It's my Declaration in Support of the Debtors' Motion that I sort of made a short while ago.

Q. And that's your signature on page 5 of Exhibit 1?

A. Yes, it is.

Q. What is -- you described yourself as a partner. Are you a partner within a particular group at KPMG UK?

A. Yeah, I'm a partner within the transaction services service line within KPMG in the UK.

Q. And in a general sense, could you describe for me what the transaction services line does within KPMG in the UK?

A. Yeah. Okay. So we -- we work with clients on transactions undertaking due diligence and providing various sort

A. Pyle

of different sort of types of advice on that transaction. So that might include where a company, or also say a fund, is looking to acquire another company or it might be on an IPO or some other transaction involving the public markets. So -- and that's -- and we would work both on effectively the buy side or possibly the sell side depending upon the requirements of our clients.

Q. And what types of services does the transaction services unit provide?

A. Do you want me to talk specifically about this case or just generally?

Q. Just generally for now and then we'll turn very quickly to this case.

A. Okay, yeah. So we would provide things like financial due diligence, so looking at the accounting and financial records of a business, both sort of historically and also their projections in terms of sort of the future. We also have a group that provides sort of a market in

A. Pyle

commercial due diligence, looking more at sort of the strategy and the commercial assumptions behind some objections. We have a team that advises on integration and separation where you've got businesses that are sort of being carved out or joined together as part of the deal. And, additionally, we do lots of work around sort of the accounting and financial aspects of structuring transactions in terms of helping our clients sort of understand how they would need to account for them and working very closely with our colleagues in tax to make sure that the tax and accounting work streams are sort of aligned on a deal.

Q. Now, you -- in that answer, you mentioned that, We have teams that do a couple of those like the market due diligence, the integration and separation services, and I think you did say with respect to tax. Are there others within KPMG that provide the services that you identified where you have a team providing

A. Pyle

those services, others than you?

A. Okay. So my -- so I tend to specialize in the financial due diligence and the -- the sort of the structuring sides of things on both sort of public market transactions and private transactions, too. I do not personally sort of lead a stand-alone engagement say around commercial due diligence or integration, but I will typically, as I did on this transaction, act as a sort of lead engagement partner, and as part of that would have responsibility for the full sort of suite of KPMG services on a deal. And some of those services I would be, you know, completely on point for, but my clients would really look to me to have an understanding of the totality of what we were doing on any transaction.

Q. And what about tax services, is that something that you personally would provide or you might serve as the engagement partner for?

A. No, I wouldn't serve as the sort

A. Pyle

of engagement partner for the tax services specifically. They would be treated in the same kind of way as the other services, which transaction services my group would provide, in that we would often have tax services forming part of an engagement letter that I may have overall responsibility for as a lead engagement partner, but I would have a tax partner that would effectively be having signoff responsibilities for that. That wouldn't be me, that would be -- that would be primarily responsible for that advice.

Q. How long have you been a partner for KPMG?

A. I made partner on the 1st of October 2007, so I'm in my sixth year.

Q. You've been with KPMG for how many years?

A. 20 years this summer.

Q. And just briefly, what's your post-primary education degree, so university or after?

A. Yeah, so -- so I went to

A. Pyle

university at Christ's College in Cambridge, and I took a degree in natural sciences specializing in physics and graduated from there in 1992. In terms of post-grad education, the first thing I did was when I joined KPMG, there was a sort of three-year training contract where I went through and effectively became a sort of a chartered accountant and qualified and had to take a sort of series of exams to -- to do that, and subsequently to that, in '99 and 2000, graduated from a KPMG executive MBA program that was sort of running -- which was running in 1999 and 2000 that I was asked to go on.

Q. In that answer you said you, "Effectively became sort of a chartered accountant." Are you a chartered accountant?

A. Yes, I am. Sorry.

Q. And you continue to be to this day?

A. I am, yes. Sorry.

Q. That's okay.

A. Pyle
And in connection with your roles at KPMG, have you worked on initial public offerings before?
A. Yes.
Q. In how many occasions?
A. Counting them up over the years, it would be a relatively large number. I would say north of 20, over 20.
Q. And since you've been a partner, how many of those more than 20 have been since you've been a partner?
A. Seven or eight, not all of which have been sort of fully successful, but on virtually all of those, we would have done all the work as we did on this one.
Q. In those seven or eight, how many, if any, were you the lead KPMG partner?
A. All of those seven or eight.
Q. All --
A. The seven or eight.
Q. How many of the seven or eight were successful?
MR. O'CONNOR: Objection to

A. Pyle

form.

Q. You can answer, if you understand the question.

A. How do you define success?

Q. How many of those seven or eight IPOs actually went to market?

A. Okay. So I don't remember the precise number, but as with this IPO, virtually all of them -- all but maybe a couple went out to market to test, and, therefore, in order to do that, we would have substantially completed all of our work. There were probably two that I can think of which did not reach the point of going out in terms of sort of marketing, and of the ones that have -- that went out to sort of pre-marketing that I was the engagement partner on, I can recall one that was sort of finally consummated and the entity completed the IPO. I can't remember if, without dredging through my memory banks, if there were more than that. I certainly recall one.

Q. And maybe the successful was --

A. Pyle

the word "successful," was that the one that this was difficult for you to respond to?

A. Yes. That's why I sort of -- that's why I said that, you know, our work is done in the run-up -- substantially all of our work is done in the run-up to sort of going out effectively with a prospectus that's used to then assess interest in the IPO enterprise. That was the case on the EuroLog transaction. And then if there is enough interest through sort of a book-building or marketing phase, then there will be a final prospectus issued which will have, you know, the final price. And at that point, it's a done deal because the IPO will have been underwritten by the investment banks and then it will just proceed automatically to completion.

Q. How many of the seven or eight had final prospectus completed?

A. That would be at least one, if not -- if not -- I can recall at least

A. Pyle

one, so let's say that.

Q. Okay. Now, would you describe the ones, the ones that were not completed in the sense they didn't have a completed prospectus, would you describe those as failed LBOs?

MR. O'CONNOR: Objection to form; you can answer.

A. I think you said LBOs. I think you meant IPOs.

Q. I meant IPOs. But how would you describe this -- how would you differentiate it? How would you describe the IPOs that did not reach the final -- reach a final prospectus?

A. Well, they were ones where, for whatever reason, there was not enough -- either there was not enough interest from the potential investors in the company that was being put forward or -- and that would be for a variety of reasons, but at the price that effectively that the people that were selling or leading, wanting the IPO to happen, were prepared to accept.

A. Pyle

Q. I'm just trying to get -- what term, as we move forward, what term would you use, if any, to describe those? The term "failed IPO," have you heard that term before?

A. I -- I -- I've heard it sort of used by -- by people. I think it's failed as sort of quite a strong or sort of, you know, pejorative sort of word, and so I -- I certainly wouldn't describe the things that I sort of worked on as being sort of a failure because in a number of cases there were other transactions that sort of went forward sort of subsequently. You know, and when you use that word, it kind of reflects badly on the people that you were working with, when in truth, often the issue is sort of external because it's the people that have got the money that need to decide whether or not they're prepared to invest or not.

Q. So the ones that were not -- can we just refer to them as uncompleted IPOs?

A. That's fine.

A. Pyle

Q. Is that a fair --

A. That's fine.

Q. We'll move back to that in a bit. All right. Now, the declaration you have before you, Exhibit 1, how was that prepared?

MR. O'CONNOR: Objection to form. You can answer.

THE WITNESS: Okay.

A. Just, can you clarify what you mean in how it was prepared?

Q. Sure. Did you prepare Exhibit 1?

A. Right. Okay. The process that we went through was this: I had some conversations with my -- with our counsel and provided some -- some background information and then there was a drafting process that arrived at some -- at this sort of document, but I've signed it, and, therefore, it's my declaration.

Q. Fair enough. And you're comfortable with everything that's in the declaration?

A. Pyle

A. I wouldn't have signed it given the penalties involved here had I not been.

Q. And you refer to your counsel. Your counsel in that answer was referring to Wilkie; is that correct?

A. Wilkie retained by KPMG.

Q. Now, we've also marked right behind that Exhibit 2. And I'll just note -- I'll represent for the record that this is the motion filed by the debtors. It is first the notice of the motion, and then starting on page 4 of 29, the debtors' motion, itself.

Have you seen this document before?

A. I'll just flip through it.

Q. Of course.

A. Yes, I have.

Q. And did you see a draft of the motion of the debtors prior to its being filed?

A. Yes, I did.

Q. And did you have input into that

A. Pyle

draft?

MR. O'CONNOR: Objection to form. You can answer.

A. Okay. Input into the draft? Some of the elements of the draft were prepared in using information that was in the declaration and those two documents were being put together in parallel. So I would say I had input into the motion in that sense, really specifically relating to the matters on sort of pages 11 sort of through to -- partway down to 13, which refers specifically to KPMG's services with regard to the IPO.

Q. And is there anything in the debtors' motion to the best of your recollection with which you disagree?

A. I don't think so, but, you know, I kind of regarded the -- it's their motion. And so I was not doing a review of it kind of in the same way as I would do a review of my own declaration. But I'm not aware that there's anything in here that I would -- that I would disagree

A. Pyle

with.

Q. And have you seen the version that's before you as Exhibit 2? This is the filed version of it. Have you seen that version?

A. I was provided with a copy of that after -- after it was sort of filed, so yes.

Q. And as you -- did you review that filed version?

A. Yes.

Q. And nothing, as you reviewed it, jumped out at you as something that you wanted to correct or you would disagree with?

A. No, but as I say, I was more reading it for kind of background in the areas that didn't relate specifically to -- to KPMG.

Q. Okay. Now, let's talk about the EuroLog IPO process. Can you describe for me generally what the EuroLog IPO was?

A. Yes. So Arcapita had put together -- had -- had made a number of

A. Pyle

acquisitions and transactions over recent years. I guess the last one would have been in or around 2008. And there were transactions, from memory, dating back to sort of 2003 or 2004, is my recollection of investments in real estate assets that are used by sort of logistics or distribution sort of companies. So these are warehouses where people -- where retailers or third-party distribution companies would -- would hold stock, and that would form part of the retailers's supply chain sort of typically. So they had made a series of acquisitions that were held in a number of individual investment structures, which Arcapita, themselves had an equity interest in, and alongside them, they had a network of investors that had also participated in each particular sort of transaction. And the idea -- as part of the last transaction, they acquired a series of management companies which have now been called PointPark Properties or P3.

A. Pyle

And so the premise for the IPO was that there -- it was a -- it would be marriage value in putting all of these assets together, together with the management sort of companies and to realize value for Arcapita and their -- and their investors through an IPO. And so that's sort of the background to -- to the transaction.

Q. Okay. In that answer, you referred to a network of investors who invested beside Arcapita. Are you generally familiar with the ownership interests of Arcapita relative to these outside -- the network of investors?

A. When we -- when we were doing our work at the early stages, we were certainly sort of made aware of Arcapita's equity interests versus the external investors, but I don't recall what they would be. They varied structure by structure, and I couldn't tell you now without going back to sort of those papers what -- what they were, but --

A. Pyle

Q. But you were aware at the time that -- that any proceeds from an IPO would benefit Arcapita and these network of investors?

A. Yes, I was, but -- yeah, but it would depend. The way that that would get sort of dealt with would obviously depend upon a number of factors, and I was never really involved in looking at how value would sort of split.

Q. Was the question or the issue of how value would be split an issue that KPMG was involved in looking at generally?

A. The only aspect that KPMG looked at was as part of our tax structuring work. One of the work streams would be referred to as looking at the funds's flow and that was -- that work stream was effectively helping Arcapita and P3 to mobile through how do you actually mechanically effect the transaction. And I -- my understanding is that the end product of that was then able to be used by Arcapita to be able to work through

A. Pyle

value split between themselves and their investors, and also but not just how the value is split, but the nature of the money coming back to them, so whether that was for sale of shares or some other form of sort of a return depending upon the natures of the instruments that had been invested in. But -- but generally our work sort of finished at a level in the structures and was then sort of carried on by -- by Arcapita once we had sort of given our advice.

Q. And the -- one step in the IPO process was going to be a transfer of the assets into ListCo; is that correct?

A. Yes.

Q. And the assets that would be transferred would be the real estate assets as well as the management services; is that right?

A. Yes, although I would say that the -- it wasn't going to be the assets themselves that were going to be transferred because a large amount of care

A. Pyle

needed to be taken, and a lot of our tax structuring work was done to make sure that there was not value leakage principally through real estate transfer taxes that apply in the multiple jurisdictions across Europe that we were dealing with here.

And so, I think, in all cases, we were transferring the ownership of corporate vehicles that might then own other corporate vehicles, and eventually you would get to something that actually had the ownership interest in the underlying real estate, but it was generally a corporate vehicle that was being transferred.

Q. But at the start of the process, the P3 entity didn't own even indirectly interest in the underlying real estate assets; is that right?

A. That is my understanding. What they had was management agreements that they were effectively responsible for managing the real estate investments on

A. Pyle

behalf of Arcapita and Arcapita's investors in return for a fee.

Q. And ultimately when ListCo, if ListCo had been consummated and received the assets indirectly, they would have an interest -- ListCo would have had an interest in those underlying real estate assets?

A. I mean, other than a few cases where the -- the investors in Arcapita didn't have a hundred percent ownership of the underlying sort of real estate, ListCo would actually have owned a hundred percent of everything. There was a small number where there are some minorities.

Q. Now, in your declaration, which is Exhibit 1, you state that -- we can look at it. Page 2, paragraph 4, "Pursuant to the engagement letters attached hereto as Exhibit 1, the engagement letters, KPMG was retained by ListCo and PointPark both of which are indirectly 100 percent owned by Arcapita Bank to provide the services described

A. Pyle

herein." Do you see that?

A. Yes, do you.

Q. And that's an accurate statement? Those are the entities that you were retained by; is that correct?

A. That is correct in respect of the reporting accountant work. I think in respect of the tax structuring work, we were also retained by Arcapita Limited which is the -- the UK company that Arcapita -- Arcapita Bank owns, I believe, a hundred percent of.

Q. And let me just -- so ListCo is the entity that we just talked about that would have owned all the assets in the IPO; is that correct?

A. Correct.

Q. And PointPark, that is the management company that -- that was -- originally didn't own any of the assets, correct?

A. Yes.

Q. And there's -- I just want to make sure I'm clear because ListCo was

A. Pyle

also called PointPark ultimately?
A. It was to be called PointPark.
Q. But it was PointPark PLC?
A. That's my recollection, yes.
Q. And PointPark -- PointPark Properties SRO was the predecessor management company; is that right?
A. That was one of the predecessor management companies. They had management companies in multiple jurisdictions that, I believe, were effectively either owned by PointPark Properties SRO, which is a Czech company. Or I think they were all owned by that company.
Q. And Arcapita Limited, the entity that you mentioned, that's a UK entity; is that right?
A. Yes, that's right.
Q. And that is not a debtor in these cases in the United States; is that correct?
A. That is my understanding, yes.
Q. And so we'll go through the engagement letters in a little bit, but

A. Pyle

none of the entities that retained KPMG are debtors in any of the cases in the U.S.; is that right?

A. That's correct.

Q. And none of them are debtors in cases in other jurisdictions like the Cayman Islands; is that right?

A. That's my understanding, yeah.

Q. Why were these particular entities chosen to be the entities that retained KPMG?

MR. O'CONNOR: Objection to form. You can answer.

A. Yeah. So in terms of -- let me take the IPO reporting accountant engagement letter. The reason why those companies were included on the engagement letter as sort of parties to it -- and in addition, the Deutsche Bank and a sponsor to the IPO and Credit Suisse, I believe, they were referred to as the joint book runners, and joint global coordinators were included -- that is, to do with the specific regulation that applies to an IPO

A. Pyle

on the London stock exchange which is governed by Listing Rules of the London -- sort of the UK Listing Authority. So in order to complete an IPO, the company has to prepare a prospectus and the company has responsibility for that. So in that case, ListCo was the entity that would have responsibility formally for the prospectus.

Deutsche Bank as sponsor, and Credit Suisse as book runners, either have -- in Deutsche Bank's case as sponsor, have a regulatory responsibility for making a certain sort of declaration to the UK Listing Authority in respect of the IPO applicant. And in Credit Suisse's case, they effectively have are very heavily associated with the prospectus. So custom and practice for UK IPOs is that the addressees of the engagement letters are the company that has regulatory responsibility for the prospectus. In the case of a cash -- in the case of a shell company, such as ListCo, we would -- where

A. Pyle

we were getting all of the information from another company that was to form part of the ListCo Group, as was the case here with PointPark Properties SRO, we would include them in the engagement letter, too. And then we would have Deutsche Bank and Credit Suisse as sponsor. And the scope of our engagement letter is basically -- sorry -- is designed around either something that has to be put into the prospectus because it's required by the relevant sort of law and regulations or which is linked to something which Deutsche Bank needs in order to sort of satisfy itself and make it sort of declaration to the UKLA, or it's something which Deutsche Bank and Credit Suisse need as part of sort of their due diligence on a business. And if you read the IPO engagement letter, it is structured in -- along those sorts of three -- three headings. So that's why those entities were chosen. Because none of the Arcapita entities were going to have responsibility

A. Pyle

for the prospectus. They were not a party to that particular engagement letter. On the -- secondly, on the tax structuring letter, that letter was -- was addressed to Arcapita Limited and to PointPark Properties SRO, and that is because Arcapita -- because as you've described the value going to Arcapita and the investors, they obviously did have a need to understand the results of our sort of tax structuring work because that would have relevance to their decision as to, you know, whether to proceed or not into the pricing that would be acceptable to them because they'd have to understand what level of sort of tax leakage and what would be required in order to effect the IPO.

So that's why I believe those entities were -- were chosen as addressees to the two engagement letters.

Q. And the engagement letters also identify who is being invoiced for the work that's being performed, right?

A. Pyle

A. That is correct. They will do that.

Q. Right. And the engagement letters -- and we can look at them -- but they indicate that you're invoicing PointPark Properties, correct?

A. That's my recollection. I can go back and refer to them if it will be helpful to confirm.

Q. We'll go through them in a little bit, but is there any document that you're aware of that says that you're looking to Arcapita Bank for payment of fees in connection with the EuroLog IPO?

A. Yes. So prior to -- at the very early stages of them initiating the IPO, we were engaged to do some preliminary tax structuring work and also what we refer to as an IPO readiness review. The engagement letters for -- the two engagements letters for those two pieces of work -- and they were, again, Arcapita Limited and PointPark Properties SRO to start with. But the IPO readiness

A. Pyle

engagement letter was subsequently varied to bring in Arcapita Bank Bahrain, one of the debtors as a party to that engagement letter, but this is all prepetition, and Arcapita Bahrain paid the fees for the -- for the IPO readiness review, for the phase -- for the tax structuring first phases and also paid some of the audit fees that were undertaken as part of the IPO engagement letter, but, again, prepetition. And they paid those fees directly. And it was always understood by -- by KPMG and the other advisors through discussions with Arcapita representatives and PointPark Properties, that Arcapita Bank Bahrain was the source of all of the money that would be used to pay KPMG's fees.

Q. Okay. We're going to break that down some. The fees that you're seeking to be paid today, the ones that are unpaid --

A. Yes.

Q. -- are any of those associated

A. Pyle

with the prepetition work that you just referred to?

A. No.

Q. And so you've been paid for the engagement letter that had the variance that included Arcapita Bank; is that right?

A. Yes, that's right.

Q. So the fees that you're now seeking compensation for are fees that were incurred pursuant to a subsequent engagement; is that fair?

A. In respect of the IPO reporting accountant, yes. I would want to just go and double check on tax structuring as to whether the -- the post-petition work was done through a variation to the original engagement letter or whether it was done through a separate engagement letter, but I'm happy to come back to that later, if that's what you'd like to do.

Q. And you said that you had always understood that Arcapita Bank was where the funding would come from. What was

A. Pyle

that understanding based upon?

A. Firstly, we were told that this was how -- how it would be -- how things worked in practice, and we were told that by representatives from Arcapita who were -- some of whom would be employees of Arcapita Limited, but in -- in some of the meetings, there would have been people who were not based in London or who would not have been -- not have been employed by -- by Arcapita Limited. And we were also told that by the CFO of PointPark Properties, who is a gentleman called George Aase, which is spelled, A-a-s-e.

Q. Who from Arcapita Limited told you that?

A. Okay. The people that we were dealing with -- and it would have been one -- one or more of -- of them -- would have been Karim Si-Ahmed, Cherine Aboulzelof -- how do you pronounce the surname? Aboulzelof, which is A-b-z-o-u-l-z-d-f {sic}, I think. I need to check that. And the other person we'd

A. Pyle

been dealing with was Jamal, J-a-m-a-l, Dutheil, which is D-u-t-h-e-i-l. Those were the principal people that we were dealing with from Arcapita Limited.

Q. And did that -- did those statements, the representations that you had received, make it into any of your engagement letters in any form?

A. Other than the IPO readiness engagement letter, I do not believe so, no.

Q. And so for the engagements that you're now seeking compensation for, leaving aside the IPO readiness, none of those have any written reference to Arcapita Bank making the payments that you're seeking; is that correct?

A. I think that is right, yes.

Q. And you're aware, are you not, that KPMG has been -- KPMG generally has been retained in the bankruptcy cases in the United States; is that right?

A. Yeah, it says so in either the motion or my declaration that that is

A. Pyle

correct. None of the individuals that were involved in the -- the retention work were involved in our work on the EuroLog IPO.

Q. Are you aware that KPMG UK has been retained in the bankruptcy case?

A. Yes, I am.

Q. And are you aware that KPMG U.S. has been retained in the bankruptcy case?

A. Yes.

Q. And -- but the services for which you're now seeking compensation, those are not services for which KPMG has ever been retained in the bankruptcy case; is that correct?

A. That is correct.

Q. And you obviously -- you were aware that Arcapita Bank had gone into bankruptcy in March, correct?

A. March 2012?

Q. 2012, yes.

A. 2012, yes, I was.

Q. And that was around the time that you were doing work with respect to

A. Pyle

the EuroLog IPO?

MR. O'CONNOR: Objection to form. You can answer.

A. Okay. So we had done some work that had been completed sort of prepetition. And we had been discussing starting some of the other work that had been -- that was required. We did not kick off further work until some weeks after the -- the petition sort of dates. So the only thing that would have been running immediately before the petition date would have been the December 2011 audit work which was undertaken in January, February and, I believe, early March of 2012.

Q. When -- for the -- the services that you're seeking compensation for in this motion, when were they completed? When were they done?

A. They were --

MR. O'CONNOR: Let me object to the form.

MR. LEBLANC: Let me go back.

A. Pyle
Q. When did you do the work that you're now seeking to be compensated for?
MR. O'CONNOR: You want the time period?
MR. LEBLANC: The time period generally.
A. Sure, so the majority of the work -- it was undertaken in phases, but the majority of the work was undertaken from the period April 2012 through until October 2012. We did not do -- we did not really do any more work after October 2012. There were a couple of periods within that -- that time frame where we were not actively working across all work streams, but as you'll see from the schedule that you have in front of you, regarding sort of fees, some of the work -- not all of the work streams were basically going on all the way through that period because there were a couple of sort of natural gaps that were there.
Q. Am I right that in terms of the work with respect to the IPO, something

A. Pyle

like 70 percent of it was done prior to July of 2012 and then 30 percent was done afterwards; does that sound right to you?

A. I mean, yeah, without checking the numbers, that doesn't sound unreasonable as the splits, but we had done the majority of the reporting accountant work. We had done quite a lot of tax work, and we then had to go through a process of updating some of that work and doing some more audit work. So I'm sure the maths could be checked, but --

Q. But that sounds generally --

A. Sounds ballpark.

MR. LEBLANC: Why don't we mark this just so you don't have to --

(Exhibit 3, Series of spreadsheets, marked for identification.)

Q. The court reporter has handed what's been marked as Exhibit 3. Do you recognize this set of spreadsheets?

A. Yes, I do.

Q. And you'll just represent for

A. Pyle

the purposes of the record, this was something that was provided to us in -- not in formal discovery, but in advance of the filing of the motion.

Is this a KPMG-created document?

A. Yes, it is.

Q. And I want to focus on -- and just, again, for the purposes of the record, it was a spreadsheet with multiple tabs that we printed out with multiple sheets that we printed it out just as it appeared, but -- so I want to actually skip the first three -- the first four sheets and go to the fifth one, which is entitled at the top left, Project Castle - Cost Update Week Ending. Do you see that there?

A. Yeah.

Q. Now, does this reflect the work done by KPMG for -- if you go through each of the columns, for each of those weeks?

A. Yeah, this is -- this is a summary of the time that was spent by the individuals that were noted by -- these

A. Pyle
are our individual work streams which you can see are tied back up to the front page.
Q. Yeah.
A. So this spreadsheet was effectively compiled from a download of our time systems in the UK and the Czech Republic and pulled together in numbers and was periodically sent to Arcapita. This is effectively the final version which was sent to Arcapita, and then I think at the request of the UCC or their advisors was then sort of sent over.
Q. And it's difficult to do, but the first two pages under this worksheet, the cost update week ending, this reflects the period of time from February 19 through, I guess, pre-kickoff through June 17. Do you see that?
A. Yeah, there's a little bit of time pre-kickoff there.
Q. Right. And, again, it's difficult to follow along, but you can see if you go to the total on the second page,

A. Pyle

the largest numbers of hours appear to be in the April time frame. Is that April/May time frame -- is that consistent with your recollection?

A. Yes, that's correct.

Q. And if you skip ahead to the next two pages, that just carries the spreadsheet forward to the following period of time from August 16 through November 22, and you can see there are three-week periods there of high debt utilization. Do you see that?

A. Yeah, I remember that.

Q. All right. And so that -- are you comfortable looking at this, that, you know, at least the majority of the work that you did was done prior to July of 2012?

A. Yeah.

Q. Okay. And while we have Exhibit 3 out, I just want to make sure I understood this correctly. Your rate, which is listed on the first page -- I'm sorry, the second -- I'm sorry -- I guess

A. Pyle

it's the third page of this sheet that we're looking at, the cost update week ending, is your rate $908 pounds per hour?

A. That's my standard rate.

Q. And that standard rate, the UK to dollar is about 1.5; is that right?

A. I haven't looked recently. So...

Q. Okay. But if I represent to you it was -- it closed yesterday at 1.49, is that about $1,350 per hour?

A. I think roughly that would be -- that would be right. Just give me a second because I just want to have a look at this. Okay, no. I can see. Some of the -- some of the numbers are in Euro and some are quoted in Sterling, but the 908 from the way the spreadsheet is on paper that would be a Sterling rate.

Q. And as you look at it, that's the -- the 908 Sterling, the rate that is charged for all partners at KPMG?

A. That would be a rate that specifically applies to transaction

A. Pyle

services partners, also other partners involved in doing work of that particular type. We use different rates for different -- different partners and different types of work.

Q. How does the rate for transaction services compare to the rate for valuation services?

A. I don't know.

Q. How does the rate for transaction services compare to the rate for tax services?

A. They are -- the rates are lower.

Q. For which one?

A. For transaction services work, marginally lower. The differential versus by -- by grade, but taxes, probably of the order of 10 percent higher.

Q. And --

A. For transactional-related tax advice.

Q. Okay. And what about for -- do you know just the relative comparison between valuation services and tax

A. Pyle

services -- and transaction services?

A. No, I don't. I've not had cause to look at those charge-out rates recently enough to be able to -- to make a statement on that.

Q. Have you had any client in your five years pay your standard rates?

A. Yes.

Q. And was that in connection with an IPO that closed?

A. No, it was not. It was in connection with other transactions that have closed.

Q. Do you regularly discount your standard rate?

MR. O'CONNOR: Objection to form. You can answer.

A. It is -- it is more the normal that some sort of discount would be given.

Q. How many times since you've been a partner have you collected at your standard rate, which is at the time of this 908 Sterling?

A. Okay, I probably oversee a

A. Pyle

reasonably large number of -- a large number of engagements every -- every year. So I would have no way of really telling you how many of engagements since I became a partner over six years, given that some of the projects are quite small in size. So I couldn't really answer that.

Q. Now, if you could turn to Exhibit 2, which you should have there, this is the debtors' motion. Do you still have that there?

A. I do.

Q. And, again, you've got to go through the first three pages, which is the notice of motion to get to the motion itself, but if you want to look, if you could, at paragraph 1 of the motion, which is -- do you see the numbers at the top, page blank of 29? Do you see that, at the very top of the document, each of them are labeled out of 29 pages?

A. Right. Okay.

Q. I'll refer to that because that -- that is consecutively including the

A. Pyle

notice of motion. So on page 7 of 29 is the first page -- the first substantive page?

A. Yes.

Q. I just want to look at paragraph 1. And it -- the paragraph 1 says, "In good faith numerous professionals worked to bring a transaction that this court approved to market. They did so with the reasonable expectation that they would be paid for their services." Do you see that?

A. I do.

Q. And do you agree with that statement?

A. Yes, I do.

Q. And did you have the reasonable expectation that Arcapita Bank would pay for your services?

A. I absolutely had reasonable expectation that Arcapita Bank would pay for those services.

Q. Now, if you have your declaration, which is Exhibit paragraph --

A. Pyle

which is Exhibit 1, I don't see, and maybe I missed it, but I don't see a reference to your expectation that Arcapita Bank would make the payment. Can you just tell me if there's a reference in there at all?

A. I can't see one. The declaration is setting out in detail the work that we did and other matters to do with that. It doesn't touch upon the question of our expectation, but it is as I've just said.

Q. So, if you had not -- if we had not spoken in this deposition, this would have been your testimony at the hearing, right? Is that your understanding?

A. I believe that's the case, yes.

Q. And nowhere in here does it talk about the conversations, for example, that you had with the individuals at Arcapita; is that right?

A. It doesn't say that, no.

Q. And it doesn't say in here at all that you believe Arcapita Bank to be the one that -- you had an expectation

A. Pyle

that Arcapita Bank would be the one paying you, right?

A. It doesn't say that, no.

Q. Did your expectation that Arcapita Bank would pay for the fees incurred change as a result of Arcapita Bank's filing for bankruptcy?

A. No, it did not.

Q. Other than your counsel, did you have discussions with anybody about whether or not it was reasonable to expect to be paid by Arcapita Bank after they had gone into bankruptcy?

A. We had conversations with Arcapita Bank employees, the names of the people that I mentioned before, about what would happen with regard to payment post petition, and they told me that things would continue to operate as they had done before and that Arcapita Bank would -- would fund either Arcapita Limited or PointPark in order for them to be able to pay for the services if Arcapita Bahrain didn't pay them directly.

A. Pyle

Q. So you had the discussions that you just described with representatives of Arcapita Bank after they filed for bankruptcy?

A. Yes.

Q. And they're the people that you identified, Mr. Ahmed, Ms. Aboulzelof and Mr. Dutheil?

A. Yes.

Q. Did you ever have a discussion with anybody at Gibson Dunn in connection with your fees?

A. Not -- not in relation to how this sort of funding would work. I don't recall ever speaking to Gibson Dunn about that.

Q. Okay. Well, you spoke with Gibson Dunn in connection with the IPO, right?

A. The only dealings really I had with Gibson Dunn, you'll see on the docket and may recall that there was an indemnity order that was granted, from memory, in September or so. So that was UCC review

A. Pyle

our reports in connection with their assessment of the IPO. So I had some dealings with Gibson Dunn, I think, partly by phone, but a lot by e-mail at that point. And obviously there have been, again, mostly dealings by e-mail in connection with the -- as the motions were being sort of put together and my declaration was being done as well.

Q. Let me ask it in an opened way:

Were you aware that Linklaters filed an application to have its fees paid as part of the EuroLog IPO as part of the Bankrupty Court?

A. Yes, I was.

Q. And when did you become aware of that?

A. Shortly before -- I think it was -- was it August 16, the court hearing that they were due to appear at? It would have been, you know, in the -- I guess, a couple of weeks before then would be when I was -- I think I became aware of it.

Q. And how did you become aware of

A. Pyle

it?

A. I don't recall.

Q. Did you have discussions with anyone other than your counsel about filing a similar motion for KPMG?

A. No, we did not. We had some internal discussions about, about what we should do. We had some conversations with Arcapita. And, you know, you will see on the -- the front schedule of Exhibit 3 that there was a payment of $500,000 that was made to us. That was made to us post petition. Arcapita represented to us that they would seek to get us paid, you know, as well. And we didn't go through the process of applying for a motion. I think in large part the reason for that was because, had we done so and not -- not worked right at the final stages to do the -- to complete the work, then the whole process would have been derailed, I think.

Q. What was Linklaters' role in the IPO?

A. Pyle

A. They were the lawyers to effectively PointPark Properties and ListCo.

Q. And then they -- and they filed a motion asking for authority to have some portion of their fees paid by Arcapita Bank? They did that some time in August?

MS. DILUIGI: Objection to form.

A. That's my understanding.

Q. Now, let me go back to the $500,000, and I have questions later in my outline about that, but who paid $500,000 to KPMG post petition?

A. It was paid to us by PointPark Properties SRO, having been funded by Arcapita Bank.

Q. Do you know when that funding was made?

MR. O'CONNOR: When you say "the funding," the payment to KPMG?

MR. LEBLANC: The payment to KPMG, let's start with that.

A. Well, it preceded the Linklaters' fee motion. It would have

A. Pyle

been either in May or June of 2012. And at the point at which, I think, I became aware of the Linklaters' fee motion, we were -- we were discussing with PointPark and Arcapita Bank about a further part payment. And we were told effectively either in -- at some point, I guess, in July that that was not -- that was not -- not likely to be made and that -- and, I guess, it would have been about at that time that I would have become aware of sort of Linklaters' fee motion either towards the end of July or early in August just slightly ahead of the hearing.

Q. Yeah, I want to focus just on the amount that was paid to KPMG, the $500,000. Your -- what's your best recollection of the date or the time in which that was paid? You can give me a month.

A. I would -- I think either towards the end of May or at some point in June.

Q. And is it your understanding

A. Pyle

that the $500,000 was funded by Arcapita Bank to P3?

A. That was what CFO of P3 told me.

Q. And was it funded for the -- to the best of your knowledge, what did he tell you, everything that he told you about that?

A. He told me that -- that they were going to make us a part payment of $500,000 -- this is Euros not dollars, to be clear, $500,000 Euros. And that is what Arcapita Bank were funding them as part of P3's normal monthly funding.

Q. Normal monthly funding from Arcapita?

A. My understanding from discussions with the P3 CFO is because P3's revenues from these asset and real estate management contracts do not cover its overheads. P3 was funded by Arcapita Bank on a monthly basis to enable it to pay the costs that were due, and as part of that normal monthly funding process, that's -- that's where sort of the

A. Pyle

$500,000 was dealt with.

Q. And that's George --

A. George Aase.

Q. And you're aware that in July, the debtors filed a motion seeking authority from the court to go through the IPO process, right?

A. I'm aware that there was a motion for IPO approval. I couldn't tell you whether that was July or another date.

Q. And to the best of your knowledge, was there disclosure of the fees that had already been incurred by KPMG made in connection with that motion?

A. I have no idea.

Q. And -- but you are aware that no request was made in that motion to pay the fees of KPMG, right?

A. I haven't gone through that motion in detail and I couldn't answer it.

Q. But you're not relying on anything in that motion to say that your fees -- that the court's already approved the payment of your fees, are you?

A. Pyle
MR. O'CONNOR: Let me object and say it calls for a legal conclusion, but you can answer.
MR. LEBLANC: Okay.
A. Well, to be honest with you, I'm not really best placed to comment on what I'm relying upon from a legal perspective because I'm -- I'm not a bankruptcy lawyer.
Q. In your declaration, for example, you don't state your view that these fees have already been approved by the court?
A. The -- what we were told, the declaration should -- sorry. The legal arguments as to why the fees should be paid, we -- were to be covered in the motion rather than the declarations that were there. So it's not covered because we were told by Gibson Dunn that that would be covered in the motion.
Q. Okay. What else were you told by Gibson Dunn about what should be in your declaration?

A. Pyle

A. That it should cover what the contents that it -- that it does. We should -- we should set out in more detail the services that we had provided. We should explain how the significant complexities of the EuroLog IPO impacted our work, and we should also set out the discounts effectively that were being given against sort of standard scale rates and discuss that. So that's why what's in the declaration is -- is there.

Q. Gibson -- Gibson Dunn didn't ask you to talk about what your expectation was to who would pay the fees?

A. No, I don't recall them sort of saying -- saying that. Again, I think that was sort of covered in, you know, in the motion.

Q. Okay. But the motion we looked at refers to what KPMG's expectations were, right?

MR. O'CONNOR: Objection to form.

A. Sorry, what do you --

A. Pyle

Q. Sure. We looked at -- you have it right there, Exhibit 2, paragraph 1 which is on page 7 of 29.

A. Yeah.

Q. Do you have that there?

A. I do.

Q. The second sentence says, "They," and the "They" there refers to, just looking at the prior sentence, "The numerous professionals that worked"?

A. Yes.

Q. And that includes KPMG?

A. Yes, it does.

Q. And so this sentence refers to your expectations, KPMG's expectations?

A. Yes, it does.

Q. And you weren't asked to speak to that question at all in your declaration?

A. No.

Q. Now, while you have Exhibit 2 there, if you could just move forward to page -- on the top, 11 of 29. Actually, yeah, that's fine. And what I -- there's

A. Pyle

a discussion here in section E which begins on paragraph 10 of the prior fee dispute. Do you see that?

A. Yes, I do.

Q. And I know you've reviewed it before. You can review it as much as you'd like, but this is generally referring to the Linklaters' fee dispute, correct?

A. Yes.

Q. And do you see on paragraph 12 --

A. Yes.

Q. -- there's the indented portion, the quotes. Those are quotes from the Linklaters' fee order. Do you see that?

A. The things that are labeled 5 and 6?

Q. Correct.

A. Yes, I can see those.

Q. Now, were you -- did you see the Linklaters' fee order at or around the time it was entered?

A. I can recall looking at the

A. Pyle

information that was on the docket either around or just after the hearing.

Q. Okay. And with the focus on paragraph 5 and, again, you can read as much as this as you'd like to, paragraph 5 speaks to payments that would be made to Linklaters, correct?

MR. O'CONNOR: Objection to form. The document speaks for itself. You can answer.

A. Sorry. I think Linklaters is the only party referred to in paragraph 5 and 6.

Q. Did it concern you that you didn't have an order like this with respect to payments to KPMG?

A. Yeah, I -- well, I mean, the -- the order -- Linklaters had a much more significant backlog of unpaid fees than KPMG had at that point. Because KPMG had been paid some money post petition but also had been paid money prepetition for the work that was done prepetition as well. So I can't really speak about

A. Pyle

Linklaters' concerns, but -- but they had a much larger amount of money outstanding at the time. We had a -- a smaller sort of sum of money. We were certainly very -- very sort of interested and looking carefully at what was happening and were having conversations with Arcapita and Linklaters, you know, and PointPark SRO when all of this was sort of -- was going -- was going on. Bear in mind that in early August the -- I don't think the IPO process was -- was that -- in early August, anyway, was just about to sort bounce, sort of kick back off again, so we were -- we were interested in it. That would be fair to say.

Q. At that time in August, do you recall having discussions with the individuals you mentioned from the debtors from Arcapita with respect to payment of your fees in the future?

A. Around the time of the fee order, I don't recall.

Q. And what about after into August

A. Pyle

or September? I'm just trying -- the discussions that you referred to earlier, can you give us a time frame for when those discussions occurred?

A. We had quite a lot of the discussions in late March and early April sort of immediately after filing and before we started work. And those discussions were around, as is normal practice for us, having a payment schedule put in place, whereby we would get paid for our costs as we go similar to the way that, you know, retained professionals would get paid through -- through a Chapter 11 sort of process. We typically have that form of monthly sort of payments on account when we do IPO work. So we were having discussions with them at that point. We were also having discussions with them over, you know, July and into August as the situation was sort of developing. After the Linklaters' sort of fee motion was approved, we would have had some other discussions with them, but not

A. Pyle

probably as many as we -- as we had earlier in the process.

Q. Do you recall any representatives of the debtors having a discussion with you about payment of your fees after the entry of the Linklaters' fee order?

A. Yeah, we did have a conversation with -- at that time would have most likely have been with Karim Si-Ahmed.

Q. And do you recall what Mr. Ahmed said?

A. My recollection is that -- that it would be difficult without going back -- sorry. In order for us to get paid anything else ahead of the IPO completing, that they would most likely have to go back through a court process, and that there would not be very much time available to do that. And so effectively, the discussions were, basically we will do that -- if the IPO does not succeed, then we will go back through the process of -- of -- of seeking approval. If the IPO

A. Pyle

does proceed, then, you know, we would have been paid out of IPO proceeds, but in the situation where the IPO does not complete, then obviously it would be the responsibility of -- of PointPark and Arcapita Limited effectively as funded by Arcapita Bahrain to pay -- to pay the fees because our fees are not and cannot be under UK Audit Independence Rules, cannot be contingent upon the outcome of an IPO.

Q. Okay. So at the time that you had the discussion that you just referred to, which was in the period after August with Mr. Ahmed, did you understand that, to have further payments from Arcapita Bank made on your fees, there would have to be an order of the court?

A. I don't think it was -- my recollection is that that's not quite what was said. I think what was said was that, there would have to be agreement reached with the creditors committee, and if that was not forthcoming, that they -- it would need an order of the court to be able to

A. Pyle

pay the fees.

Q. Now, you have the debtors' motion still open there. Go back to page 7 of 29, if you would, and this is Exhibit 2.

A. Yeah.

Q. The first paragraph we've looked at, and we're not doing every paragraph, trust me. But the second sentence in particular says that, "They" -- referring to you and others -- "did so with the reasonable expectation that they would be paid for their services." And the second paragraph begins, "The Committee disagrees." Do you see that?

A. Yes.

Q. Is it your understanding that the Committee's position is that you should not be paid for your services?

A. I have not had any discussions with the Committee at all about what their position actually is. There were some attempts in January that you may be aware of to try to come to some form of

A. Pyle

negotiated arrangement, and what we were told, I don't recall now whether that was via Gibson Dunn or Arcapita or both, was that the Committee was not interested in negotiating. There was a proposal that Houlihan Lokey, that were retained by the UCC, had suggested to Arcapita and ourselves, and they had also suggested that to the Committee, and KPMG Linklaters and Fresh-fields had put a counter proposal on the table. And we were told that the Committee was not interested in discussing or negotiating around either the Houlihan Lokey potential deal, nor the deal that we said we might be happy to accept.

Q. My question is slightly different than that.

A. Sorry.

Q. That's okay. Do you understand the Committee to object to your ability to get paid by P3 and Arcapita Limited?

A. I'm not sure it's for me to comment on what the Committee's position

A. Pyle

is. The Committee is objecting to the motion.

Q. The motion that is before the court, the motion that was filed is to fund money for the purpose of paying your fees, right?

A. Yeah, I understand that.

Q. If P3 had the money to pay your fees, do you know of any objection that's been lodged to the payment of those by the entity that engaged you?

A. I don't believe that the Committee has objected to PointPark paying the fees.

Q. So is it your understanding that the Committee objects to Arcapita Bank funding money for the purpose of paying your fees?

A. That seems to be my understanding, yes.

Q. So just to be clear, is it your understanding that the Committee does not want you to be paid by anybody or by money funded from Arcapita Bank?

A. Pyle

A. The Committee does not want us to be paid through the only current route for us to be paid, which is funding through Arcapita Bank.

Q. Do you agree that there's little risk that funding of your fees in connection with the IPO ultimately can be made by P3?

MR. O'CONNOR: Can you read that back?

(Whereupon, the question is read back by the reporter.)

MS. DILUIGI: Objection to form.

MR. O'CONNOR: Objection to form.

A. I don't understand the risk.

Q. Let's go to the debtors' motion to page 27 of 29. And I'm really going to focus you on paragraph 45, which begins on the prior page.

A. Okay.

Q. This is in Exhibit 2?

A. Yeah, I have that.

Q. And I just want to focus on the

A. Pyle

last sentence of the paragraph, but read as much of it as you'd like to.

A. Yes.

Q. So let me just ask this question: Based upon the transaction services that you've provided to date for -- in connection with the EuroLog IPO, do you agree with the debtors' statement that there -- that, "When the debtors' investment in the EuroLog affiliates are monetized, there is little risk that the funding of the IPO fees will not eventually" -- "will not be eventually repaid"?

MR. O'CONNOR: Objection to form.

MS. DILUIGI: Objection to form.

MR. O'CONNOR: You can answer.

A. I can't really comment definitively on that because I don't think I've ever seen any analysis that -- although my understanding is analysis exists, that shows that there is substantial value to the debtors' estates

A. Pyle

that significantly exceeds the value of fees that will be -- that will be talked about here. And so I do agree with the statement in principle. And my understanding is that there are EuroLog affiliates that have got substantial enterprise value, and so if those entities did reimburse -- enter into reimbursement agreements, then -- then I think there would be little risk that the funding of the IPO fees would not be eventually repaid, yes.

Q. So as far as you're aware today, PointPark and Arcapita Limited have not executed reimbursement agreements with the EuroLog affiliates that have substantial enterprise value; is that correct?

A. I'm not aware of whether they have or have not.

Q. But if they did that, then you would expect that the funding of the IPO fees would be repaid at some point in time?

MR. O'CONNOR: Objection to

A. Pyle

form.

A. Sorry, can you just repeat the question for me?

Q. Sure. If PointPark and Arcapita Limited entered into reimbursement agreements with EuroLog affiliates that have substantial enterprise value, then you would expect that the funding of the IPO fees would eventually be repaid?

MR. O'CONNOR: Objection to form.

MS. LIU: Same.

MR. O'CONNOR: Objection to form.

A. Can you -- okay. So in terms of -- what I think you're saying is that downstream, that there would be an expectation that on some form of monetization event, that the funding of the IPO fees would be repaid. So I think I -- on the basis that I explained before, I would agree with that, but subject to the caveats that I gave in the answer to my previous question because I think it's

A. Pyle

kind of the same question again.

Q. It is the same question. Now, let me ask a different question.

So if PointPark and Arcapita entered into reimbursement agreements with EuroLog affiliates that have substantial enterprise value, wouldn't it be your expectation that KPMG could get paid upon a monetization value?

MR. O'CONNOR: Objection to form.

MS. LIU: Same.

MS. DILUIGI: Objection to form.

A. I haven't made any -- we haven't had any discussions about getting paid on monetization event as to how that sort of would work. So I have no -- no sort of expectations one way or the other on how that might work.

Q. Do you think that there's risk that KPMG would not be paid upon a monetization event of the EuroLog assets?

MR. O'CONNOR: Objection to form.

A. Pyle

A. What do you mean by -- by -- what do you mean by "risk" effectively? I mean, there's a question of timing and -- and uncertainty as to when -- when -- when that would -- when that would sort of take place and also as to the nature of the monetization event. So -- but as I said, I haven't seen -- I haven't seen the analysis that -- that lets the debtors make the statement that they have -- that they've made. So I'm not really able to say -- to think to say sort of much more than I've sort of said.

Q. And you mentioned that there are two components to it; there's the risk of being paid and then there's the timing of being paid. Those are the two components that you mentioned in the prior answer, right?

A. Yes.

Q. Those are different. I want to separate the two of them for a second. Do you believe that there's risk that KPMG would not be paid upon a monetization

A. Pyle

event of the -- by its contract
counterparty upon a monetization of the
EuroLog assets?

MR. O'CONNOR: Objection to
form, asked and answered. I think
it's the same question.

A. I was going to say I'm not sure
what I can add over and above what --
what -- what I've added before, to be
honest, but it is just the same question;
isn't it?

Q. It isn't the same question. I
want to separate the timing from the risk.

Is there risk of nonpayment if
the EuroLog assets are monetized?

MR. O'CONNOR: Objection to
form.

A. Sorry. Can you try and ask a
different way? Because it is just the
same question; isn't it?

Q. Okay. You want Arcapita Bank to
fund money to pay KPMG, correct?

A. Yes.

Q. That would eliminate any risk to

A. Pyle

KPMG that it would not get paid upon a monetization event of the EuroLog IPO, right?

A. Once paid, yes.

Q. And you want Arcapita Bank to fund money to take away any timing element to it, to get paid today rather than upon a monetization event, right?

A. Yes that's right.

Q. My question is on the first one. Do you believe that there's risk that KPMG would not get paid upon a monetization events? I'm trying to understand, is it just about timing or is it ultimately about not getting paid?

MS. DILUIGI: Objection.

A. I think the subject to -- the question is around -- why I'm maybe struggling to answer is, there's going to be a whole suite of different legal agreements that I have no awareness of that would need to be executed and additionally whatever is sort of -- is finally decided by the court, that would

A. Pyle

remove the risk. So, you know, it -- I guess the answer to the question is that if all of the steps that were necessary to remove the risk were taken, then there would be no risk.

Q. No risk on KPMG, correct?

A. Well, no risk on anybody. If the requisite steps are taken, there's no risk.

Q. Well, okay. If the steps that are requested in the motion, namely the payment of fees -- funding of money to pay fees today were taken, then KPMG would no longer be at risk?

A. Well, that's right because once we've been paid, we've been paid.

Q. But Arcapita Bank would be at risk, correct?

A. Arcapita Bank would effectively have taken the risk from KPMG, yes.

Q. And if Arcapita Bank funds money to pay KPMG today, KPMG would get paid as soon as that funding is made, so the timing element, Arcapita Bank would take

A. Pyle

that off of KPMG's hands as well, right?
A. Yes.
Q. And that's what's requested in the motion, to shift the risk, both the timing and of repayment from KPMG keto Arcapita Bank, correct?
MS. LIU: Objection to form.
MS. DILUIGI: Objection to form.
MR. O'CONNOR: The motion speaks for itself.
Q. You can answer.
MR. O'CONNOR: You can answer.
A. I think that is effectively the point of -- that's what the motion is trying to do. As you say, the motion speaks for itself.
Q. Okay. Has KPMG sought compensation from P3 and Arcapita Limited?
A. Not to date.
Q. Why not?
A. Because Arcapita Limited and P3, our understanding is this, while they have significant revenue streams and assets, they are funded on a monthly basis by

A. Pyle

Arcapita Bahrain and so, therefore, what we have done in terms of trying to seek recovery of the fees is that we have -- we have been pursuing the route that we're doing now, and we have not gone down the route of -- of pursuing these -- the organizations that have the liability for -- for the money pending resolution of this process.

Q. Do you have any understanding of whether P3 and Arcapita Limited could borrow funds from someone other than Arcapita Bank?

A. I don't have any understanding on -- on that. I would be very surprised if they could.

Q. And why is that?

A. Because they have revenue streams that exceed their costs and their parent is in Chapter 11.

Q. And they manage assets that have substantial enterprise value, correct?

A. They manage -- they manage assets that have substantial enterprise

A. Pyle

value. They do not own those assets today.

Q. Did KPMG conduct any diligence on those entities when it entered into engagement letters with those two entities, P3 and Arcapita Limited?

MR. O'CONNOR: Objection to form. You can answer.

A. What do you mean by "due diligence"?

Q. Were you aware that they were entities that didn't own the entities with substantial enterprise value?

A. Yeah. I mean, I think I already covered the discussions that we had sort of upfront about Arcapita Bank Bahrain funding these organization -- Arcapita Limited and PointPark to pay the fees and we were aware of that because we have a relatively long-standing relationship with Arcapita. So we've seen that work in practice among multiple occasions prior to the EuroLog IPO.

Q. You were aware of what limited

A. Pyle

revenue streams that Arcapita and P3 had at the time you signed the engagement letter, right?

A. That is correct.

Q. And, again, I think I may have asked this, but you didn't have any document that required Arcapita Bank to fund the shortfalls to pay KPMG what it was owed?

MR. O'CONNOR: Objection, asked and answered.

A. You have already asked that and I answered it.

Q. Can you answer it again?

A. Yes, we did not have a document other than the IPO readiness engagement letter.

Q. Now, if the court were to grant the motion and you were paid the amounts that you're seeking, I'm just trying to understand this, would you still be seeking additional amounts from the EuroLog -- from P3 and Arcapita Limited or is this in full satisfaction of what KPMG is owed?

A. Well, it's the fee that's outstanding for the work that we've done to date. So we wouldn't be -- once we've been paid, we've been paid.

Q. Well, it reflects -- and we'll talk about these in a moment, but it reflects a variety of discounts. Would you seek the full payment from P3, for example?

A. Yeah. We would seek -- the amount that is here that is outstanding at this point in time is the amount of money that we would seek either from P3 or -- or Arcapita.

I think if we were to -- if we were to go down the route of seeking the money from P3 or Arcapita Limited, then as would be -- the engagement letters confer rights on us to do things like charge interest and to recover any costs that we incur in -- in recovery. We haven't put those numbers on the table as part of this sort of submission, but I would not commit

A. Pyle

myself now to us not seeking to recover further money linked to -- linked to either sort of interest or -- other reimbursement of costs incurred in getting paid from Arcapita Limited or P3 based on what we would be entitled to under the terms of engagement that we have.

Q. So just so I understand that answer. If the court grants the motion and you're paid the amounts that you've asked to be paid, you still may pursue additional amounts from --

A. No. In the event that the court does not approve and we then have to basically take whatever action is necessary to get paid by -- by P3 and Arcapita Limited --

Q. Okay.

A. -- then in that situation we would look at whether there was a different sort of sum because some of the discounts that we've already given have been, you know -- we would look at it again in terms of what we thought we would

A. Pyle

actually be entitled to get paid and what we would seek to recover and it may well be a higher number if we were to go to the organizations that we referred to, Arcapita Limited and PointPark.

Q. Do you have any estimate of how much higher that number would be?

A. No, I've not given that any thought and I would need to consult internally what we would do as well.

MR. O'CONNOR: Can we take five?

MR. LEBLANC: Now is a perfect time.

(Exhibit Pyle 4, Engagement letter dated August 11, 2011, marked for identification.)

(Exhibit Pyle 5, Engagement letter dated January 17, 2012, marked for identification.)

(Exhibit Pyle 6, Engagement letter dated May 14, 2012, marked for identification.) (Engagement letter dated May 16, 2012.)

(Exhibit Pyle 7, Engagement

A. Pyle

letter dated May 16, 2012, marked for identification.)

(Exhibit Pyle 8, Engagement letter dated October 22, 2012, marked for identification.)

(Exhibit Pyle 9, Engagement letter dated October 30, 2012, marked for identification.)

(Exhibit Pyle 10, Engagement letter dated October 30, 2012, marked for identification.)

(Whereupon, a brief recess is taken.)

Q. I've promised to do this before, but we're going through the engagement letters quickly.

I'm handing you what has been marked as Exhibit 4. You can see the numbers on the top are the sort of the stamp of the Pyle declaration. We pulled these exactly as they were from your declaration. And this is the first engagement letter that you started with.

A. This is the tax structuring

A. Pyle

engagement letter which started in August 2011.

Q. And who is Richard White?

A. He is a tax partner, senior tax partner at KPMG.

Q. And at this point was he the primary contact with -- in connection with the PointPark Properties engagement?

A. He -- he has lead the tax work stream throughout the engagement. He and I have effectively acted as the overall sort of lead engagement partners on the PointPark matter.

Q. And the services provided under this engagement letter, which is Exhibit 4, the August 2011 one, those services have been paid for; is that right?

A. They were -- they were paid prepetition, yes.

Q. So no services provided under this engagement letter are part of the amounts you're seeking compensation for now?

A. No, I think that this letter was

A. Pyle

-- I need to just check because this letter -- there are some bits of the work were not done until post petition. So there is a small amount of money which on Pyle Exhibit 3, the front page, if you look in the unbilled stroke/unpaid column, and down, there is a figure of $28,800 Euros, which I think would fall under this engagement letter, which has not been billed. Do you got that?

Q. That's the row out-of-pocket expenses not included in previous schedule?

A. No, if you go about four rows further up.

Q. I'm sorry.

A. 24,800.

Q. Tax structure and fees, too?

A. Yeah. So that I think is the amount that was outstanding per this letter. My recollection, but we can kind of come to this with the other exhibits is that the tax implementation costs were done under a completely new engagement

A. Pyle

letter, which I think was just PointPark Properties.

Q. So let's look at the next document in your exhibit. And this is now the exhibit I've handed out, what's been marked as Exhibit 5 for this deposition.

A. Yeah.

Q. And from your declaration it has -- at the top, it's page 17 of 75?

A. Yes.

Q. Okay. What is this document?

A. Okay. So this document was effectively varying the Pyle Exhibit 4, 11 of August engagement letter to bring in Arcapita Bank BSC, which is Arcapita Bahrain into the previous engagement letter.

Q. When you say to bring in Arcapita Bank BSC, what do you mean by bringing in?

A. Well, if you look at the documents, then it says -- effectively it sets out the terms under which Arcapita

A. Pyle

Bahrain will accept the terms of the engagement letter as if it had actually signed a copy of it itself, and that in return for that, we will basically assume responsibility to them for the work that was done. So this letter is -- is designed to have the legal effect of making Arcapita Bahrain an addressee of Pyle Exhibit 4 engagement letter as though it had been an addressee right from the outset.

Q. And is it your belief that as a result of that, Arcapita Bank is obligated to make, for the invoices in connection with the prior engagement letter?

MR. O'CONNOR: Objection. It calls for a legal conclusion, but he did ask for your understanding, so you can answer.

THE WITNESS: Okay.

A. Well, under our sort of standard terms and conditions, all of the addresses of our engagement letters have joined in several liability under UK law for our

A. Pyle

fees. So by signing this, Arcapita Bahrain would effectively assume joint and several liabilities to pay the fees that are attached under this -- that would be billable under this engagement letter.

Q. Did Arcapita ever sign what is marked as Exhibit 5?

A. My recollection is that they did not and that this letter was -- post-petition was rescinded because I think, again, my recollection is that we were told that that would perhaps require, you know, some approvals in order to do that.

Q. Okay. But this letter, Exhibit 5 was dated January 17, 2012, right?

A. Yeah. I think there was an equivalent letter for the IPO readiness review, which did get paid prepetition in full and that letter was signed. That's my understanding and recollection.

Q. When you say an equivalent letter, was it a letter as to which Arcapita Bank was a party?

A. Pyle

A. We had exactly the same kind of original letter with Arcapita Limited and PointPark Properties SRO for the IPO readiness review. And we then had a subsequent letter that -- like this that then brought Arcapita Bahrain in, but they paid those fees full.

Q. Okay. But Exhibit 5, you don't believe was ever signed by Arcapita --

A. I don't think it was, no.

Q. So they did not become obligated for the -- even under your standard terms and conditions for the charges in connection with Exhibit 4, the first engagement letter?

MR. O'CONNOR: Objection to form. Calls for a legal conclusion. You can answer.

MS. DILUIGI: Objection to form.

A. So they didn't sign the letter, but they did pay the fees.

Q. So the fees under this Exhibit 5 have been paid?

A. Apart from the 24,800 Euros,

A. Pyle

yes.

Q. Is there some reason you included what is Exhibit 5 and not the other letter that you recall?

A. The IPO readiness letter?

Q. Yes.

A. Well, the simple reason is that the IPO readiness letter was paid in full and we were asked to -- to provide the engagement letters that pertain to the unpaid fees.

Q. Okay.

A. That's the only reason.

Q. Fair enough.

Exhibit 6. Now, Exhibit 6 is the next engagement letter or next document in your declaration and it has at the top page 19 of 75. Do you see that?

A. Yeah.

Q. Okay. And what is this?

A. Okay. So this is -- so this is a letter that was put in place, as you can see from the date, 14 of May 2012, was put in place post petition. And effectively

A. Pyle

this was a letter that varied the previous two letters because the third -- the previous letters had a subsequent phase 3 of work that was intended to have been done. And so this letter was effectively saying that all of the work that's -- that was required to be carried out under the engagement letter has been completed and that the work that the engagement letter envisioned was to be completed, which was called phase 3, was not to be undertaken.

Q. Okay. And this letter says "draft" on the first page. Do you see that?

A. Yeah, I do.

Q. And it doesn't reflect signatures on the second page?

A. Again, I don't -- my understanding is that this letter was not signed either.

Q. And that's true, not even signed by KPMG?

A. Well, this letter isn't signed by KPMG. I'm not aware of whether we

A. Pyle

issued a letter that was signed for signature. We may have done it. We may not have done it. I don't know.

Q. All right. Exhibit 7 --

A. Yeah.

Q. What is Exhibit 7?

A. So Exhibit 7 is an engagement letter in respect of the tax implementation phase work, which was done effectively for PointPark Properties SRO. And it effectively replaced -- well, it replaced, from my recollection, is with a -- with a different scope what had been contained -- or a detailed scope what had been contained under the previous engagement letters for phase 3.

Q. Okay. Now, this engagement letter or, I'm sorry, this document Exhibit 7 says "draft" again?

A. Yes.

Q. And if you look at the last page which should be 28 of 75 at the top. Do you see that?

A. Yes.

A. Pyle
Q. It's unsigned by either KPMG or anyone from PointPark Properties; is that right?
A. The back page of this exhibit is unsigned.
Q. Do you know if there exists any signed version of this, signed by anyone?
A. I think I'd give the same answer as before, which was there may have been a version that was sent out by KPMG for signature that we did not have a copy of on file, but I'm not aware that the letter is signed by PointPark Properties SRO.
Q. You've described to us before, there were phases or two sides to the work. There's the tax services and then you called them the reporting?
A. Reporting accountant.
Q. Reporting accountant.
To this point, have we looked at the engagement letter for the reporting accountant work?
A. No, we have not.
Q. Prior to what we just looked at,

A. Pyle

Exhibit 5, was there a reporting accountant engagement letter that existed prior to this date of May 16, rather Exhibit 7?

A. We would have sent a draft engagement letter out prior to -- prior to sort of or at the early stages of having commenced work, but I do not know the date on which we first sent a draft engagement letter for reporting accountant services out.

Q. And am I right that the majority of the fees you're seeking compensation for now are the reporting accountant services; is that right?

A. Yes, that's right.

Q. And so let's look at the next exhibit, and this is Exhibit 8. And do you recognize what's been marked as Exhibit 8?

A. Yes, I do.

Q. And what is Exhibit 8?

A. It's the engagement letter for reporting accountant services.

A. Pyle

Q. Now, we can go back and look, but this is the first engagement letter on which you are listed as the contact; is that right?

A. Yes, that's right.

Q. And as of October 22, 2012, you completed all of the -- virtually all of the services?

A. Yes.

Q. Is there any engagement letter prior to this one that we should be looking at for the reporting accounting services, this one being Exhibit 8?

A. This was the final version of the letter that was issued for signature. So any other versions that were issued, you know, well ahead of this, were issued in draft and subject to negotiation principally between ourselves and Deutsche Bank and Credit Suisse.

Q. And if you look at Exhibit 8 at the last page, which is on page 52 --

A. Yes.

Q. -- this one is signed by KPMG,

A. Pyle

correct?

A. It's signed by KPMG -- it's signed by me signing as KPMG Audit PLC.

Q. And do you have a version of Exhibit 8 that is signed by P3 PLC?

A. No, the letter -- the letter was -- would have been signed prior to effectively the IPO completing or just at the point that the prospectus would be -- would be signed, which is pretty common, sort of standard occurrence on IPOs that these letters get signed very, very late in the day.

Q. And at this point, again, you had performed all of the work and you didn't have a signed engagement letter?

A. That's correct. That's fairly normal.

Q. And it's normal in your experience that you don't have a signed engagement letter until the end of the process?

A. Regrettably, yes.

Q. Now, in any of the iterations,

A. Pyle

to the best of your recollection, any iterations, prior versions of Exhibit 8, was there any mention of Arcapita Bank making payment of charges incurred?

A. No.

Q. Now, there's reference in the document, and this is in Exhibit 8 at page -- well, let me -- before we get to that, page 14 -- internal page 14, which is 42 of 75 of Exhibit 8?

A. Yep.

Q. There are general terms of business at the bottom of paragraph 5?

A. Yes.

Q. And then there are, by my count, I think it goes to page 23, 10 pages or so of variations to those general terms of business?

A. That's why the letters don't get signed until the last minute.

Q. But am I correct there are about ten pages of variations to your standard terms and conditions?

A. Yeah, it runs to page 51 of 75

A. Pyle

at the top.

Q. Correct. We have your standard terms and conditions here if you'd like to look at them, but my question is, do any of the variations reflect intention that Arcapita Bank would make payment of the fees that were incurred?

A. I don't think they do.

Q. Look for me at page 48 of 75. I'll give you a little bit of a memory test. There's a reference to clause 10 there?

A. Yes.

Q. The words "to the company" are inserted after the words "invoices" in the first line. Do you see that?

A. Yeah.

Q. And the company is defined in this engagement letter in Exhibit 8 as P3, correct?

A. P3 PLC.

Q. P3 PLC, okay.

And so -- I don't know if you can remember this, but it's your

A. Pyle

expectation that it says in the terms and conditions that invoices will be issued to the -- based on this variation to P3 PLC, correct?

A. Yes, that's right.

Q. And that is to make clear that it's not being issued -- invoices are not being issued to Deutsche Bank or Credit Suisse?

A. Yeah, that's right.

Q. But there's no reference to invoices being issued to anybody other than P3 PLC, correct?

A. That's correct.

Q. And, again, this engagement letter, even as we sit here today, it's still not been signed?

A. It would only have been signed had the -- had the IPO completed, so, no, you're correct.

Q. Now, the last two -- actually, let me step back for one second. On Exhibit 8, who negotiated this on behalf of KPMG?

A. Pyle

A. It was myself and a consultation -- we have a second partner who we have to sort of consult with and she heads up our capital markets group that does IPOs and other capital markets transactions. And I negotiated the letter and at the final -- the final bit when we were dealing with the last few points from Deutsche and Credit Suisse, she got involved directly at that stage, but it was my responsibility, but she helped at the end.

Q. And who was responsible for negotiating this on behalf of P3 PLC?

A. They have -- I forget his title, but his name is Jonathan Farrell F-a-r-r-e-l-l and he is their either general counsel or, you know, equivalent sort of title, but he's an in-house lawyer. It was him. And, additionally, from a company perspective, Linklaters is the P3 PLC's counsel reviewed it, but in the main, the vast majority of the comments came from Freshfields, who, as

A. Pyle

you know, were acting for Deutsche Bank and Credit Suisse and obviously the bank themselves.

Q. And for the reporting accounting services, this is the engagement letter that we should be focused on if we want to focus on that particular part of the engagement; is that right?

A. Yes, that's the only engagement letter that there is.

Q. Just to complete the picture, I'm going to actually give you two more exhibits, 9 and 10.

A. Okay, yeah.

Q. And Exhibit 9 and 10, what are they? What is Exhibit 9?

A. Okay. So Exhibit 9 is an engagement letter in respect of a relatively small part of the overall reporting accountant work which deals with a comfort letter that's issued under SAS 72, which is a U.S. auditing standard. And you'll see it's on -- in a paragraph on page 54 of 75, "Letters for

A. Pyle

underwriters and certain other requesting parties," which is issued by the AICPA. And effectively it is some agreed-upon procedures that we -- we undertake as sort of set out in this particular sort of letter in relation to sale of securities that are made outside of the USA. And we give a comfort letter in respect of that.

Exhibit 10 is sort of exactly the same work effectively, but the comfort letter relates only to securities that are sold in the USA. And typically these letters are required by the investment banks, where there is an offering to investors in the U.S. under Rule 144-A of one of the U.S. Securities Acts. It might be the 1932 or '33 Act.

Q. Or '34?

A. Or '34, whatever, but, you know --

Q. '32 was a slow year, I think.

A. And so these are -- once the letters are sort of quite long and, in many respects, very painful to negotiate

A. Pyle

and agree, they actually represent a very, very small proportion of the total reporting accountant work that's done.

Q. And as with Exhibit 8, these two were not signed by P3 PLC?

A. No, they were in -- all of these letters were in agreed form effectively at the date that we issued them. And they were sent for signature, but they were not signed.

Q. Now, we had talked earlier in the morning about -- you had explained that, I should say, the -- why P3 PLC, Deutsche Bank and Credit Suisse were all parties to the engagement letter?

A. Yes.

Q. I just want to refer back to that testimony.

Is there any limitation on having additional parties be parties to your engagement letter under UK listing requirements?

A. UK listing requirements don't really cover who we address the engagement

A. Pyle

letters to. They govern the form and contents of the prospectus and they cover the sponsor's sort of declaration. So it's more about the obligations that people have to fulfill. Market practice in the UK is that -- excuse me -- the main IPO letter effectively, which if there was no 144-A issued, would be the only letter.

Q. And you're holding Exhibit 8 there?

A. Sorry, I'm holding up Exhibit 8. Thank you.

It's addressed to the company and Deutsche Bank and Credit Suisse are the sponsors and book runners.

Q. Let's just stick with that. I'm not worried about the other letters.

A. Okay.

Q. I want to just focus on -- I want to just understand this.

Have you had situations, other than the EuroLog IPO, where you were looking for payment of your fees from someone other than the party that engaged you?

A. No.

Q. So this is the first instance that you can recall where you had an expectation that someone other than, for example, in this case, P3 PLC would be making payment to you?

A. That's right, yeah.

Q. So then you wouldn't have experience as to how you would reflect that in the engagement letter?

A. You typically -- I mean, I've had situations outside of IPOs where we've done that. And so you wouldn't necessarily reflect it in the engagement letter. You might have a side letter. You might not. It would depend upon the nature of the relationship and the specific circumstances of the transaction.

Q. Have you had occasion previously to work on an IPO of a portfolio company of an entity that's in bankruptcy?

A. No. To my knowledge, this was the first London IPO of an entity where

A. Pyle

there was a lead in a U.S. bankruptcy anyway.

Q. Have you had occasion to work on IPOs of portfolio companies of other investment managers?

A. Yes, from time to time.

Q. And how recently were those?

A. The last one that I can recall was the IPO of a company called Jessops, which used to operate sort of a -- it was a retailer in the UK, but that was quite a long time ago now, maybe not ten years, but I would guess sort of back in 2005 or 2006. Since then, they haven't been owned by investment manager. They've been part of a corporate or standalone sort of entity.

Q. In the Jessops situation, who paid KPMG's fees to the extent that you remember?

A. Jessops paid the fees.

Q. So in that instance the investment manager didn't pay the fees?

A. No, the IPO completed and

A. Pyle

Jessops paid the fees.

Q. Can you recall any example of an investment manager paying the fees for an IPO of one of its portfolio companies?

A. Not in my experience, but it's not -- it has -- you do often find that the -- that an entity other than the company that is subject to the transaction will pay the fees.

Q. When you say you do often find that, can you give me an example of that?

A. You may have -- you may be working for a business that's about to be sold and you're doing -- so I have an example at the moment where we're working for a business that's going to be sold but not through an IPO and the parent company is going to pay the fees, but in that case, the engagement letters were the parent company.

Q. Can you think of a single example of a party, other than the party on the engagement letter, paying the fees where that was not reflected in the engagement letter?

A. I can't think of a specific example, but I'm sure that -- I need to give that a bit more thought. I'm sure there has been. I don't think this is the first time where this has been the case, but a specific example doesn't come to mind immediately. I haven't given it any thought before this hearing.

Q. Is it something that you've seen on multiple occasions in your career?

A. I don't recall.

Q. Prior to your being a partner, would you have been familiar with engagement letters that KPMG had signed?

A. Yes.

Q. Now, we talked earlier about the term "co-investors." Is that familiar to you?

A. Yes.

Q. And certain of these investments had co-investors at various levels, right, these investments being the EuroLog assets?

A. Pyle

A. What do you mean by "levels"?

Q. Various percentages.

A. Proportions, yes.

Q. Proportions.

A. Yeah.

Q. Okay. Has KPMG sought payment of fees from any of the co-investors in any amount?

A. No, we have not.

Q. Have you considered that?

A. Not to date in the same way that we haven't considered or taken any action to recover the fees from Arcapita Limited or PointPark.

Q. So the only party you've considered pursuing fees from is Arcapita Bank?

MR. O'CONNOR: Objection to form.

A. All the discussions that we've had on fees has been around Arcapita Bank continuing to do what it has done in the past and fund the non-debtors to pay fees. So -- so we have only had discussions or

A. Pyle

only really considered following this sort of -- this sort of route to date because that's what -- that's what we've always done.

Q. Now, the co-investors would benefit from an IPO of the EuroLog assets, correct?

A. They would depending upon the values of the underlying sort of investments that were -- that were there and their sort of proportionate ownership of it.

Q. Have you formed a view as to -- did you form any view as to the value of the IPO or is that not part of --

A. That wasn't part of our services.

Q. Do you have a view as to the value of the assets that would have gone through the IPO?

A. Well, there was a formal valuation that was included in the prospectus and the accounts on which we were to sign an audit opinion contained a

A. Pyle

valuation of those assets. So in that sense, yes, we had formed a view on the assets that were coming over.

What we were not asked to do, however, was look at the underlying -- sorry -- the value of the real estate less any debt or other sort of financial instruments that were in place in the individual investment structures and form a view as to the value to the owners of those structures as to what they held. So that we didn't do. That was something which Arcapita sort of did.

Q. Are you aware of any monetization events that are on the horizon for the EuroLog IPO assets?

MR. O'CONNOR: Objection to form.

A. What I'm aware of is that Arcapita continues to explore sort of all opportunities that it sort of can to think about monetization fee of the assets. I don't have any sort of knowledge of specific opportunities that are being

A. Pyle

discussed today. We have not been asked to do any work in relation to those -- you know, any specific opportunity as it stands today, but I don't really have any knowledge as to, you know, as to what the state of play is with regard to monetization opportunities.

Q. Does KPMG typically give a discount when IPOs are not completed?

A. No, as I said earlier, we are prohibited under something called The Ethical Standards for Reporting Accountants from giving any formal fee arrangement that is contingent upon the outcome of the IPO. We're putting a public report in the prospectus to the investors that the financial statements, the accounts, give a true and fair view. And the relevant guidelines say it is inappropriate for us to have any form of our fees linked to the outcome of the transaction because the investors would perceive that to -- to impair our independence to do the work that we do.

A. Pyle

Q. But leaving aside -- have you ever seen an instance where KPMG has agreed to reduce its fees because an IPO did not complete?

A. Okay. Normally what happens is that we receive -- we bill and receive stage payments sort of through the course of our work. And at the end of an IPO, we will look at what we have in terms of unbilled time and expenses and we will then negotiate on both the successful IPO and both an unsuccessful IPO, if you like, what amount of those unbilled fees should actually be paid.

I've gone over probably about four or five examples other than the EuroLog IPO and looked at what had happened and is there any sort of practice in our experience as to, is there a consistently higher discount in a non-successful IPO. And -- and the honest position is the variations in discounts tend to be in -- are not correlated with whether the IPO concluded all the way

A. Pyle

through or whether it didn't complete.

There will be other specific factors that will drive that. And in all of those cases, the level of discounts against our standard scale rates that is here, which is, I think we quote about 47 percent of standard scale is significantly higher than these other -- and these are other large IPOs that have taken place or we've worked on in, say, the last 12 to 18 months. And they typically had a discount rate of -- in the range of 30 to 40 percent off of the standard scale, but in some cases the discount was -- was lower than that. It was maybe in the sort of mid to high 20s. And actually some of the ones with the lowest discounts were IPOs that hadn't completed. So our experience is that we generally don't give bigger discounts on -- on an -- on a non-completed IPO and that the level of discount that's here is actually higher than any of the other ones that we've sort of given and worked on, major IPOs where

A. Pyle

say our fees were above a million -- a million Euros over the last sort of 12 to 18 months.

Q. Why don't we look at your chart.

(Exhibit Pyle 11, Document entitled project Castle - Fee Overview and Discounts, marked for identification.)

Q. The court reporter has handed you what's been marked as Exhibit 11. And this, again, was taken right from your declaration, page 75 of 75.

Do you recognize this?

A. Yes, I do.

Q. And what is it?

A. It's a schedule entitled Project Castle - Fee Overview and Discounts, and it effectively bridges between The Full Costs Act, the applicable scale rates, which is in sort of the left-hand -- or the left-hand column of numbers called full costs. And it bridges from that, those numbers through to effectively the fee numbers which are on the lead sheet of

A. Pyle

Pyle Exhibit 3.

Q. And the full costs, those are based on the full rate, for example, your 908 pound Sterling?

A. Yes, that's right.

Q. And then the standard 20 percent discount, what does that reflect?

A. So previous engagements that we've worked on with Arcapita, we had given them a 20 percent discount off scale. The next column is an additional 10 percent discount, which we agreed to give them on this engagement in respect of certain -- certain parts of the work.

Q. Okay. And I want to just make sure I understand. The 20 percent discount that you -- that's reflected in the second column there, that's -- that's something that you would have given even if the IPO had completed, whether it completed or not, correct?

A. Yeah, I mean, we have a fee arrangement here that was based on a flat fee that is independent of whether the IPO

A. Pyle

is completed or not. In situations other than IPOs where we are not allowed to give a sort of contingent fee, then our approach is to quote a base fee and then apply a success premium and then a further discount on an aborted transaction. We don't have that here because we're not allowed to do it.

Q. In other instances where you are allowed to provide a discount on an aborted transaction, what is the typical discount you would give for an aborted transaction?

A. There's a maximum discount that The Institute of Chartered Accountants in England and Whales, which is sort of our regulatory body, says that we should give and that's -- that's of the order of 25 percent -- a 25 percent reduction.

Q. Okay. Now, you had agreed at the time of the engagement to a substantial discount from your standard rates, correct?

A. Yes.

A. Pyle

Q. And that's reflected in the 20 percent, plus the 10 percent?

A. Yeah, that's right.

Q. So those two discounts reflect the fact that -- those are engagement -- I'm sorry. Those are discounts that you gave at the commencement of the engagement?

A. Yes.

Q. What is the column "no fee inflation"?

A. So we originally quoted for the other reporting accountant work back in or around August 2011, but we didn't commence the work until April 2012. So we went through a further iteration of fee proposals and effectively our scale rates had increased between August 2011 when we quoted the work and April 2012. And we agreed that we would not pass that scale rate increase through.

Q. So 908 pounds Sterling is less than your scale rate for 2012?

A. I'd need to just double check

A. Pyle

the way that the schedule sort of work. Though my recollection is that, yes, that's right, 908 reflects the engagement rate.

Q. What is your scale rate today?

A. It's in the region of 960 pounds. Sorry, but just to clarify, and there's a differential between a greater than five-year partner and a less than five-year partner. And I think when we gave these sort of quotes out, I would have been in the less than five-year. And the less-than-five-year number is of the order of 920, 930.

Q. But we looked earlier at Exhibit 3, that had the spreadsheet with the backup material --

A. Yes.

Q. -- that reflected 908, right?

A. Yes, it did.

Q. Now, the next column is "cost overruns not reported." What is that?

A. Okay. So it varies. It varies sort of case by case, but in a number of

A. Pyle

areas, we have done -- we'd spent significantly more time than was built into a budget that we had established at the beginning. And in some instances, we had agreed to effectively sort of cap certain sort of elements of the fees. So you'll see that there are negative numbers in respect of virtually all of the audit-related -- related numbers. In other cases there are positive numbers where we had effectively incurred additional costs and where the estimates were -- the fees were not on the basis of the effectively fixed fee.

Q. What's the next column "audit versus TS rates"?

A. Normal practice on an IPO is for any -- is for audit work to be done at transaction services rates or TS. In this particular case, we -- we agreed to do the audit work at audit rates and so that's that additional discount column.

Q. Okay. So 1.312 million Euro reflects the fact that you'd agreed to

A. Pyle

charge auditors at auditors' rates rather than at TS rates?

A. No, we charge -- we charge -- because of the higher risk associated with giving an opinion in a published prospectus on which investors are making investment decisions, standard practice is for us to charge audit -- the work that is done by auditors on arriving at an audit opinion for the prospectus at transaction services rates because the risk is very significantly higher for us. And in the case here, we -- we agree -- in agreeing fees with Arcapita Limited and PointPark SRO, we agreed that we would do the audit work at -- at the normal audit rates rather than seeking a premium.

Q. And is that agreement reflected in any of the documents?

A. There were some proposal documents that set out fee arrangements and it was sort of stated -- it was stated in those. I don't think that they've -- I don't think that you have those, but it's

A. Pyle

not stated in the engagement letter, but it was kind of understood by everybody that that was the case.

Q. Okay. And that was something though that was agreed at the beginning of the engagement?

A. At the time that we quoted for the relevant bit of -- the relevant bit of the work, yeah.

Q. So the three biggest columns of discounts are the standard 20 percent, the additional 10 percent --

A. Yeah.

Q. -- and the audit versus TS rates, right?

A. Yeah.

Q. And, in fact, the cost overruns not reported, that's actually not a discount, that's an additive; it's a negative number?

A. Negative, yes, but, actually, it may have been more helpful to put that in two different columns that reflected the two things but, you know, because that's

A. Pyle

really just showing -- yeah, that's sort of showing the differences effectively.

Q. But if I totaled those three columns up, standard 20 percent, additional 10 percent, audit versus TS rate, that effectively gets me almost all the way to the total discount?

A. Yeah, it does.

Q. And so that total discount, that was agreed prior to the engagement or at the time that you began the engagement?

A. Those three line items were agreed up -- up front.

Q. And if the IPO had been completed, you had already agreed to give all of the discounts that are reflected in those three columns?

A. That's correct.

Q. And so this is not a situation where you looked at the final set of fees and made some adjustment because the IPO didn't complete; is that right?

A. We looked at the fees and the total level of discounts. As I said, we

A. Pyle

regard the level of discount that we've given here as very high in relation to other major IPO work that we have done both completed and non-completed IPOs. Therefore, our -- our belief based on the other engagements that we've looked at is that this is already a below-market fee level and we do not see why there should be a further discount when on both completed and non-completed IPOs, that the discount levels might be 20 percentage points lower than this.

Q. And part of the discount that you're factoring into there are discounts with respect to monies you've already been paid, right?

A. That's the way that the schedule works, yes.

Q. And, in fact, the discount rates for the monies you've already been paid appear, at least just in terms of numbers, to be higher than the discount rates applicable to amounts that you have yet been paid, right?

A. Pyle

A. I think without getting a my calculator out, it's probably not worth me commenting on that without just checking and running the numbers through.

Q. The highest discounts that were given were 66 percent, 63 percent and 62 percent, all of which were associated with amounts that have already been paid?

A. In percentage terms, that is correct, but, you know, you've also got a 61 percent in the bottom and you have got -- you know, there's going to be a mix effect because some of the bigger work streams are sort of further down on the completed sort of post petition.

Q. And the biggest work stream post petition was other reporting accountant work and that was discounted at 34 percent?

A. 34 percent, that's correct.

Q. And, in fact, in the amounts that were already paid, the 20 percent discount, that's the lowest discount on any item, that only is associated with the

A. Pyle

$71,000 in fees?

A. That's correct.

MR. O'CONNOR: Euros.

A. All of this is Euro.

MR. LEBLANC: I apologize.

Q. Okay, but just so I'm very clear about this, the amount that you're asking to have Arcapita Bank fund to pay KPMG is exactly the amount that KPMG would have been paid if the IPO had completed?

A. Yes, because we do not have -- we did not have a fee structure and we're not permitted to have a fee structure that varies with the outcome of the IPO.

Q. Right. And KPMG is not proposing any discount off of what its fees would be if the IPO were completed to have Arcapita Bank make the payment necessary to fund those fees?

A. No, we are not. Partly because there are other costs that we, you know, we talked about the other costs that we may seek to recover in the event that we are not successful through this route.

A. Pyle

Q. And those costs you can't tell me how much they are?

A. No, but there's -- no, because we haven't considered that yet.

Q. Okay. Have you looked at what rates your partners are charging the U.S. estates, the ones that are retained here?

A. No, I haven't.

Q. Do you have any sense of what they are?

A. No, I don't.

Q. Would you be surprised if they were charging at rates significantly below the 908 pound Sterling?

A. I have no expectation for what the rates would be.

Q. Do you know Douglas McPhee?

A. Yes, I do.

Q. What about Garreth Williams?

A. I don't think I know Garreth.

Q. David Fletcher?

A. I do know David.

Q. Jonathan White?

A. Yes, I know Jonathan.

A. Pyle

Q. Are those all senior partners in KPMG UK?

A. Douglas and David Fletcher are relatively senior. Jonathan White has been a partner for a year or two less than me.

Q. And would it surprise you if they were billing at a rate of $908 U.S. for work to the U.S. estates?

A. Well, is that the number, I perceive; is that the number they are billing at?

Q. I'll represent to you that it is the rate.

A. Just to be clear, you've talked a lot about 908 pounds per hour. That, of course, is the full scale rate and not the rate that would actually be billed at. So if we were to just sort of run through that and say, let's forget the further discounts and sort of things like that, but if you were to take a 30 percent discount against the 908, then you're going to get to roughly to 600 pounds. I

A. Pyle

think that you said that the U.S. dollar closed at 1.49 as of last night. So that's going to take you back up to about $900 an hour. What rate did you say they were charging?

Q. 950.

A. So we're cheaper.

Q. And that's, again, without applying any discount for the fact that the IPO failed; is that right?

A. Exactly because as I've said before more than once, we're not allowed to do that and we are cheaper --

Q. And do your UK partners charge higher rates than your U.S. partners?

A. All of those partners that you just mentioned with the exception of Garreth Williams, who I don't know, they are all partners of the UK firm.

Q. My question was, do the UK partners charge higher rates than the U.S. partners?

A. I don't know the details. I believe so, but I don't know the details.

A. Pyle

Q. Are you familiar with Mary Grande, G-r-a-n-d-e?

A. No.

Q. We talked earlier, I think you mentioned that your expectation would be that tax advice would be charged at a higher hourly rate?

A. For the services that we have billed here, the tax charge-out rates are a little bit higher than the TS charge-out rates that you've seen. And for transaction-based tax work in the UK, the scale rates are -- are higher than the TS rates, but I have no knowledge about what U.S. tax rates would be relative to other scale rates in the U.S.

Q. Now, are you a -- KPMG is structured -- are you a partner only of the UK?

A. Yeah. So KPMG, I think it says either in the declaration or the motion, we're organized as a -- as a series of national partnerships or corporations, which all have membership of a Swiss

A. Pyle

cooperative, which is called KPMG International. So I am a partner in KPMG LLP in the UK. And I am not a partner of KPMG, also called KPMG LLP in the U.S.

Q. Would it surprise you if a partner in the KPMG U.S. entity were charging an hourly rate of $665 an hour?

A. Not necessarily. It would depend upon what they were doing, where they were, the nature of the services, et cetera, et cetera.

Q. The EuroLog IPO was unique; is that fair?

A. Yes, in my opinion and experience.

Q. And it required an extraordinary amount of work?

A. Yes.

Q. It was not an ordinary IPO; is that fair?

A. Yes.

Q. I think you've even used the line that, "The services KPMG performed far exceeded those required for a typical

A. Pyle

IPO," correct?

A. Yes.

Q. Now, has KPMG ever filed a bankruptcy action against a client?

MR. O'CONNOR: Objection to form.

A. A bankruptcy action?

Q. Sure.

Has KPMG ever put a client of it -- filed an involuntary bankruptcy petition against a client?

MR. O'CONNOR: KPMG UK or what entity?

Q. To the best of your knowledge, has KPMG ever filed an involuntary petition or put into administration or sought administration against any of its clients?

MR. O'CONNOR: I'm assuming that's KPMG UK?

Q. It started with bankruptcy. I just want to know anywhere, to the best of your knowledge.

A. So, firstly, I have no knowledge

A. Pyle

about what any KPMG member firm outside of the UK would have done.

Q. Okay.

A. Okay. With regard to KPMG UK, we have done -- we have served proceedings on clients with respect to recovery of fees. It does not happen very often, but it is something that we -- we do when we feel as though it is in our best commercial interest to do so.

Q. How many instances do you know of where KPMG has served proceedings on its clients?

A. Well, I have no knowledge as to the number of times that KPMG, as a whole, recognizing that there are 550 partners in the UK and sort of about 12,000 people. I have not personally been in the situation in my career where I have had to sue a client for fees. And I would like to finish my career without having to sue a client for payment of our fees, but I have no problem with doing that if I judge it to be in KPMG's best commercial interests.

A. Pyle

Q. To the best of your knowledge, has anyone in transition services sued a client to recover fees?

A. I don't have any knowledge to be able to comment on that.

Q. And can you give me any example of which you are aware in which KPMG has served proceedings against a client?

A. Not without breaching client confidentiality undertakings, which I would not do.

Q. Even where the proceedings have been commenced?

A. I don't have a specific name in my head, but even if I did, I think it would be subject to confidentiality requirements generally, so...

Q. Okay. Has KPMG told P3 that it will commence an administration action against it?

A. No, we haven't. We -- we have had discussions with -- with Arcapita that -- that, you know, we would -- that that may be a direction that we would need to go in.

Q. When did you have those discussions?

A. Relatively recently.

Q. With whom?

A. Karim Si-Ahmed.

Q. When?

A. In the last few days.

Q. So this was after the motion was filed?

A. When was the motion filed? Yeah, it would have been. It would have been.

Q. And was it after the Committee's -- have you seen the Committee's response to the motion?

A. Yes.

Q. And was it after the Committee's response to the motion?

A. That was last Friday; wasn't it? Yes, it probably was in the last couple of days.

Q. And you're aware that the Committee -- one of the points that the

A. Pyle

Committee made was that there was no showing that anyone was intending to put these entities into administration; is that right?

A. Yeah, I mean, as I said, we agreed with Arcapita that we would go down this route. We -- we also agreed with them that because of the potential damage that it would cause to Arcapita and PointPark SRO including the fact that it could significantly impair a potential monetization event, we agreed with them that it would not be appropriate to take any sort of steps that would be sort of public, if you like, until such point as this process has unfolded and concluded.

If we're in the position where the court does not sort of find in our favor, then we would obviously consider what options we actually have and will then take a decision as to how we go forward.

Q. How would -- you mentioned in the last answer that it could

A. Pyle

significantly impair the monetization events.

How would any such action significantly impair potential monetization events?

A. Well, I think there are a number of things that could happen. Firstly, if there was to be a monetization event, then P3 and Arcapita would need KPMG to be fully cooperative and to undertake some further work in order to help realize the event.

If we're in a situation where we're having to take action against them for nonpayment of fees, then our willingness to do any further work to actually help them get through that sort of sale event is going to be pretty limited. And so they may find it very, very difficult to consummate a transaction without the help of -- of the professionals like ourselves, if we're in a position where we are effectively in a standoff about -- about sort of fees.

A. Pyle

We may, of course, be able to cut through that depending upon, you know, the circumstances at the time and the relationship that we have, but that would be one example.

Q. Just so I'm clear, though, your expectation was that, at least over the last year, that you would have been paid upon a monetization event, correct?

A. No. Our expectation was that we would get paid either by P3 PLC on a monetization event or -- sorry -- strike that.

Our expectation was that when we started the work on the IPO, we would be paid periodically through the process by P3 or Arcapita Limited funded by Arcapita Bahrain and that on completion of the IPO or a monetization event, Arcapita Bahrain would effectively be made whole for the costs that it had funded and that if we have any remaining outstanding unbilled fees at the date of the monetization event, that some of those costs -- that

A. Pyle

those costs would then be paid effectively at that point in time.

Q. So that was your expectation, but that periodic payment hasn't happened other than the $500,000 that you just referenced?

A. No, that's not right you see because, of course, we did some work over, you know, over 2011 and that work was paid in sort of February 2012. So, I appreciate you're looking at kind of post petition very specifically. We look at this as kind of a project that started for us, you know, back in kind of spring of 2011 and finished in sort of October 2012. And over the course of the project as a whole, we were being paid. Where things stopped was effectively in -- you know, we were expecting some payments in July 2012 and, you know, that was the point at which the Committee sort of objected to -- to Arcapita funding -- funding payment and, you know, at that point we had done a lot of the work, but actually we'd been paid

A. Pyle

for a fair bit of that work at the point that we had done it.

Q. Since July of last year, you have not been paid; your expectation was that you would be paid upon a monetization event, or failing a monetization event, that you would seek payment from -- through an Arcapita Bank funding; is that fair?

A. That was the expectation that we had based on the conversations that we had with Arcapita, sort of post, if you like, the Linklaters' fee order being done.

Q. Just so I'm clear about it, is it your testimony that if there were a monetization event on the horizon, you'd be less willing to work unless you were paid your fees; is that what I understand?

A. We would -- so if there's a monetization event and we're asked to do more work and we haven't been paid, we're -- for the work that we've done to date, then given -- given where we are now, in the situation where the court

A. Pyle

decides in the Committee's favor and we are not paid, we're going to think pretty carefully before doing anything else in respect of any of the EuroLog assets before we sort of -- before we pick up our pens again. We'd be nuts not to do that.

Q. That was the first way that it would impair a monetization event. And I stopped you to get some more detail on that, but was there another way?

A. I guess, secondly, you'd have a situation where, if it became publically known that an action was being taken against Arcapita Limited or PointPark SRO, you know, all of the stakeholders and other creditors and people that trade with those businesses today will obviously be aware of the fact that the parent is in Chapter 11. And so there's -- I think there's a risk that if any action that was taken by some creditors against those organizations became public, that you could get a domino effect and you'd have a whole bunch of other people, which would

A. Pyle

decide that they would soon cease to trade. And P3 -- I mean, both Arcapita Limited in terms of its employees and P3 are, in my opinion, very important if not critical to the value of the EuroLog assets because the level of knowledge that exists within those organizations and the people in those organizations about these assets, the tenants, the strategy for, you know, enhancing value is very significant. And, you know, again, in my opinion, the value of selling the individual assets without the management company with all of the knowledge would be. Less so there's a marriage value here and a value to the management company. And I think if that management company was either in or at significant risk of bankruptcy proceedings, then if I put myself in the shoes of advising a buyer, which is what I do, you know, in a large part of my work, you know, you would be very nervous about that situation as a buyer and you'd want to get -- you'd want to get the situation

A. Pyle

resolved, if it's at all possible. So that would be another way.

Q. And do you expect that the overall package of the EuroLog assets would sell for greater than 11 million Euro?

A. I don't know where you get the 11 million Euro number.

My understanding is that there were terms that our Arcapita had told the Committee it expected to get based on my clear pricing was significantly north of 11 million Euros, but I don't know the precise number and how that would split between Arcapita and its investors.

Q. Let me just -- what I'm trying to understand is, if you were advising this buyer and the risk of bankruptcy to Arcapita Limited was because it owed KPMG 2 million Euro and the buyer was paying more than 2 million Euro, you would expect that would be a way to resolve the issue, correct?

A. Well, it would be but, of

A. Pyle

course, bear in mind that the buyer won't be paying the entities that we'd be taking action against the money.

Q. It would be buying the entities that have the enterprise value, correct?

A. Yes, that's right. So, again, it comes back to the statement in the motion about needing to come to an agreement that links the asset-owning vehicles with effectively the management companies to be able to do that.

Q. And so if, for example, P3 PLC entered into a reimbursement agreement with the entities that owned the assets so that they would get reimbursed for the fees that they've incurred for the sale process, that would be a way to resolve that issue?

A. Potentially, but, of course, that would have to happen, you know, at an appropriate sort of point. So, you know, we would need to see -- we'd need to look at -- there are probably a whole bunch of different ways that you could resolve a

A. Pyle

situation and get us sort of -- get us comfortable with things, but, you know, until we know what the specific fact pattern would be, you know, we're not going to sort of -- we're not going to give any form of sort of undertaking that everything would be okay and we're obviously going to reserve our rights.

Q. Okay. And I just wanted to -- the management services that are provided by P3, those management services could be provided by a different manager; is that right?

A. I don't think they could be provided by another manager to the same sort of quality, and -- as P3 is currently doing. Because in some cases these -- the assets that are there were built by P3. So they -- and in other cases, they've managed them for a number of years. So the level of institution and knowledge about the assets is very high, and it would take anybody else, you know, a significant period of time to get up the

A. Pyle

learning curve with regard to, you know, those particular sort of assets.

So while they might be capable of being replaced, I think, you know, our opinion is that there would be an impact on -- on the assets if P3 were not there to manage them.

Q. What impact? Can you quantify it?

A. It's difficult to quantify, but you know, there's -- the portfolio has got -- and it varies asset by asset, but, you know, each one of these buildings, you've got a relationship with the tenant so an understanding as to the likelihood of the tenant renewing or not renewing its lease. So what you would see is if there would be a greater chance of a tenant's leaving. There would be, I think, a slowdown in the rates at which the vacant space would be -- would be leased up, and I think that would have a negative impact on the value of the assets. Quantifying it is pretty difficult considering it's a

A. Pyle

hypothetical question, but, you know, it wouldn't be a positive. It would be negative, and that would just be a question of degree.

Q. And the relationship you're talking about, those are between human beings, right, people, and the knowledge is the manager of a particular facility?

A. Yeah, well, you've got -- but not just one person, you know. You've got multiple individuals in P3. I think that now we've got about 50 or so people in the organization, most of whom are involved in something that touches these assets sort of one way or the other. So you've got quite a lot of institutional experience that you'd have to go and replace. It's not an impossible job, but, you know, it's not something that you can just click your fingers and hope that it's all going to be fine.

Q. Well, but if these individuals, they are individuals, they could choose to go work for someone different, including a

A. Pyle

new management company, right?

A. Potentially. But then if they've got restrictive covenants, which, you know, you often find that you've got key men and women sort of requirements in people's contracts. So I wouldn't like to sort of speculate on whether or not what you've just outlined is how easy that could be achieved. And bear in mind as well that all of these people are employees in jurisdictions in -- in kind of Europe where, you know, the labor laws and the restrictions that you have as an employer are off the scale compared to what you would see in the U.S.

Q. Have you looked at the negative restrictions or the restricted covenants --

A. No, I have not had any need to do that.

Q. Do you believe that KPMG's ability to collect the 2.1 million Euro, it said it's owed, would be enhanced if it put P3 into administration?

A. Pyle

A. Haven't looked -- haven't looked at it, but, yeah -- haven't looked at it. We would have to think very, very carefully about what we do.

Q. Well, do you think that would be a positive effect on your ability to recover?

A. It would -- it may not be, but it may be something which we have to consider -- consider doing. If depending upon the alternatives available to us. So...

Q. So the entity -- you have the entities that actually own the assets and then you have the management company?

A. Yes.

Q. When you said earlier it would clearly be a negative effect that you haven't quantified it if something happened to P3, it would clearly be a negative effect on P3, right?

A. And I think it would be a negative impact on the value of the asset companies as well.

A. Pyle

Q. But the most direct impact would be the impact on P3, correct?

A. Well, in the sense that that organization would be -- would then be in some form of insolvency proceedings under local law, yes.

Q. And that's the entity -- you have no agreement with the underlying asset holders within the EuroLog entity for payment of your fees; is that right?

MR. O'CONNOR: Objection to form.

A. Sorry. Just sort of --

Q. The entities that hold the underlying assets, the real estate, you don't have any agreement with those entities to pay fees --

MR. O'CONNOR: Objection to form.

Q. -- to KPMG?

A. So KPMG doesn't have any form of contractual relationship with the asset -- of the asset owning entities other than in some cases we are providing services

A. Pyle

directly to them in terms of audit or tax.

Q. And those services you just described in your answer, those are not services for which you're seeking funding from Arcapita Bank?

A. No, they are just separate services we would be providing any way in the normal course.

MR. LEBLANC: Can we take a three-minute break?

(Whereupon, a brief recess is taken.)

MR. LEBLANC: I have no further questions.

(Time noted: 2:33 p.m.)

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A. Pyle

CERTIFICATION

I, DANA N. SREBRENICK, a Notary Public for and within the State of New York, do hereby certify:

That the witness, ANDY PYLE, MA ACA, whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of March 2013.

____

DANA N. SREBRENICK, CRR, CLR

* * *

NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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