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Creditors of Arcapita Bank B.S.C.(c), et al.*

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

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)
In re:) Chapter 11
)
ARCAPITA BANK B.S.C.(C), <u>et al.</u> ,) Case No. 12-11076 (SHL)
)
Debtors.) (Jointly Administered)
)
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**DEPOSITION DESIGNATION LIST OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS IN CONNECTION WITH THE HEARING
REGARDING THE DEBTORS' MOTION FOR ORDER 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], the Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession in the above-captioned chapter 11 cases files this deposition designation list in connection with the July 18, 2013 hearing on the Motion, and respectfully designates the following deposition testimony of Sarah Murphy of Freshfields Bruckhaus Deringer LLP for use at the hearing.

The Committee reserves the right to use any deposition excerpts designated by any other party and to utilize additional excerpts for cross-examination or impeachment. The Committee further reserves the right to counter-designate additional ranges in response to any excerpt designated by any other party. The Committee expressly reserves the right to supplement these designations as necessary and appropriate. The deposition transcript of Sarah Murphy is attached hereto as Exhibit A.

Deposition Designations for Sarah Murphy (Freshfields) – March 15, 2013

Tr.	Excerpt
13:5-14:25	<p>Q Can you tell me what it is?</p> <p>A It's the debtors' reply to the official committee's objections.</p> <p>Q Have you had any input into this document?</p> <p>A I provided some thoughts on this document, yes.</p> <p>Q Did you review a draft of this document?</p> <p>A Very briefly, because of the timing involved when I received it, so I reviewed an early draft. Comments were made, and I was sent a draft, which I looked at very quickly.</p> <p>Q Did you review a final version of this draft?</p> <p>A I did review -- I reviewed the filed version.</p> <p>Q To the best of your knowledge, is there anything inaccurate in this document?</p> <p>MR. STUART: Objection. Overbroad.</p> <p>Q You can answer.</p> <p>A I am going to look, because I think there are a few things that are in the nature, I think, of typographical errors that I noted when I was reviewing this. In footnote six, in the second sentence, I think there is -- it must have been re-edited. The provision ultimately was not included, because the underwriting agreement would not have been signed -- would only have been -- I think it should say the underwriting agreement would only</p>

	<p>have been signed once the IPO was priced, and therefore, the deal had succeeded, and therefore, the provision would have been irrelevant, not in force -- would -- "enforceable" doesn't make too much sense in this context, so I think it was probably - - somebody must have edited that sentence after they had written it and then not gone back and read it again.</p> <p>Q So just to clarify, in footnote six of page 13, your edit was to remove the phrase "and that provision enforceable"?</p> <p>A Yes, that would be -- that would be a good edit.</p>
35:8-15	<p>Q If you look at Exhibit 4, the letter dated -- the engagement letter dated April 30th, 2012, does not contain any reference to Arcapita Bank funding fees, does it?</p> <p>A No, it does not.</p> <p>Q It only provides that AiM and NewCo shall be responsible for the banks' fees; correct?</p> <p>A That's right.</p>
55:10-56:4	<p>Q So the April 30 letter was between Arcapita Limited, Deutsche Bank and Credit Suisse?</p> <p>A Yes.</p> <p>Q Freshfields was not party to that engagement letter?</p> <p>A No.</p> <p>Q None of the debtors were parties to that engagement letter?</p> <p>A No.</p> <p>Q And it's not your position that Freshfields was directly retained by Arcapita Bank or any of the debtors to provide the services here?</p> <p>A Again, we couldn't have been engaged by any parties other than our clients.</p> <p>Q And it is not your position that Freshfields was a third-party beneficiary of a contract with the debtors; is that correct?</p> <p>A Not with the debtors, no.</p>

56:8-15	<p>Q If you look at the Exhibit 4, which is the excerpt you provided of that engagement letter, it says -- at the end there, it says, "AiM and NewCo will be responsible for fees and expenses of legal counsel to the banks." And this is the provision on which Freshfields is entitled to its fees?</p> <p>A I think the answer to that is yes.</p>
59:12-60:13	<p>Q Did this engagement letter allow Freshfields as a third-party beneficiary to enforce the provision providing that AiM and P3 should be responsible for Freshfields' fees?</p> <p>MR. STUART: Objection. Calls for a legal conclusion. But you may answer.</p> <p>A This letter does not include the language that the amendment includes, which specifically provides for Freshfields to be a third-party beneficiary.</p> <p>Q And does that mean that Freshfields could not enforce the terms of this letter?</p> <p>MR. STUART: Same objection.</p> <p>A I don't -- I think that is a legal conclusion, which I would have to take advice on.</p> <p>Q Please turn to section ten of the letter. The third paragraph down. Do you see where it says, "The banks and the company do not intend that any term of this letter should be enforceable by virtue of the act by any person who is not a party to this letter"?</p> <p>A I do see that.</p> <p>Q Is Freshfields a party to this letter?</p> <p>A No.</p>
65:4-20	<p>Q This April engagement was amended in October 2012; correct?</p> <p>A It was.</p> <p>Q Why was it amended?</p> <p>A It was amended primarily to deal with the adding of Arcapita</p>

	<p>Industrial Management and the ListCo as parties. It was also amended to clarify our fee provisions.</p> <p>Q Any other reasons?</p> <p>A And to make us a third-party beneficiary of the fee provisions.</p> <p>Q So Freshfields was not a third-party beneficiary of the fee provisions until October 8, 17 2012?</p> <p>MR. STUART: Objection.</p> <p>MR. MARECKI: You can answer.</p> <p>A No.</p>
67:6-22	<p>Q The parties to this October 2008 (sic) engagement letters, they are Deutsche Bank, Credit Suisse, Arcapita Limited, and then it is adding Arcapita Industrial Management and P3; is that right?</p> <p>A Yes.</p> <p>Q Freshfields is not a party to this; correct?</p> <p>A No.</p> <p>Q And none of the debtors are a party to this agreement?</p> <p>A No.</p> <p>Q So it's not your position that Freshfields is a third-party beneficiary to an engagement letter between the underwriters and one of the debtors, is it?</p> <p>A No, that's not my understanding.</p>
71:25-72:15	<p>Q The October 8th engagement letter specifically included Arcapita Limited along with AiM and P3 as being obligated to pay Freshfields' fees; right?</p> <p>A Yes. It says Arcapita Limited and the ceding parties, so, yes, it does.</p> <p>Q And again, none of the debtors are any of the parties to this fee obligation; correct?</p>

	<p>A They are not parties to this letter.</p> <p>Q And they are not mentioned as being ne of the entities responsible for payment of fees?</p> <p>A They are not mentioned in this letter.</p>
109:22-110:16	<p>Q When did you invoice last?</p> <p>A We invoiced once. And we invoiced -- I don't have the invoice with me. I'm sure you have the invoice. I can't believe you don't have that. But it would have been sometime before five days from the end of November. Whatever date that Karim told me that he needed to have the bill for that purpose.</p> <p>Q So you invoiced in the end of November, and you invoiced to which entities?</p> <p>A We invoiced -- technically, the bill is addressed to Deutche and Credit Suisse as our clients, and is expressly payable by the three entities that we have -- that are parties to the engagement letter.</p> <p>Q And that's Arcapita Industrial Management, Arcapita Limited and P3?</p> <p>A It is.</p>
117:11-118:19	<p>Q That's not my question. My question is not whether it was signed or what happens upon a successful IPO. My question is whether the agreement itself contains a provision that requires the debtors to pay any portion of Freshfields' fees.</p> <p>MS. LIU: Objection.</p> <p>MR. STUART: Objection.</p> <p>A It does not -- it does not contain a provision for them to pay the fees. It contains a provision for our fees to be deducted from the IPO proceeds.</p> <p>Q Does it contain a provision that requires any of the debtors to pay any portion of Freshfields' fees in the event of an unsuccessful IPO?</p> <p>MS. LIU: Objection.</p>

	<p>MR. STUART: Objection.</p> <p>A It would only have been signed -- it would have only been signed when there was an IPO, so therefore, that provision would be irrelevant and unnecessary.</p> <p>Q Whether the provision operates or not is not my question. I'm asking if such a provision exists.</p> <p>A I'm telling you it doesn't exist. I'm telling you why it doesn't exist.</p> <p>Q Did any drafts of the underwriting agreement contain a provision that would require the debtors to pay any portion of Freshfields' fees in the event of an unsuccessful IPO?</p> <p>MS. LIU: Objection.</p> <p>A They did.</p>
119:17-121:8	<p>Q And do you see the last sentence at the end of clause 10.7 which is struck out?</p> <p>A Indeed.</p> <p>Q And it says, "In the event that admission does not occur, Arcapita shall pay or procure the payment of such legal fees, expenses and disbursements, plus VAT thereon, subject in the case of legal fees to the caps set out in this clause 10.7, within ten days of the date of this agreement." Was that a provision that was proposed by Freshfields?</p> <p>A It was.</p> <p>Q And that provision was removed from the underwriting agreement?</p> <p>A It was.</p> <p>Q And "Arcapita" here means AIHL, one of the debtors?</p> <p>A Let me look at the defined terms.</p> <p>Yes.</p> <p>Q And so Freshfields had proposed that AIHL be responsible for the payment of 725,000 pounds in Freshfields' legal fees in</p>

	<p>the event that the IPO failed to launch?</p> <p>A Yes.</p> <p>Q And that provision was objected to by the committee; correct?</p> <p>A I understand that it was objected to by the committee.</p> <p>Q And that provision was not in fact in the agreed-to version of the underwriting agreement; is that right?</p> <p>A It was not.</p> <p>Q Therefore, there is no provision in this underwriting agreement that provides for the payment of Freshfields' fees by the debtors in the event of an IPO that failed to launch?</p> <p>MS. LIU: Objection.</p> <p>MR. STUART: Objection.</p> <p>A There is not.</p>
126:17-128:12	<p>Q You are aware that Linklaters filed an application in the bankruptcy court to have its fees paid for work in connection with the EuroLog IPO; right?</p> <p>A I indeed am.</p> <p>Q When did you first become aware of that?</p> <p>A I think when the papers showed up in the court docket.</p> <p>Q Okay.</p> <p>A So that would be whatever date you have in the docket for the motion.</p> <p>Q When Freshfields first saw that, did Freshfields consider asking for authority to be paid?</p> <p>A We certainly considered whether it would be appropriate for us to seek a similar motion. We were not as exposed financially as Linklaters was. We also were quite, and our clients were quite concerned that that kind of a dispute appearing on the record in advance of a public offering process was potentially very damaging to the public offering process. So we determined</p>

	<p>at that time that we were willing to not proceed with an order specifically relating to Freshfields at that time. We were concerned, with all due respect to Linklaters, and understanding why they would have sought the order, that there was potential considerable damage to IPO valuation, having those kinds of disputes on the record in the run-up to the IPO. That was probably more of a concern that we faced than Linklaters, because the banks were much more focused on marketing.</p> <p>Q You are also aware that the bankruptcy court ultimately did enter an order with respect to the Linklaters fee motion?</p> <p>A Yes.</p> <p>Q And you are aware that that motion only applies to Linklaters, are you not?</p> <p>A Yes.</p> <p>Q It doesn't speak directly to Freshfields' fees?</p> <p>A No.</p>
141:4-142:11	<p>Q I know you are running short on time, so I will try to blow through this quickly. I want to turn to your declaration, Exhibit 1, and to talk about payments. If we could turn to paragraph seven. What's the total amount of fees that Freshfields incurred in connection with work on the EuroLog IPO?</p> <p>A The amount that is reflected in the time sheets attached to the declaration is 1,060,276 pounds.</p> <p>Q And the fees that Freshfields is seeks here is 725,000 dollars - - 725,000 pounds?</p> <p>A Yes.</p> <p>Q And that is obviously less than the 1,060,276 pounds of fees incurred.</p> <p>A Yes.</p> <p>Q And am I correct that Freshfields is only seeking the 725,000 dollar amount because --</p> <p>A Pounds.</p> <p>Q 725,000-pound amount, because there is a cap on the amount</p>

	<p>of fees that Freshfields is entitled to claim?</p> <p>A We are seeking to recover the agreed and invoiced amounts.</p> <p>Q Those agreed amounts are reflected in the amended engagement letter; correct?</p> <p>A Yes.</p> <p>Q And the agreed amount in the October 8th engagement letter is a cap of 725,000 pounds?</p> <p>A That's right.</p>
146:9-17	<p>Q The end result, though, is a cap of 725,000 pounds on Freshfields' fees, which is reflected in the October 8, 2012, engagement letter?</p> <p>A And in our invoice, yeah.</p> <p>Q And that is the same amount that you are seeking in connection with the fee motion; am I right?</p> <p>A Yes.</p>
152:7-15	<p>Q So you have not had any conversations with anyone at Arcapita about Freshfields initiating a proceeding?</p> <p>A There have been no conversations, and I would only have conversations like that after seeking detailed advice from insolvency experts and the people advising the directors to -- to Arcapita Limited. Not that that couldn't happen at some stage. Anything is possible.</p>
160:15-20	<p>Q That wasn't my question, though. Do you find that there is an additional risk associated with waiting until a monetization event to get paid?</p> <p>A There is always risk in waiting to be paid.</p>
163:5-11	<p>Q So it says that there are necessary -- the services were necessary and required in connection with the EuroLog IPO. But is there anywhere that says that those services ended up providing value to the debtors?</p> <p>A It does not specifically say that, no.</p>

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: July 10, 2013
New York, New York

MILBANK, TWEED HADLEY & M^cCLOY LLP

/s/ Andrew M. Leblanc

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Exhibit A

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In re Chapter 11
ARCAPITA BANK B.S.C.(c), Case No. 12-11076(SHL)
et al.,
Debtors. (Jointly Administered)

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DEPOSITION OF SARAH MURPHY

New York, New York

March 15, 2013

Reported by:
Bonnie Pruszynski, RMR
JOB NO. 59266

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March 15, 2013

8:15 a.m.

Deposition of SARAH MURPHY, held at
the offices of Milbank, Tweed, Hadley & McCloy,
LLP, One Chase Manhattan Plaza, New York, New
York, before Bonnie Pruszynski, a Registered
Professional Reporter, Registered Merit Reporter,
Certified LiveNote Reporter and Notary Public of
the State of New York.

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A P P E A R A N C E S:

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APPEARANCES (Continued):

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Attorneys for Linklaters

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BY: BRENDA DiLUIGI, ESQ.

1 S. Murphy

2 (Murphy Exhibit 1 marked for
3 identification as of this date.)

4 (Murphy Exhibit 2 marked for
5 identification as of this date.)

6 (Murphy Exhibit 3 marked for
7 identification as of this date.)

8 (Witness sworn.)

9 SARAH MURPHY,

10 called as a witness, having been first
11 duly sworn, was examined and testified
12 as follows:

13 EXAMINATION

14 BY MR. MARECKI:

15 Q Good morning, Ms. Murphy. My name is
16 Patrick Marecki from Milbank Tweed. I'm here on
17 behalf of the Official Committee of Unsecured
18 Creditors of Arcapita Bank.

19 Can you just please state your name
20 and current place of employment for the record.

21 A Sarah Curtis Murphy. 65 --
22 Freshfields Bruckhaus Deringer, 65 Fleet Street,
23 London.

24 Q I would just like to give you a few
25 ground rules for the deposition, mainly to help

1 S. Murphy

2 the court reporter get things down.

3 But your answers must be clear and
4 verbal. No nods of the head. Do you understand?

5 A I do.

6 Q If you don't understand a question,
7 please let me know, and I will rephrase it to the
8 best of my ability, and if you answer a question,
9 I will assume that you have understood it. Is
10 that fair?

11 A That's fair.

12 Q And if you need a break at any time,
13 please let me know and we will do so. I would
14 only ask that you answer a question that is
15 pending before you leave for a break.

16 A Understood.

17 Q Can you please describe your
18 educational background?

19 A Where would you like me to start with
20 that?

21 Q I guess with undergraduate, college.

22 A I went to Williams College, and then
23 to Fordham Law School, and that was -- that's my
24 educational background.

25 Q And when did you graduate from

1 S. Murphy

2 Fordham Law School?

3 A 1983.

4 Q And what is your -- your current
5 position is at the Freshfields U.K. office?

6 A Yes, the London office.

7 Q And are you a partner there now?

8 A Yes.

9 Q How long have you been a partner?

10 A Fifteen years.

11 Q And where did you work prior to being
12 a partner at Freshfields?

13 A Cravath, Swaine & Moore.

14 Q And about how long were you at
15 Cravath for?

16 A I started at Cravath in '85, and so
17 I -- and I was there through '98.

18 Q In your experience as a partner at
19 Freshfields, have you worked on other initial
20 public offerings in addition to the EuroLog IPO?

21 A Yes.

22 Q Roughly how many?

23 A During my time at Freshfields?

24 Q Yes.

25 A Fifteen, twenty. Possibly more,

1 S. Murphy

2 actually -- well, maybe I would say average of
3 three a year, so 15 years, that would make it 45,
4 doing the math. That is probably more than I
5 actually did, particularly as often people think
6 about doing an IPO and talk about doing an IPO,
7 but then don't really get it started.

8 So probably more fair to say, you
9 know, one to two a year over the 15 years.

10 Q And out of that amount, roughly how
11 many were while you were a partner?

12 A I was a partner the whole time I was
13 there, so it would be all.

14 Q How many of those IPOs were
15 successful?

16 A I would say of those IPOs, which
17 would be ones that actually involved a substantial
18 amount of work, I would probably say 75 percent,
19 if not more. I am not including things where
20 people want to discuss the possibility of doing an
21 IPO, you did some preliminary work, and they
22 decided not to go ahead for one reason or another.

23 Q What were your responsibilities on
24 the EuroLog IPO?

25 A I was -- there were two partners that

1 S. Murphy

2 were integrally involved in the EuroLog IPO, one
3 of whom was Mark Austin, who is English qualified.
4 I am U.S. qualified. So we shared joint
5 responsibilities for the matter, with him being a
6 bit more focused on things like the English law
7 underwriting agreement, with me being more focused
8 on overall deal management plus the disclosure and
9 due diligence that needed to be done.

10 When the bankruptcy situation arose,
11 I also was responsible for guiding the clients
12 through that, so I did most of the risk management
13 discussions with our clients. But it was quite
14 flexible in terms of how we split our
15 responsibilities.

16 Q Okay. I would like to give you
17 what's been premarked as Murphy Exhibit 1.

18 Do you recognize this document?

19 A I do.

20 Q And what is it?

21 A It is my declaration in support of
22 the debtors' motion for getting certain of their
23 expenses paid, their obligations paid.

24 Q Can you flip to the last page,
25 please. Is that your electronic signature?

1 S. Murphy

2 A That is.

3 Q You understand that the fee motion
4 seeks confirmation of the debtors' ability to fund
5 approximately \$1.1 million in Freshfields' fees
6 for services rendered in connection with the IPO?

7 A I do.

8 Q Did you draft this declaration
9 yourself?

10 A I did.

11 Q Did anyone provide any input into
12 this declaration?

13 A I discussed it with one of my
14 associates.

15 Q And did you discuss it with anyone
16 outside of Freshfields?

17 A Well, yes. I certainly sent it to
18 Gibson Dunn, and I also sent it to Abbey Walsh,
19 who is here in the room, who is with Freshfields,
20 and I did receive a few comments from both of
21 them.

22 Q Okay. And are those comments
23 incorporated into this --

24 A Yes.

25 Q -- final version?

1 S. Murphy

2 Is there anything in the declaration
3 that you believe to be inaccurate that you would
4 like to correct?

5 A No.

6 Q I would like to show you what's been
7 premarked as Murphy Exhibit 2. Do you recognize
8 this document?

9 A I do.

10 Q Can you tell me what it is?

11 A It is the motion for the order
12 confirming the debtors' authority to fund
13 non-debtor EuroLog matters.

14 Q Did you help prepare this motion?

15 A No. We reviewed it. We provided
16 some comments, but the preparation and
17 organization and overall content was a
18 determination of Gibson Dunn, who represents the
19 debtors.

20 Q Have you reviewed the final or filed
21 version of this document?

22 A Yes.

23 Q And did the comments that you
24 provided make it into the final draft?

25 A The comments that I provided for this

1 S. Murphy

2 mainly related to the activities that Freshfields
3 performed, and the sections that would relate to
4 Freshfields, and those comments were reflected.

5 Q And as for those sections that relate
6 to Freshfields, is there anything you believe to
7 be inaccurate in those sections?

8 A Let me just take a quick look to make
9 sure that -- I can skip the legal arguments.

10 MR. STUART: So, can we understand
11 which pages we are referring to
12 specifically? Is it anything beyond the
13 part that begins at page 13?

14 Q Well, just generally. I mean you are
15 free to --

16 MR. STUART: I will object. Unless
17 you want her to review the entire document
18 now.

19 Q Are you aware of anything,
20 Ms. Murphy, that, to your knowledge, is inaccurate
21 in this motion?

22 A I'm not aware of any inaccuracies,
23 no.

24 Q Just to get this in front of you, I
25 would like to show you what's been premarked as

1 S. Murphy

2 Murphy Exhibit 3. Have you seen this document
3 before?

4 A Yes, I have.

5 Q Can you tell me what it is?

6 A It's the debtors' reply to the
7 official committee's objections.

8 Q Have you had any input into this
9 document?

10 A I provided some thoughts on this
11 document, yes.

12 Q Did you review a draft of this
13 document?

14 A Very briefly, because of the timing
15 involved when I received it, so I reviewed an
16 early draft. Comments were made, and I was sent a
17 draft, which I looked at very quickly.

18 Q Did you review a final version of
19 this draft?

20 A I did review -- I reviewed the filed
21 version.

22 Q To the best of your knowledge, is
23 there anything inaccurate in this document?

24 MR. STUART: Objection. Overbroad.

25 Q You can answer.

1 S. Murphy

2 MR. STUART: Yeah.

3 A I am going to look, because I think
4 there are a few things that are in the nature, I
5 think, of typographical errors that I noted when I
6 was reviewing this.

7 In footnote six, in the second
8 sentence, I think there is -- it must have been
9 re-edited. The provision ultimately was not
10 included, because the underwriting agreement would
11 not have been signed -- would only have been -- I
12 think it should say the underwriting agreement
13 would only have been signed once the IPO was
14 priced, and therefore, the deal had succeeded, and
15 therefore, the provision would have been
16 irrelevant, not in force -- would -- "enforceable"
17 doesn't make too much sense in this context, so I
18 think it was probably -- somebody must have edited
19 that sentence after they had written it and then
20 not gone back and read it again.

21 Q So just to clarify, in footnote six
22 of page 13, your edit was to remove the phrase
23 "and that provision enforceable"?

24 A Yes, that would be -- that would be a
25 good edit.

1 S. Murphy

2 Q Is there anything else to your
3 knowledge that is inaccurate in this document?

4 MR. STUART: Same objection.

5 A Just referring to the same text, the
6 text that the footnote would have related to.

7 Q I believe it's on the earlier page,
8 actually.

9 A I'm actually not seeing another point
10 there, but my memory is that it was more of a
11 manner of expression than a mistake, just as -- or
12 more language than was necessary. So it may be
13 that those are lawyer's edits as opposed to
14 necessary edits, if you understand.

15 Q You can put that aside for now.

16 Can you describe the EuroLog IPO
17 process generally for me?

18 A As I am sure you know, the Arcapita
19 structure is a series of funds in which they have
20 co-investment by third parties. Those
21 co-investments happen in a number -- happen in
22 ways where other entities which then other
23 entities are invested in come into the funds.

24 My understanding was that they had
25 acquired various warehouse properties in Europe

1 S. Murphy
2 through those funds, and that the idea of the IPO
3 was to bring those properties under one company,
4 which was referred to as ListCo. That required
5 the separation of assets and the movement of those
6 assets into ListCo.

7 The transaction was originally
8 conceived as a sale by Arcapita of its interest in
9 ListCo. For tax reasons, it was restructured so
10 that it was a transaction where it was a primary
11 offering by the issuer with the proceeds used to
12 acquire the assets from the Arcapita funds, and
13 Arcapita, so that -- and then the money from that,
14 the proceeds of that, of those sales by the
15 Arcapita entities, would then move up the chain to
16 Arcapita Bank and to pay off the co-investors.

17 So it was originally -- the original
18 conception was Arcapita was a -- was a monetizing
19 event for Arcapita to get money out of the -- the
20 European real estate portfolio.

21 Q You mentioned co-investors. Do you
22 know the ownership interest of the co-investors in
23 the assets?

24 A That information was provided to us
25 at one stage through Gibson Dunn and also provided

1 S. Murphy
2 to the committee at the same time. I don't have
3 the details of those percentages of ownership and
4 who those investors were with me, but that was
5 provided, and I know it was provided to the
6 committee, because I was sent documentation I was
7 told was sent to the committee.

8 Q Sitting here today, do you have a
9 rough idea of the percentage ownership of
10 co-investors?

11 MR. STUART: Objection. Calls for
12 speculation.

13 A I wouldn't want to speculate because
14 I don't know that I would be accurate. There
15 certainly were ownership interests of third
16 parties in entities that owned entities that were
17 invested in the Arcapita funds.

18 Q Would the proceeds of the IPO have
19 benefited both Arcapita and the co-investors?

20 A In certain cases my understanding was
21 that because of obligations that the funds owed to
22 Arcapita, that there would be no money left for
23 the third parties, and most of the money would go
24 to Arcapita.

25 That, again, is information that the

1 S. Murphy

2 committee has.

3 Q And that is in certain cases. Which
4 cases specifically?

5 A The -- again, I would need to -- I
6 would recommend that you discuss that with Alan
7 Bannister at Gibson Dunn, who was the person who
8 provided all the information on that to the
9 committee.

10 Q In other cases the co-investors would
11 be receiving proceeds from the IPO?

12 A If there was money left over in the
13 fund after all its obligations had been paid off,
14 as a legal matter, it would have -- it would have
15 been the case that the co-investors would receive
16 money when the funds were effectively dissolved.
17 Whether that was -- how much money was left over
18 for the third parties, I -- I would be -- it would
19 be speculating for me to state today, but again
20 that information has been made available to the
21 committee.

22 Q But was it expected that money would
23 be left over for the co-investors in some amount?

24 A That was going to depend upon the
25 contractual obligations that the funds had, and so

1 S. Murphy
2 if there was money left over, then again, as a
3 legal matter, it would have been inappropriate for
4 that -- for those entities to be dissolved and the
5 shareholders of those entities not receive the
6 funds.

7 But in many cases, we were made aware
8 that actually there were other obligations that
9 those funds had to Arcapita entities, so that
10 Arcapita would be actually getting the benefit
11 first. Probably, I know, as a legal matter,
12 creditors get first claim on funds before equity
13 holders, so...

14 Q So on Arcapita in many cases would
15 get benefits first, and to the extent funds were
16 left over, the benefit would flow to the
17 co-investors?

18 A And to Arcapita in equal proportions
19 to the equity ownership. That's again a legal
20 matter as to how any kind of a dissolution would
21 work.

22 Q So in general, would you say that the
23 proportion of ownership interests of Arcapita and
24 the co-investors would have been roughly equal to
25 the value of the IPO that they shared?

1 S. Murphy

2 A No, that was not how it was explained
3 to us by Gibson Dunn. And it was -- and again,
4 the -- there was a chart that was produced, and
5 there was a session that took -- a call that took
6 place on which the committee members were present,
7 and where it was explained where the different
8 obligations were and how the monies were going to
9 flow, and they were not going to flow in
10 accordance with equity interests because of these
11 creditor interests that Arcapita already had.

12 Q You mentioned warehouse assets. Were
13 there any other assets that were part of the
14 EuroLog IPO?

15 A There was -- there was the -- it was
16 referred to in the process as the Manco, which was
17 the company -- the ParkPoint Properties I believe
18 is the name of the entity, and that was the entity
19 which employed all of the people who actually did
20 the property management activity for -- for this
21 group of assets.

22 And it was viewed as very important
23 that that -- that that entity and its employees be
24 included in the IPO assets.

25 Q ParkPoint properties is not a debtor;

1 S. Murphy

2 correct?

3 A No.

4 Q And the management activities of --
5 they are not performed by the debtors; correct?

6 A The day-to-day management activities
7 are not performed by the debtors. The debtors
8 certainly were very involved in the funds and the
9 fund structures, but the -- I don't believe that
10 the debtor employees are actually property
11 managers themselves.

12 Q Does ParkPoint Properties own the
13 underlying warehouse and real estate assets, or
14 are they just managers of those assets?

15 A They are managers of those assets.

16 Q Do those underlying assets have
17 substantial value?

18 A Yes.

19 MR. STUART: Objection. Overbroad.

20 A My understanding was that they did.
21 Obviously, I'm not a property valuer. There was a
22 property valuation that was done by property
23 valuers, and that's been made available to the
24 committee.

25 Q Do you have any understanding as to

1 S. Murphy

2 the value of those assets?

3 A I am not going to state at this stage
4 what the value of those assets was. I could dig
5 out the property report, as could you, and we
6 could see what that value is. The valuations were
7 made of each of the properties.

8 Q But they did have substantial value?

9 MR. STUART: Objection.

10 A The property report would have
11 suggested that they did, if the property valuers
12 were accurate in their evaluations.

13 Q I'm going to turn to your
14 declaration, exhibit -- Murphy Exhibit 1.

15 A Let's see, that's this one. It's a
16 short one.

17 Q If you could turn to paragraph four
18 of the declaration.

19 Who was Freshfields retained by?

20 A Credit Suisse and Deutsche Bank.

21 Q In what capacity?

22 A As underwriter and sponsor counsel.

23 Q And generally speaking, what did that
24 engagement involve?

25 A The particular activities are listed

1 S. Murphy

2 in -- on pages three and four of the declaration.

3 And five, actually.

4 Q Those are the activities in paragraph
5 five, subparagraph A through X?

6 A Yes. Obviously, we weren't
7 originally retained to advise in connection with
8 the Chapter 11 and Cayman proceedings, as those
9 had not been filed at the time of the original
10 retention. The original retention would have been
11 for items listed.

12 Q The original retention was in July of
13 2011?

14 A That is -- I have to look at my time
15 sheets. I think that is what I have said here,
16 isn't it?

17 Q Paragraph five.

18 A We actually were -- were brought in
19 earlier than that, but didn't -- we had
20 discussions with the two banks before then, but
21 the first meeting we attended was in July.

22 Q When were you brought in initially?

23 A The first discussions took place in
24 June.

25 Q And those discussions, were they with

1 S. Murphy

2 Deutsche Bank and Credit Suisse?

3 A They were.

4 Q Is there an engagement letter?

5 A The practice in the European market
6 is to have global engagement letters with each of
7 the investment banks, so we have engagement
8 letters, as I suspect you do as well, with the
9 different investment banking firms, and then
10 individual matters are under those broader
11 letters.

12 Q When you say "under," does it mean
13 that there is a -- an additional letter that is
14 produced as part of the new engagement?

15 A Usually it is the -- an e-mail that
16 just explains the basis on which we are doing the
17 deal, outlines the activities that we are going to
18 be performing. It's quite standard, and any other
19 particular issues that we need to highlight in
20 that letter.

21 Q In this case, is there an e-mail
22 confirming Freshfields' engagement with Credit
23 Suisse and Deutsche Bank?

24 A There is an e-mail in this case that
25 they were copied on, which outlines the fee

1 S. Murphy

2 arrangements that had been agreed with Arcapita,
3 as well as the scope of activities.

4 MR. STUART: Let me just interject an
5 objection here, that we are not authorized
6 to disclose attorney-client privileged
7 information, so, to the extent we have
8 letters between our client and ourselves
9 that have not been produced, we certainly
10 don't intend to produce them or discuss the
11 contents of them during this deposition.

12 MR. MARECKI: Do you know if that
13 document has been produced --

14 MR. STUART: I don't.

15 MR. MARECKI: -- to any other
16 parties?

17 MR. STUART: I don't.

18 Q Who were the parties to this
19 engagement?

20 A The parties to the engagement
21 meaning?

22 Q Was the engagement just between
23 Freshfields, Deutsche Bank and Credit Suisse?

24 A We were engaged by our clients. We
25 need to be engaged by our clients, as do all

1 S. Murphy

2 attorneys. But the fee arrangements were with
3 Arcapita entities.

4 Q When you say "our clients," are you
5 referring to Deutsche Bank and Credit Suisse?

6 A Deutsche Bank and Credit Suisse were
7 our clients, the people to whom we owed our
8 obligations.

9 Q Were there any Arcapita entities that
10 were a party to this agreement?

11 A Again, the engagement was with our
12 clients. Arcapita agreed to paid pay our fees.

13 Q Did any Arcapita entity sign this
14 engagement?

15 A The Arcapita entities signed an
16 engagement letter with the banks in which they
17 agreed they would pay our fees.

18 Q And are you referring to this
19 original July 2011 engagement letter?

20 A There was a July 2011 -- no, that is
21 a different engagement. The engagement with our
22 clients --

23 Q For this, I'm just --

24 A I would refer -- I think it would be
25 more appropriate, from a professional standpoint,

1 S. Murphy

2 to refer to the arrangement with Arcapita as being
3 a contract, while the arrangement with our clients
4 would be an engagement.

5 We can't be engaged by clients who --
6 by two different clients on different sides of the
7 table. That wouldn't be appropriate.

8 Q When you refer to the contract, are
9 you referring to the engagement letters in April
10 and October of 2012, or are you referring to
11 Arcapita being part of this fee arrangement in
12 July 2011?

13 A I think there is two ways in which
14 Arcapita agreed to pay our fees. The first was
15 that they told us that they wanted all fee
16 arrangements to be discussed and agreed with them.
17 That was told to us orally.

18 We were then asked to -- after
19 discussions with them, we had a meeting with
20 Jonathan Farrell, who was the legal counsel for --
21 that was going to be the general counsel for
22 ListCo, but an Arcapita employee, who was
23 presented to us by Arcapita at the kickoff meeting
24 as the person we should be discussing our fees
25 with. We discussed our fees with him.

1 S. Murphy

2 We exchanged e-mails, and that is all
3 summarized in the attachment to -- one of the
4 attachments to my declaration.

5 Then we -- then there was an
6 engagement letter between the banks and Arcapita
7 Limited, in which the agreement was made that our
8 fees would be paid by Arcapita.

9 Throughout the process, really at the
10 request of Arcapita, all discussions with regard
11 to fees took place with Arcapita personnel, and
12 the banks were informed of discussions rather than
13 participating in them.

14 Q Let's unpack this a bit. Just to
15 clarify, when you say there was an engagement
16 letter between the banks and Arcapita Limited, you
17 are referring to the April 30th, 2012, engagement
18 letter; correct?

19 A Yes, yes.

20 Q When you initially had the fee
21 arrangement discussions, who did you have those
22 discussions with? Anyone in addition to Jonathan
23 Farrell?

24 A Jonathan was the person we had the
25 discussions with. We kept personnel at our

1 S. Murphy

2 clients informed, and Jonathan discussed those
3 arrangements with Arcapita -- other people at
4 Arcapita. So he was not purporting to sign off on
5 arrangements on his own, but needed to check back
6 with other Arcapita entities to get that
7 agreement -- personnel to get that agreement.

8 Q Do you know what entities he checked
9 with?

10 A He certainly checked with Karim
11 Si-Ahmed and Cherine Aboulzelof. The spelling of
12 those names are in the documents. I'm sure we
13 can -- we can find those.

14 And I believe they also were run by
15 Martin Tan. Again, because of the way they were
16 organized, and I didn't specifically know, but I
17 did specifically know that Karim and Cherine
18 were -- had discussed the fees. I believe they
19 are Arcapita Limited employees.

20 Q When did these fee arrangement
21 discussions first occur?

22 A The first discussion took place in --
23 right after the July 2011 meeting. We left the
24 room, in which there were a myriad of parties,
25 probably 36, 40 parties, and we had a discussion

1 S. Murphy

2 with Jonathan.

3 I was accompanied by Simon Witty, who
4 was then a partner at Freshfields, who is no
5 longer at Freshfields, but the two of us were in
6 that meeting, as were two -- two people from the
7 investment banks.

8 Q Was a fee arrangement agreed upon at
9 this meeting?

10 A At Jonathan's request, we didn't
11 agree to a fee arrangement at that time, because
12 given the complexity of the situation, the fees
13 that we would have proposed were higher than
14 Jonathan was comfortable with, and his -- what he
15 wanted to do was to do some more work with
16 Linklaters and KPMG to get this complex structure
17 organized, so they could present to us a completed
18 package of how everything was going to happen,
19 which we would then diligence.

20 We thought that was a perfectly
21 acceptable way to do things, so we agreed that we
22 would continue to do what work we needed to do,
23 but would hold off on the bulk of our work until
24 they came back to us.

25 Q And is the fee arrangement you

1 S. Murphy

2 ultimately agreed upon the one detailed in the
3 April 30, 2012, engagement letter?

4 A The April 30, 2012, engagement letter
5 refers to our fees. We have an excerpt. Do you
6 have the -- I don't have the -- you haven't given
7 me the attachments.

8 Q We will go through that. I'm just in
9 general speaking. Do you recall --

10 A I think I need -- I'd like to see
11 that.

12 MR. STUART: Let me just object. To
13 the extent you don't recall the wording of a
14 document and it's available from counsel,
15 then I will object to the question.

16 MR. MARECKI: Sure. Let's mark it.

17 We're marking as Murphy Exhibit 4
18 Exhibit 1 to the declaration.

19 (Murphy Exhibit 4 marked for
20 identification as of this date.)

21 A So, you had a question. Maybe you
22 better repeat that.

23 Q Yes.

24 Is the fee arrangement reflected in
25 the April 30th, 2012, engagement letter the fee

1 S. Murphy

2 arrangement that came out of your initial
3 discussions in July of 2011?

4 A I think if you read this excerpt from
5 the engagement letter, you will see that it's an
6 agreement that those fees will be paid by
7 Arcapita, but not that -- the specifics of those
8 fees, as that refers to them being in connection
9 with standard engagement terms, which were being
10 discussed with Jonathan Farrell.

11 Q Freshfields began working on the IPO
12 in June of 2011; is that right?

13 A Yes.

14 Q Between June 2011 and April 30th, the
15 date of this agreement, did Freshfields issue any
16 invoices?

17 A No.

18 Q So nobody paid Freshfields' fees?

19 A No.

20 Q And it had not been agreed upon until
21 this time what entity was responsible for paying
22 Freshfields' fees?

23 A There was not a legal -- a written
24 agreement on the subject. It had been made very
25 clear to us that Arcapita would be covering our

1 S. Murphy

2 fees, and it's standard practice in the European
3 IPO market that the fees of the underwriters and
4 sponsor's counsel will be paid by the person
5 benefiting from the transaction, which is either
6 the seller of the shares, which in this case would
7 be Arcapita, or the issuer.

8 Q When you say "made clear to us," made
9 clear to you by who?

10 A We were told by Arcapita to discuss
11 our fee arrangement with Jonathan Farrell, and it
12 is again market practice. All discussions took
13 place with Jonathan and/or -- and/or Karim. And
14 that was clearly the expectation, the
15 understanding and oral agreement.

16 Q That was the expectation going back
17 to the initial July 2011 conversations?

18 A We -- we -- there had been
19 discussions -- actually, there had been
20 discussions not with me, but between Simon Witty
21 and Jonathan Farrell, in advance of the meeting
22 that took place in July, and Jonathan requested
23 that we join him for a meeting to discuss those
24 fees after the July '11 meeting, yes.

25 So I think there was no question that

1 S. Murphy

2 the full expectation on their part was that they
3 would be paying our fees.

4 Q When you say it was clear to you
5 Arcapita would pay the fees, are you referring to
6 Arcapita Bank?

7 A At that time, I was not fully
8 apprised of the structure, the Arcapita structure
9 and how they had funded themselves. By the time
10 we had entered into -- that the banks had entered
11 into an engagement letter, there had been
12 extensive discussions about the fact that Arcapita
13 Limited was their engaging party for all matters
14 in Europe, but that all the -- but their funding
15 came from Arcapita Bank.

16 So though they would -- the banks
17 would be contracting with Arcapita Limited, the
18 funds would come from Arcapita parent companies to
19 actually pay those obligations. There were quite
20 extensive discussions on that subject between
21 Arcapita Limited employees and our clients, the
22 banks, which were related to us.

23 Q And Arcapita Limited was the ultimate
24 engaging party?

25 A Arcapita Limited was the party that

1 S. Murphy

2 Arcapita put forward as the engaging party for the
3 banks.

4 Q Arcapita Bank was not; correct?

5 A Again, Arcapita Bank -- we were told
6 Arcapita Bank would be funding the amounts, but
7 that Arcapita Limited would be the engaging party.

8 Q If you look at Exhibit 4, the letter
9 dated -- the engagement letter dated April 30th,
10 2012, does not contain any reference to Arcapita
11 Bank funding fees, does it?

12 A No, it does not.

13 Q It only provides that AiM and NewCo
14 shall be responsible for the banks' fees; correct?

15 A That's right.

16 Q I want to go back to the slowdown in
17 work that you described. If you can look at
18 paragraph five of your declaration, which is
19 Exhibit 1.

20 So, Freshfields commenced work in
21 July 2011, and after some initial -- after some
22 initial work, Freshfields did a slowdown of work;
23 is that correct?

24 A What -- at the request of Arcapita,
25 as I said earlier, we agreed that we would wait

1 S. Murphy

2 until there was a more completed plan and a clear
3 timetable before we would do detailed work.

4 So, if you look at the time sheets
5 that we have provided as part of this declaration,
6 you will see that during the period from July
7 through December of 2011, the work was limited.
8 There were some phone calls. There was some
9 scoping of due diligence done. There was some
10 work done on the engagement letter we have just
11 been discussing. But there was not, say, a level
12 of work that was required to actually lead to the
13 IPO.

14 Q And when did Freshfields begin
15 working in earnest?

16 A I think I need to go back and look at
17 our time sheets, where the entries started to
18 become more significant. But I believe we got a
19 call in early January saying that they wanted to
20 have a kickoff meeting, another kickoff meeting,
21 because we had already been to the earlier kickoff
22 meeting, but they wanted to have another meeting,
23 and that we should plan to attend that, and that
24 we would then begin working -- we should be
25 reserving time to spend on it.

1 S. Murphy

2 Q From the period in June 2011, to the
3 January kickoff meeting, in January 2012, roughly
4 how much in fees had Freshfields incurred?

5 A My memory was the fees were less than
6 30,000 pounds at that stage. But I -- again, one
7 could check the -- the time sheet records that we
8 have provided. I haven't actually done that, so I
9 may be off here or there.

10 Q When -- when did the parties reach an
11 agreement that Freshfields' work on the EuroLog
12 IPO should wait until more preparatory work had
13 been done?

14 A There is an e-mail that Jonathan
15 Farrell sent to us following our July 2011
16 meeting, which was shortly after that meeting,
17 where he proposed that this -- and he sent us some
18 information about the Arcapita structure, and
19 proposed that we -- that this might be helpful for
20 us in -- in -- that they would -- I think it was
21 they were going to come back to us with -- with a
22 more completed structure.

23 And just as a bit of background, that
24 if two sets of counsel -- they had counsel all
25 doing the same thing at the same time, it can

1 S. Murphy
2 result in all of them reaching the same level of
3 fees that -- that perhaps you would see in the
4 Linklaters fee structure, and we concluded that
5 that was not necessary, and -- and Jonathan
6 concluded that that was not necessary.

7 Q It was not necessary because it was
8 duplicative work?

9 A At that stage, it would have been
10 duplicate and inconclusive. So that job -- our
11 job as underwriter's counsel is to diligence the
12 work that the company and their lawyers and
13 accountants have done, not to do it, and often
14 IPOs are organized so that people are doing things
15 in parallel. So we would be watching everything
16 as it happened.

17 That is inefficient. And we agreed
18 with Jonathan that it would be preferable for him
19 and for us that we waited until there was a more
20 complete understanding of how things were going to
21 be organized and how these transfers of assets
22 were going to be made.

23 Q Could Freshfields have performed any
24 work during this time?

25 A Well, we did perform some work, as we

1 S. Murphy

2 were asked to. So we didn't indeed need to
3 discuss issues with our clients, who may have had
4 questions about how things should be done
5 throughout the process. So our clients were
6 actively working with Arcapita at that time, so
7 there were some things that we needed to do.

8 And there was also work that Arcapita
9 and Linklaters wanted us to do in terms of getting
10 an understanding of how much diligence would be
11 done, and how the diligence would be done on
12 individual properties. So we spent some time on
13 that as well.

14 So again, the time sheets will all
15 show the work that we did. Again, it was either
16 requested by Arcapita or by our clients.

17 Q That work amounted to roughly
18 30,000 pounds over the period?

19 A The best thing to do is to look at
20 the information we have provided. I didn't come
21 with a specific breakdown month-by-month of what
22 time we did spend. I'm happy to look at time
23 sheets and do some addition, if you want me to.

24 Q All I'm trying to get at is, it's a
25 relatively insignificant amount in relation to the

1 S. Murphy

2 total fees you requested; is that correct?

3 MR. STUART: Objection. Overbroad.

4 The actual numbers are in the record as an
5 attachment to the declaration.

6 You can answer.

7 A Because I think it is in the range of
8 30,000 pounds, I think 30,000 pounds relative to
9 the over a million pounds that we ended up
10 spending in terms of our time cost, I have to say
11 that mathematically that would be relatively
12 insignificant.

13 Q Is it market practice in London for
14 Freshfields to defer work until Linklaters had
15 completed the work that they were doing?

16 A It is -- again, transactions are
17 organized differently depending upon what the
18 different parties -- how the different parties
19 want them organized. In a situation where there
20 is a lot of work needed to be done preparatory to
21 the IPO, it should be market practice, and I think
22 it is market practice, that responsible counsel
23 would propose and be willing to not get overly
24 involved in duplicating the efforts that -- that
25 another counsel would be -- would be making.

1 S. Murphy

2 So, I can't speak to what other firms
3 do, because that obviously is not -- not for me to
4 say, but certainly it is a responsible practice
5 to -- if you feel that there is responsible
6 counsel on the other side, to let them get on with
7 their work, and as long as they know, they clearly
8 understand the parameters, which we had discussed
9 with them, which the assets had to be clean, there
10 couldn't be any claims against the assets by third
11 parties, you can't IPO a company saying that it
12 may or may not own its assets, at least not in the
13 London market -- they understood those parameters
14 well, and they were working on seeing how that
15 could be done.

16 There were issues about tax
17 efficiency that they needed to work through with
18 KPMG, and all those things were things that we
19 could responsibly check and see whether we agreed
20 with once they had done the preparatory work.

21 Q Is it customary as underwriter's
22 counsel to defer the -- to defer to Linklaters the
23 work that Linklaters was performing?

24 MR. STUART: Objection. Overbroad.

25 MS. DiLUIGI: I will object as well.

1 S. Murphy

2 A The role of issuer's counsel is
3 broader than the role of underwriter's counsel,
4 so, I wouldn't say that it's unusual to -- to --
5 for them to be doing more work than -- or more
6 detailed work than Freshfields is doing.

7 So, for example, they would produce a
8 chart of the Arcapita structure, and explain to us
9 the work they had done to figure out how to move
10 the assets to where they needed to be, what the
11 pitfalls were that they might have come across in
12 the process of doing that, and then we would take
13 that away, and see whether we agreed with that.

14 What we wouldn't be doing is seeing
15 if there was a better way to do it, because we
16 hadn't been hired to do that job.

17 Q Do you know who was paying
18 Linklaters' fees at this time?

19 A I, certainly at the time, was not
20 aware of who would be paying their fees. I assume
21 that they would be being paid by the entities who
22 were benefiting, which would have been Arcapita
23 and -- well, they were all Arcapita entities at
24 the time, so, yes, Arcapita.

25 Q When you say "Arcapita," do you mean

1 S. Murphy

2 Arcapita Bank, or do you mean other Arcapita
3 entities?

4 A Again, based on my understanding that
5 Arcapita -- as was explained to us by Arcapita,
6 that Arcapita Limited was the entity that did all
7 the engaging in Europe for them, but it received
8 its funding from Arcapita Bank, then that would be
9 the arrangement that I would have expected to see.
10 I wouldn't know why that would have been any
11 different.

12 Q If you look at paragraph five of your
13 declaration, the second sentence: "Freshfields
14 had a number of discussions with P3 Limited
15 personnel at that time regarding the fee
16 arrangement."

17 A Yes.

18 Q Are these the discussions we were
19 talking about earlier, or are these new
20 discussions?

21 A These are the same discussions.
22 These are the discussions with Jonathan Farrell.
23 The reference to P3 is that it was Jonathan who
24 was a Manco employee rather than Karim and
25 Cherine, who were Arcapita Limited employees, but

1 S. Murphy

2 it was certainly the case that Jonathan discussed
3 whatever discussions we had with them. At least
4 he certainly told us he did.

5 Q What is P3 Limited?

6 A P3 Limited is effectively the NewCo,
7 so, P3 Limited would have been -- would be the
8 ListCo. Technically, we could have called this --
9 we could have said ParkPoint Properties personnel
10 here at this stage.

11 So the engagement with the banks was
12 with -- ended up being effectively with the NewCo,
13 with the ListCo. At this particular moment in
14 time, actually, Jonathan would have been an
15 employee of ParkPoint Properties.

16 Q And when we say ParkPoint Properties,
17 we are not talking about ParkPoint Properties SRO,
18 the Czech entity; correct?

19 A You know, actually, I don't think I
20 could actually say that. ParkPoint Properties, my
21 understanding is, is the Manco, and the Manco is
22 where I believe Jonathan was employed.

23 So I think we can check with Arcapita
24 about the legal entities that were involved.

25 Q Are you familiar with ParkPoint

1 S. Murphy

2 Properties PLC?

3 A PLC would be the P3 entity that we
4 referred to. I think it was P3 Limited, and then
5 it became PLC in order to do the IPO.

6 Q Is that the entity we are referring
7 to here?

8 A My use of "P3 Limited" here was to
9 distinguish Jonathan from Karim, but the actual --
10 I believe at the time of the discussions, it would
11 have been -- it's actually ParkPoint. At the time
12 that this was written, it was probably P3.

13 He was going to be the general
14 counsel of the ListCo, so, whether he was having
15 those discussions with us in the context of his
16 being the general counsel of ListCo or being
17 counsel for ParkPoint Properties, you know,
18 because this was a -- a forward-looking situation,
19 it could be either one of those that he was acting
20 for, and it was probably both. Because if the IPO
21 had happened, then the fees would have come from
22 the IPO proceeds.

23 Q So you are not sure who he was acting
24 on behalf of?

25 A Well, I think he was certainly -- he

1 S. Murphy
2 could not be acting on behalf of anybody other
3 than his employer at the time, I wouldn't have
4 thought, but he was also acting on the entity --
5 for the entity who was going to be ListCo going
6 forward, so I think he was probably acting on
7 behalf of both.

8 And he was delegated the authority by
9 Arcapita to discuss the fees with us and agree to
10 them with us.

11 Q And the next sentence says,
12 "Freshfields and the underwriters were told by P3
13 Limited personnel that they wanted to reach an
14 agreement with Freshfields directly regarding the
15 scope of Freshfields' work and rates, rather than
16 with our clients, the underwriters of the EuroLog
17 IPO."

18 Why was that?

19 A Well, again, I think Arcapita thought
20 if it was paying the fees, it should be discussing
21 what the fees should be and wanted to have control
22 over that.

23 Q Was that market practice in London?

24 A It is market practice in London for
25 the party benefiting from the IPO, i.e., the

1 S. Murphy
2 selling shareholder or the issuing company, to
3 determine what the fees will be. It's a bit more
4 unusual the extent to which Arcapita wanted
5 control over the process.

6 So, often there are more discussions
7 with our clients that are then discussed by our
8 clients with the ultimate paying entity. In this
9 case, the ultimate paying entity asked that it be
10 the person -- the people that these discussions
11 took place with.

12 So that is one aspect of this that
13 was a bit unusual, was the insistence of Arcapita
14 that because they were paying, that we would be --
15 that they would be the ones agreeing on the fees
16 with us.

17 Q When you say "the ultimate paying
18 entity," what entity are you referring to?

19 A Well, I should say the ultimate
20 paying entities, so from our perspective, the
21 parties benefiting -- in the banks' perspective,
22 the parties benefiting in the transaction were
23 paying the fees.

24 We really weren't totally particular
25 as to which of the Arcapita entities would

1 S. Murphy

2 ultimately pay, because it may well be that they
3 would choose to have it paid by one entity or
4 another, depending on where money flows were
5 going, and, as you may remember, the complexity of
6 the structure is such that there were any number
7 of entities that were benefiting from this IPO,
8 and Arcapita should have been the party
9 determining which one they thought was the
10 appropriate entity at the time, and it would vary
11 depending on the structure of the IPO.

12 Again, I think I explained to you
13 earlier that this transaction was originally
14 conceived as a wholly secondary deal out of which
15 the ListCo would not be getting -- receiving any
16 proceeds whatsoever, in which case it would
17 have -- there would be no question that the
18 engaging party would have been -- or the paying
19 party would have been the party that received the
20 proceeds from the transaction, and that would have
21 been either AIHL or Arcapita Bank.

22 Q You said that your expectation was
23 that the party benefiting from the transaction was
24 the one that would be paying the fees.

25 A Well, normally -- I mean, if a

1 S. Murphy

2 transaction moves forward, the proceeds are
3 raised, and the underwriter counsel fees are
4 deducted from those proceeds. So, the entity that
5 sold the shares is the party that normally would
6 be -- who -- where that deduction would be being
7 taken, if the transaction moves forward.

8 If the transaction doesn't go
9 forward and there aren't proceeds, then the
10 question becomes who is the appropriate party to
11 be paying, and that is -- you know, which party
12 will actually wire us the money is something that
13 we would be less concerned about, in this case,
14 than ultimately that some party did indeed wire us
15 the money.

16 So, you know, we have to be a little
17 careful here in terms of responsibility, and who
18 sends the wire. Those are two different things.
19 So Arcapita has a very complicated structure.
20 They use Arcapita Limited to do all of its -- all
21 of their activities in Europe. Arcapita Limited
22 doesn't have significant cash resources. It
23 regularly gets cash resources from Arcapita Bank,
24 who I assume pulls money out of the system, and
25 then it gets the benefit of many of the

1 S. Murphy

2 transactions that Arcapita Limited does, so
3 therefore, it funds Arcapita Limited.

4 That is how it was described to us.
5 That's how it was described to our clients.

6 Q What benefit would it have received
7 from this transaction?

8 A Arcapita Bank?

9 Q Yes.

10 A My understanding was that Arcapita
11 Bank was going to receive -- actually, depending
12 on how the structure worked -- within the
13 bankruptcy, there are two debtor entities, as I
14 understood, AIHL and Arcapita Bank, and my
15 understanding was that once various other
16 obligations were paid off, all the benefit of the
17 portion of the IPO proceeds used to acquire the
18 assets would flow to Arcapita, either AIHL or
19 Arcapita Bank.

20 Q When the IPO failed, what benefit did
21 Arcapita Bank receive from the failed transaction,
22 if any?

23 A As with any transaction, they -- you
24 know, they did not get any money at that time, but
25 they had had the possibility of having money at

1 S. Murphy

2 that -- and therefore, they were the party that
3 was going to benefit from the transaction. As you
4 probably know, not all transactions work, but if
5 work is taken to make the transaction possible,
6 that is an obligation that parties are willing to
7 take on. It's a decision that they make at the
8 time they decide whether to proceed or not to
9 proceed.

10 There were various points along the
11 way in this transaction where both AIHL, the
12 debtors, and the UCC were given the opportunity to
13 say that they didn't think this was an appropriate
14 transaction to do, and at -- and that was not a
15 decision that they made. They made a decision
16 that the transaction should proceed, and if -- to
17 determine whether they were happy with the
18 pricing. Pricing is not something that -- that we
19 have much of a determination as to.

20 Q I understand that they would have
21 benefited from the transaction had it gone
22 through, but that's not my question.

23 My question is: Once the transaction
24 failed, did Arcapita -- did the debtors receive
25 any benefit from the failed transaction?

1 S. Murphy

2 MR. TROY: Objection. Form.

3 MS. DiLUIGI: Objection.

4 Q You can answer.

5 A There was not cash that was passed up
6 the chain to the Arcapita entities, because they
7 had not raised cash. That would have done that.

8 Q Did the debtors receive any benefit
9 aside from cash as a result of the transaction?

10 MR. STUART: Objection.

11 MS. DiLUIGI: Objection.

12 A I think I would -- that really would
13 be speculation. I -- although I do think that a
14 tremendous amount of work was done so that they
15 either could sell -- they now know what they would
16 need to do to sell this, either in an IPO or
17 frankly in a trade sale. The same work would need
18 to be done in either case.

19 And I would presume that it's in the
20 interest of the debtors and the creditors to the
21 debtors that they monetize those assets at some
22 point. If they -- if they would monetize in two
23 months' time, they wouldn't have been able to
24 monetize in two months' time before all this work
25 had been done.

1 S. Murphy

2 So it does make that -- I think they
3 received substantial benefit in that they had
4 never previously conceived of a structure which
5 would enable them to monetize.

6 Q I'm not asking you to speculate or
7 presume. I'm asking if you have any personal
8 knowledge of any benefits from this transaction
9 that the debtors have received.

10 A I think I have --

11 MR. STUART: Objection. Asked and
12 answered.

13 A I described it in detail just that
14 moment. You can read the record back, if you
15 would like to.

16 Q I don't think you did answer the
17 question. All I am asking -- I'm not asking for
18 speculation. I just want to know if you are
19 personally aware of any concrete benefits that
20 flowed to the debtors as a result of the
21 transaction.

22 MR. STUART: Same objection.

23 MR. TROY: Objection.

24 MS. LIU: Objection.

25 A There was substantial benefit

1 S. Murphy

2 received from the delivery of a plan as to how the
3 assets could be monetized at some point in time.

4 Q And does that plan have any value
5 today?

6 MR. STUART: Objection.

7 MS. DiLUIGI: Objection.

8 A I suspect that the UCC is aware of
9 efforts that Arcapita is currently making to
10 monetize those assets today, and they would have
11 not been able to do that if they didn't have a
12 plan as to how those assets could be delivered.

13 Q Let's go back to the engagement for a
14 few minutes. So the first official engagement
15 letter was entered into on April 30th, 2012; is
16 that right?

17 A Yes.

18 Q And the declaration says that the
19 underwriters were in turn engaged by Arcapita
20 Limited, Arcapita Industrial Management Sarl and
21 P3 Limited?

22 A Yes.

23 Q Who were the original engaging
24 parties as part of the April 30th, 2012,
25 engagement?

1 S. Murphy

2 A Okay. It was set up with Arcapita
3 Limited as the engaging party at the request of
4 Arcapita. The intention was that, and it was
5 expressed in the engagement letter, that Arcapita
6 Industrial Management and the NewCo would join in
7 due course so that they would become the ceding
8 parties to the engagement letter, and the April 30
9 letter contemplates that.

10 Q So the April 30 letter was between
11 Arcapita Limited, Deutsche Bank and Credit Suisse?

12 A Yes.

13 Q Freshfields was not party to that
14 engagement letter?

15 A No.

16 Q None of the debtors were parties to
17 that engagement letter?

18 A No.

19 Q And it's not your position that
20 Freshfields was directly retained by Arcapita Bank
21 or any of the debtors to provide the services
22 here?

23 A Again, we couldn't have been engaged
24 by any parties other than our clients.

25 Q And it is not your position that

1 S. Murphy

2 Freshfields was a third-party beneficiary of a
3 contract with the debtors; is that correct?

4 A Not with the debtors, no.

5 Q And Arcapita Limited is not a debtor;
6 right?

7 A Arcapita Limited is not a debtor.

8 Q If you look at the Exhibit 4, which
9 is the excerpt you provided of that engagement
10 letter, it says -- at the end there, it says, "AiM
11 and NewCo will be responsible for fees and
12 expenses of legal counsel to the banks."

13 And this is the provision on which
14 Freshfields is entitled to its fees?

15 A I think the answer to that is yes.

16 Q Is there any reference to Freshfields
17 itself in the engagement letter?

18 A There is -- the engagement letter was
19 amended on the 8th of October, 2012, with a
20 specific reference to Freshfields, with a specific
21 reference to the amount of the fees, and the
22 circumstances and timing of payment.

23 That's in the next excerpt, if you
24 would like to take a look at it.

25 Q Let's stick to the April 30th for

1 S. Murphy

2 now.

3 If the engagement letter was with
4 Arcapita Limited, why were these two entities, AiM
5 and P3, chosen as the entities to be responsible
6 for Freshfields' fees?

7 A That would have been the proposal of
8 Arcapita Limited. Well, there is -- there is two
9 provisions actually in the letter as well. There
10 is one where they agree -- Arcapita Limited agrees
11 to pay the fees and expenses of the banks, which
12 would include their counsel, and then there is
13 another provision which actually uses -- uses this
14 language.

15 Q You only include one provision in the
16 excerpt you provide in your declaration.

17 A This was the more specific provision,
18 and then the provision that was subsequently
19 amended to make it clearer what the amounts and
20 the terms were, so it would seem to me to be the
21 more appropriate provision to include.

22 MR. MARECKI: Let's -- can I have the
23 April 30 letter?

24 (Murphy Exhibit 5 marked for
25 identification as of this date.)

1 S. Murphy

2 BY MR. MARECKI:

3 Q We've marked this as Murphy
4 Exhibit 5. Have you seen this document before?

5 A I have.

6 Q Can you tell me what it is?

7 A It is the April 30 engagement letter
8 that we have been discussing.

9 Q And if you flip to the end, does it
10 appear to be executed?

11 A Yes.

12 Q And the only parties to this letter
13 are Deutsche Bank, Credit Suisse, and Arcapita
14 Limited; correct?

15 A That's correct.

16 Q Can you point me to the second
17 provision you were referencing, the one you said
18 was not included with your declaration?

19 A Yeah. It's section four, "Expenses
20 and Payments."

21 Q Okay. What section of that?

22 A It's the -- the sentence that says,
23 "Whether or not the securities are issued and/or
24 the offering is consummated, the company shall
25 procure" -- "company" is defined here as Arcapita

1 S. Murphy

2 Limited -- "that AiM and/or NewCo shall reimburse
3 the bank promptly upon consummation of the
4 offering or abort of the same for all fees,
5 expenses and disbursements and other costs
6 (together with any VAT payable thereon) in each
7 case reasonably and properly incurred," and then
8 it goes on from there.

9 Q And that shall reimburse the banks,
10 not reimburse Freshfields; correct?

11 A Yes.

12 Q Did this engagement letter allow
13 Freshfields as a third-party beneficiary to
14 enforce the provision providing that AiM and P3
15 should be responsible for Freshfields' fees?

16 MR. STUART: Objection. Calls for a
17 legal conclusion.

18 But you may answer.

19 A This letter does not include the
20 language that the amendment includes, which
21 specifically provides for Freshfields to be a
22 third-party beneficiary.

23 Q And does that mean that Freshfields
24 could not enforce the terms of this letter?

25 MR. STUART: Same objection.

1 S. Murphy

2 A I don't -- I think that is a legal
3 conclusion, which I would have to take advice on.

4 Q Please turn to section ten of the
5 letter. The third paragraph down. Do you see
6 where it says, "The banks and the company do not
7 intend that any term of this letter should be
8 enforceable by virtue of the act by any person who
9 is not a party to this letter"?

10 A I do see that.

11 Q Is Freshfields a party to this
12 letter?

13 A No.

14 Q What is the basis for your position
15 that the debtors should fund the amounts that you
16 are being asked to be paid as part of the fee
17 motion?

18 A As explained in the e-mail attachment
19 to my declaration -- which actually might be
20 useful to have here, just so I can get the wording
21 accurate. So if we could look at -- Exhibit 4 to
22 my declaration?

23 Q This one?

24 A Yes.

25 (Murphy Exhibit 6 marked for

1 S. Murphy

2 identification as of this date.)

3 Q Marking as Murphy Exhibit 6 an e-mail
4 attached as Exhibit 3 to the declaration.

5 A So, I think what we explained in this
6 e-mail is that there was a court order in effect
7 authorizing power in the debtors to pay any
8 required legal fees and expenses in connection
9 with the IPO.

10 There was an engagement letter with
11 Arcapita and response from the underwriters
12 stating that they were responsible for those legal
13 fees, and that to me seemed quite a reasonable
14 basis on which to assume and expect that the fees
15 would be paid by -- the fees would not be paid to
16 us by the debtors, but rather that the debtors
17 would be funding the entities that had taken on
18 the obligations which the debtors were expected to
19 benefit from.

20 Q Well, the -- the fee order at --
21 first of all, is this referring to the IPO fee
22 order?

23 A I'm referring to the IPO fee order,
24 yes.

25 Q The fee order was not entered until

1 S. Murphy

2 September of 2012, and this --

3 A Yeah, I think it was -- it was not --
4 it was not on the docket until 2012, but I believe
5 the judge -- there was a negotiation of the order
6 at the hearing, and that -- so we certainly
7 justifiably relied upon the content of the order
8 provision that had not been challenged from the
9 date of the hearing, and we were certainly told by
10 Arcapita and Gibson Dunn that although the order
11 was not yet on the docket, that the judge had --
12 had ruled.

13 Q Well, we will get to the IPO fee
14 order in a bit. But what I am asking is: At the
15 time the April 30, 2012, engagement letter was
16 signed, the IPO fee order did not exist; correct?

17 A Yes.

18 Q And the fee order had not even -- the
19 fee order motion had not been filed.

20 A True.

21 Q So, what I am asking is: At the time
22 that the April 30th, 2012, engagement letter was
23 signed, what is the basis of your position at that
24 time that the debtor should fund the amounts that
25 you are asking for as part of this fee motion?

1 S. Murphy

2 A Arcapita Limited explained to us and
3 explained to our clients that the way their
4 arrangements worked with Arcapita Bank was that
5 Arcapita Limited took on the obligation, and they
6 were funded for those obligations by Arcapita
7 Bank. They didn't really -- they -- yes, by
8 Arcapita Bank.

9 And of course, for AI -- for Arcapita
10 Limited to take on obligations that it had no
11 ability to pay, obviously would have been
12 completely inappropriate for Arcapita Limited and
13 its directors, if not actionable, and potentially
14 subjecting them to criminal liability.

15 I think we reasonably expected that
16 the arrangements that Arcapita Limited had always
17 had in the past in its contracting would continue.

18 Q And these conversations, they were
19 conducted before this engagement letter was
20 signed?

21 A Yes, because there certainly was a
22 discussion of who was the appropriate engaging
23 party, given the complexity of the Arcapita
24 structure.

25 Q Aside from the representations as to

1 S. Murphy

2 Arcapita's funding structure, is there any other
3 basis for your position that the debtors should be
4 funding Freshfields' fees?

5 MR. STUART: You mean as of April --

6 MR. MARECKI: As of April 30, 2012.

7 A I -- I don't think that is actually
8 relevant to the circumstances. However, I think
9 we would have to say that we were relying on the
10 practices that were represented to us as the
11 manner in which Arcapita Limited funded its
12 obligations.

13 Q Can you turn back to section ten of
14 Exhibit 5, the April 30th engagement letter. At
15 the beginning of section ten, "Miscellaneous" --

16 A Um-hum.

17 Q -- it says that "this letter
18 constitutes the entire agreement and supersedes
19 all prior agreements, both written and oral,
20 between the parties with respect to the subject
21 matter hereof."

22 Do you see that?

23 A I do see that.

24 Q Does this written agreement contain
25 any of the oral representations as to Arcapita or

1 S. Murphy

2 the debtors funding the fees requested?

3 A It does not.

4 Q This April engagement was amended in
5 October 2012; correct?

6 A It was.

7 Q Why was it amended?

8 A It was amended primarily to deal with
9 the adding of Arcapita Industrial Management and
10 the ListCo as parties. It was also amended to
11 clarify our fee provisions.

12 Q Any other reasons?

13 A And to make us a third-party
14 beneficiary of the fee provisions.

15 Q So Freshfields was not a third-party
16 beneficiary of the fee provisions until October 8,
17 2012?

18 MR. STUART: Objection.

19 MR. MARECKI: You can answer.

20 A No.

21 Q I'm sorry, what was that?

22 A It was not, as we have just read in
23 the earlier engagement letter.

24 Q And it was also added to include AiM
25 and ListCo?

1 S. Murphy

2 A Yes.

3 Q And why were they included on this
4 letter?

5 A It was contemplated by the April 30
6 letter that they would be joined, and they were
7 joined.

8 Q Who was it contemplated by the
9 April 30 letter?

10 A I would have to look at that.

11 "The company will procure that, at
12 the request of a bank, Arcapita" --

13 MR. STUART: I think you better tell
14 him where you are reading from for the
15 record.

16 A I'm sorry. The second paragraph of
17 the letter.

18 Q And this is from the letter, not the
19 excerpt; correct?

20 A Yes.

21 Q Okay. Continue.

22 A "The company will procure that (a) at
23 the request of a bank, Arcapita Industrial
24 Management, and any other entity as may be agreed
25 by the banks and the company, and upon

1 S. Murphy
2 incorporation of NewCo, NewCo will enter into
3 terms identical to this letter, and engage the
4 banks on terms and conditions contained herein."

5 Sorry.

6 Q The parties to this October 2008
7 (sic) engagement letters, they are Deutsche Bank,
8 Credit Suisse, Arcapita Limited, and then it is
9 adding Arcapita Industrial Management and P3; is
10 that right?

11 A Yes.

12 Q Freshfields is not a party to this;
13 correct?

14 A No.

15 Q And none of the debtors are a party
16 to this agreement?

17 A No.

18 Q So it's not your position that
19 Freshfields is a third-party beneficiary to an
20 engagement letter between the underwriters and one
21 of the debtors, is it?

22 A No, that's not my understanding.

23 Q And it's not your position that
24 Freshfields was directly retained by Arcapita Bank
25 or AIHL to provide the services that you provided

1 S. Murphy

2 in connection with the IPO; right?

3 A They could not have retained us for
4 that. They could have contracted with us, but
5 they didn't -- they are not party to this
6 contract, no.

7 Q When you say that an additional
8 reason for amending the letter was to clarify the
9 fee provision, what are you referring to?

10 A The fee -- the -- I think just --
11 well, to clarify the fee provision to actually
12 state what was -- were the agreed terms. So, as
13 we see from the earlier letter, it said "in
14 accordance with standard engagement terms." As we
15 had at that stage agreed a specific fee
16 arrangement with Arcapita Limited, we thought it
17 was better that that specific arrangement be
18 stated clearly in -- in the letter, and that the
19 timing of that payment be stated as well.

20 I think Arcapita Limited was
21 concerned about timing of the payment because --
22 there was something to do with their getting money
23 from Bahrain, that it was going to take a certain
24 period of time for them to get the money from
25 Bahrain, which is why it says the five business

1 S. Murphy

2 days from the end of November. That was at their
3 request.

4 We had had five business days after
5 the decision not to proceed with the transaction,
6 and they preferred that we have this particular
7 structure, because the money would be coming from
8 Bahrain.

9 Q When you say "coming from Bahrain,"
10 coming from who?

11 A Arcapita Limited doesn't have an
12 office in Bahrain, so I think they were referring
13 to Arcapita Bank.

14 (Recess taken.)

15 (Murphy Exhibit 7 marked for
16 identification as of this date.)

17 BY MR. MARECKI:

18 Q We marked as Exhibit 7 the October 8,
19 2012, engagement letter.

20 A All right. Um-hum.

21 Q Ms. Murphy, have you seen this
22 document before?

23 A Yes.

24 Q And it is the executed October 8,
25 2012, engagement letter?

1 S. Murphy

2 A I probably should get handed a copy
3 of it. Do I have it? Sorry, I have the -- it
4 looked so similar at the top. Yes, I have it.

5 Yes, it looks like it is signed.

6 Q Before the break, you said that one
7 of the reasons for amending the letter was to
8 clarify the specific fee with Arcapita Limited; is
9 that accurate?

10 A Yes. Basically, to clarify what
11 "standard engagement terms" meant in the earlier
12 letter.

13 Q Arcapita Limited is not one of the
14 entities that was obligated to pay fees under the
15 April 30 engagement, was it?

16 A It has an obligation to procure the
17 payment of fees, so -- but it certainly is under
18 this letter.

19 Q So, under the original letter,
20 Arcapita Limited was obligated to procure the
21 fees, but Arcapita Industrial Management and P3
22 were the entities that were responsible for paying
23 the fees?

24 A Well, I think from a legal
25 perspective, the obligation to procure payment is

1 S. Murphy
2 an obligation. If it's going to be fulfilled
3 through one entity or another, again, I think as I
4 said earlier, that those were the entities that
5 they would -- they were putting forward at the
6 time.

7 Q So it was your view that Arcapita
8 Limited was also responsible for paying
9 Freshfields' fees under the April 30 engagement
10 letter?

11 A Let me find that provision.
12 Arcapita Limited was a party to the
13 April 30 letter, and it provided that entities
14 would indeed pay those fees, so yes, I think they
15 had to be responsible for it. They were the only
16 contracting party at the time.

17 Q So, only the contracting party can be
18 responsible for the fee obligation?

19 MR. STUART: Objection.

20 MS. DiLUIGI: Objection.

21 A They certainly had to be one of the
22 people responsible for the fee obligation, as they
23 had contracted that the other parties would pay
24 it.

25 Q The October 8th engagement letter

1 S. Murphy

2 specifically included Arcapita Limited along with
3 AiM and P3 as being obligated to pay Freshfields'
4 fees; right?

5 A Yes. It says Arcapita Limited and
6 the ceding parties, so, yes, it does.

7 Q And again, none of the debtors are
8 any of the parties to this fee obligation;
9 correct?

10 A They are not parties to this letter.

11 Q And they are not mentioned as being
12 one of the entities responsible for payment of
13 fees?

14 A They are not mentioned in this
15 letter.

16 Q The letter also makes Arcapita
17 Limited, Arcapita Industrial Management and P3
18 jointly and severally responsible for Freshfields'
19 fees; is that right?

20 A It does.

21 Q Were those entities jointly and
22 severally liable under the April 30 letter?

23 MR. STUART: Objection.

24 A I think as a legal matter, that you
25 wouldn't have been able to -- the language that

1 S. Murphy

2 you have used, were they liable for it, at that
3 stage they had not become party to the letter.

4 Q So, no, they were not?

5 A They were not contractually liable.

6 Q Do you know why the letter was
7 amended to make the parties jointly and severally
8 responsible for the payment of fees?

9 A That would be the normal way if they
10 had been -- if those entities had been able to
11 sign the original letter, that would have been the
12 usual language that we would have used. So this
13 language was just putting in the language that we
14 would have used if they had all been parties at
15 the time.

16 Q And again, why were they not made
17 parties to the original letter?

18 A The -- my understanding was that at
19 the -- on April 30, that with Arcapita Industrial
20 Management, the banks weren't able to contract
21 with them at that time because they were used --
22 they were going through their process of -- their
23 money laundering, know your customer type
24 processes, that they need to go through before
25 they can contract with somebody legally, and so

1 S. Murphy

2 that wasn't possible, and at that time the NewCo
3 had not been formed.

4 Q Let's talk about Arcapita Industrial
5 Management for a bit. Do you have any idea where
6 Arcapita Industrial Management fits within the
7 corporate structure of Arcapita?

8 A I don't have the structure chart in
9 my head, and I don't have a structure chart with
10 me. I don't know if you might have one in your
11 box over there that we could take a look.

12 Q I do not.

13 A Okay. So, but it is not a -- it -- I
14 don't believe it is actually within a chain of
15 ownership. It may well be an owner of some of the
16 assets. But I don't -- I don't actually have that
17 information at hand.

18 Q You don't know whether it owns any
19 assets or, if so, what assets?

20 A I believe it was only joined because
21 it does own some assets. I don't know the
22 circumstances of those assets. This -- the
23 decision to join them was one specifically made by
24 the banks, and not particularly in consultation
25 with Freshfields.

1 S. Murphy

2 Q And you don't recall why the banks
3 wanted to join them to the letter?

4 A They -- Arcapita Industrial
5 Management was viewed as an entity of substance,
6 so it must -- I'm assuming that that came from
7 either an analysis that the banks did of their
8 balance sheet or perhaps an analysis of their
9 structure to see what assets they owned.

10 Q And Arcapita Industrial Management,
11 they were a party to the original, or rather, not
12 a party to the original engagement letter, but
13 they were one of the parties responsible for the
14 payment of Freshfields' fees?

15 A They were named as a party that would
16 become a party to the engagement letter in
17 paragraph -- in the second paragraph of the
18 April 30 letter. Paragraph -- subparagraph A
19 specifically refers that they -- that Arcapita
20 Limited would procure that they will become a
21 party.

22 Q Another reason you mentioned for the
23 amendment of the letter was the timing of the
24 payment, and I believe you used the phrase,
25 something to do with getting money from Bahrain.

1 S. Murphy

2 A Well, there are two points. I think
3 we wanted to clarify the timing of payment to be
4 consistent with what we previously discussed with
5 Arcapita Limited. And then Arcapita Limited had
6 requested this specific provision, that it be five
7 days after the end of November, as opposed to what
8 we proposed, which was five days after the
9 decision to -- I think it was after the
10 transaction had not -- let me look at this.

11 Sorry.

12 Yeah. So, I think we had -- we had
13 initially proposed something that would have been
14 an earlier date, and Karim came back to us saying
15 that he wanted it changed to this, because the way
16 it worked was, they would put something in, we
17 would invoice them. They would put something in,
18 and then it would come back from Bahrain, there
19 was a five-business-day provision that was needed
20 for getting money out of Bahrain.

21 Q So the timing concern was purely this
22 five-day period issue?

23 A Well, actually, my memory is not
24 perfect on that. I just -- I do remember we
25 changed the provision, and that he specifically

1 S. Murphy

2 said he needed it changed because that's the way
3 the normal payments worked with getting money from
4 Bahrain.

5 And that was acceptable to us. We
6 would have preferred to have it be sooner, but --
7 but it seemed a perfectly acceptable thing to
8 accept.

9 Q Did Freshfields have any concerns
10 about getting paid at this point?

11 A Lawyers always worry about getting
12 paid.

13 Q Did Freshfields have any particular
14 concerns in this instance about getting paid its
15 fees?

16 A Again, we always have concerns about
17 getting paid until we have the money. That's
18 become an increasing issue, I think, for all law
19 firms. I hope it's not just a Freshfields point.

20 I think in this circumstance, we were
21 aware that despite the court order, that the
22 committee was likely to raise objections to our
23 fees, because that was their historical pattern,
24 raising objections. We didn't think that they
25 would deny the existence of the court order, but

1 S. Murphy

2 we did think that we would have to have some
3 discussions.

4 We, of course, thought it was useful
5 to have clarity as to what the specific
6 arrangements were, because they previously dealt
7 with most of the specifics of the arrangements
8 over an exchange of e-mails with -- with Arcapita
9 Limited, which is a usual way of dealing with
10 these things in the London market, probably a less
11 usual way to deal with these things when you have
12 parties in front of a bankruptcy court.

13 Q So you are aware of the -- and by the
14 order, you are talking about the IPO fee order?

15 A The IPO fee order, yes.

16 Q And that fee order was --

17 A I'm sorry, no, not the IPO fee order.
18 I think I am referring to the EuroLog order. I
19 don't know what you call them. There's two
20 orders.

21 Q The approval order.

22 A Yeah. It's not the Linklaters order,
23 which was a separate order.

24 Q We're talking about the same order.
25 The one entered in approximately September?

1 S. Murphy

2 A Yes. The one that appeared on the
3 docket in September.

4 Q Did you rely on the IPO -- on the
5 EuroLog order in any way?

6 A I think if you read my e-mail to
7 Karim that has been included, you can see that we
8 did rely upon that.

9 Q In what way did you rely upon it?

10 A Well, it was a court order that
11 authorized the debtors to fund the obligations
12 necessary to be incurred in connection with the
13 IPO, the expenses of the IPO. Our fees were quite
14 clearly an expense of the IPO.

15 So we very much relied on that order.
16 It was an order of the court.

17 Q Was it your understanding that that
18 order preapproved payment of Freshfields' fees
19 without committee approval or further order of the
20 court?

21 A Well, we were aware that there was a
22 budgeting process, which somewhat unusually seemed
23 to happen the way every month that fees had to get
24 approved, so we were aware that our fees would
25 have to be put into the budget, and indeed, they

1 S. Murphy

2 would be subject to some form of scrutiny by the
3 committee.

4 We also knew, having seen the pattern
5 of the -- with Linklaters, that there would be a
6 process that we would need to go through. Whether
7 we were expecting it would be this degree of
8 process, I would say no, because I would have
9 thought we -- we -- a court order is a court
10 order. The fees were clearly authorized. The
11 amount was not authorized and the timing of the
12 payment was not authorized, because they were not
13 mentioned or put before the court.

14 Q As you said, the court order, you
15 recognize that despite the existence of the court
16 order, Freshfields could not get paid its fees
17 without further order of the court; correct?

18 A No, I didn't expect that at all. I
19 would have thought that the fees were authorized.
20 Then the -- maybe this is me not understanding
21 bankruptcy properly. But the court -- the
22 court -- the -- the order actually stated that the
23 funding of the fees was authorized. However, we
24 understood from the process that had gone on in
25 the past with the committee, that they objected to

1 S. Murphy

2 just about everything, so that we shouldn't be
3 surprised if there would be wrangling over the
4 request by the debtors to fund the fees.

5 The point, as Karim has said in his
6 e-mail that is included in Exhibit 3 to my
7 declaration, which is Murphy Exhibit 6, "The point
8 I was making below is that just because we ask for
9 payment does not mean the UCC will not object or
10 fight it."

11 We did understand that, and it was
12 clearly stated to us in writing. That didn't mean
13 we thought that the UCC could overrule the court
14 order.

15 Q Well, if you turn to the previous
16 e-mail on this Exhibit 6, on September 25th, 2012,
17 you wrote to Karim, "We are aware of the situation
18 in terms of obtaining budget approval from the CC
19 in the event the transaction does not proceed, and
20 that even for agreed payments, they may attempt to
21 block/debate them."

22 Do you see that?

23 A Yes, indeed.

24 Q Does CC refer to Creditors Committee
25 here?

1 S. Murphy

2 A Yes.

3 Q So you were aware after the IPO,
4 after this order had been entered, that
5 Freshfields' fees were not automatically going to
6 be paid; correct?

7 A We had understood that what had been
8 agreed between the debtors and the UCC was that
9 they would -- they would agree the budget every
10 month, and so that there would need to be that
11 process.

12 We also knew that -- we had been
13 told, we didn't know, but we had also been told
14 that the UCC argued about most points regardless
15 of whether they had been authorized or not.

16 Q And this says even for agreed
17 payments, meaning even if there was not a dispute
18 as to the amount of the fees, you are aware that
19 the Creditors Committee may take action and that a
20 court order would be required in order to obtain
21 payment of Freshfields' fees?

22 MR. STUART: Objection. Compound
23 question. Could you break that down? I
24 think there were at least two questions
25 there.

1 S. Murphy

2 Q You can answer.

3 A Again, I think what I was saying here
4 is what it says, is that they may attempt to
5 block/debate them, which has proved to be true.
6 That doesn't mean that they weren't authorized
7 payments and we weren't entitled to rely upon the
8 court order.

9 Q Well, let's -- let's break this down.
10 It says "even for agreed payments." What do you
11 mean by "agreed payments"?

12 A That if the debtors agreed that these
13 were appropriate payments, that there was still a
14 budget process as to when the money was going to
15 leave the debtors' estate.

16 Q When you say "appropriate payments,"
17 do you mean that if the amount of the payments
18 were deemed appropriate, then -- is that what you
19 mean by "agreed payments" here?

20 A I think what I -- what I -- what I
21 understood at the time of writing this was that
22 there was a budget process that was gone through
23 every month, and that the practice of the -- the
24 committee and the debtors was that they would
25 agree that budget, and that in -- that what

1 S. Murphy

2 usually happened is there was an argument about
3 them, and that's what I understood.

4 Q And even if the amounts in the budget
5 was reasonable, it could still be objected to?

6 A I did not think that if there was a
7 court order that said that these were required --
8 that required payments would be funded, that --
9 and the debtors agreed as to the amounts of the
10 payments being appropriate, that they could
11 ultimately be blocked.

12 Q That's not my question. My question
13 is simply: If the amount of a payment was
14 considered reasonable, could it still be -- could
15 it still require a court order in order to obtain
16 funding of that payment?

17 MR. STUART: Objection.

18 Go ahead, you may answer.

19 A The court order said that these
20 payments could be made without further order of
21 the court, so that was my reasonable expectation.

22 Q But here it says that the committee
23 may attempt to block or debate them. When you
24 mean -- when you say "block or debate," did you
25 not think that it could require a further order of

1 S. Murphy

2 the court?

3 A It would -- it would surprise me that
4 it would, given that there was a court order, but
5 then again, we have the debtors' objection denying
6 the existence of the court order, so, anything --
7 anyone can make an argument, and it would appear
8 that arguments were made about just about
9 everything in this process.

10 Q Is it your position that the IPO --
11 is it your position that this order preapproved
12 the debtors' funding of Freshfields' legal fees?

13 MS. DiLUIGI: Objection.

14 A It preapproved -- well, it did what
15 it said, actually. Do we have the order here?
16 Does anybody have a copy of the order?

17 Q I'm not asking about the text of the
18 order.

19 MR. STUART: I think if she wants to
20 see it, she should be entitled to see it, to
21 answer your question.

22 (Murphy Exhibit 8 marked for
23 identification as of this date.)

24 THE WITNESS: This is the wrong
25 order.

1 S. Murphy

2 MR. STUART: Do you want to leave
3 this marking?

4 MR. MARECKI: We can leave it as 8.
5 So this is 9.

6 (Murphy Exhibit 9 marked for
7 identification as of this date.)

8 A Is it useful for me to read paragraph
9 two?

10 Q You can read --

11 MR. STUART: If that's responsive to
12 his question.

13 A "Pursuant to Sections 105(a) and
14 363(b) of Title 11 of the United States Code, (the
15 Bankruptcy Code), the Debtors are authorized to
16 execute the EuroLog IPO documentation and the
17 debtors are authorized and empowered to take any
18 and all, pay any required fees and expenses, enter
19 into any and all other agreements and
20 transactions, and to perform such other and
21 further actions as are necessary to carry out,
22 effectuate or otherwise complete the EuroLog IPO
23 without further order of the court." That's what
24 I believed was the case.

25 That's what I believed was the case.

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2 Q As a result of that language, is it
3 your position that this order preapproves the
4 debtors' funding of Freshfields' fees?

5 MR. STUART: Objection.

6 You can answer.

7 A Yes.

8 Q Can you take a look at Exhibit 3, the
9 debtors' reply brief, and turn to page 16.

10 At the top of -- right -- or rather
11 right under point C, it says, "The debtors do not
12 contend that the IPO approval order preapproved
13 the debtors' funding of fees and costs of the
14 EuroLog affiliates in any amount whatsoever."

15 So you disagree with that statement?

16 A Perhaps I misunderstood your previous
17 question. Services provided must have been
18 necessary and the amount to be paid must be
19 reasonable.

20 As I think that both of those are the
21 case, that's why I believe that the IPO order did
22 approve them. But of course, the amounts and
23 whether they are necessary or not are -- are to be
24 determined.

25 Q And that would need to be determined

1 S. Murphy

2 by the court?

3 MR. STUART: Objection.

4 A If the -- if -- I think -- well, I
5 think ultimately, if -- if the UCC is
6 uncomfortable with the court's order and the
7 debtors' determination as to the -- that they are
8 required and reasonable, that that would probably
9 need to be the next step.

10 But I do think that the court
11 authorized these fees as long as the debtors
12 believed that they were required and reasonable.

13 Q So, if the committee did not -- if
14 the committee was not comfortable, then in order
15 for Freshfields to get paid, it would need a court
16 order determining that the fees are required and
17 reasonable?

18 MR. STUART: Objection.

19 A I think that is getting beyond my
20 knowledge of bankruptcy procedure.

21 Q So you recognize, though, that even
22 despite the existence of this order, there is
23 still a procedure that Freshfields needed to
24 undergo with the court in order to obtain payment
25 of its fees?

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2 MR. STUART: Objection.

3 MS. DiLUIGI: Objection.

4 A I was certainly surprised that we
5 needed to go through the process that we are going
6 through now and the expense and the time to --
7 certainly for the debtors' estate, if nothing
8 else. So I am surprised we are going through this
9 process, given the circumstances, given the court
10 order, given the reasonableness of the fees, given
11 the fact that they were required. It does
12 surprise me.

13 Q Although it surprises you, you do
14 recognize that this was a possibility at the time
15 the order was entered; correct?

16 A I didn't -- well, I certainly
17 recognized it at the time that -- my e-mail to
18 Karim does recognize that the committee generally
19 does object to everything, yes.

20 Q And you recognize that when the
21 committee objects to something, you need a court
22 order in order to obtain the funding?

23 MR. STUART: Objection.

24 A I don't -- I mean, that -- that's --
25 yes, I could -- that goes beyond my bankruptcy

1 S. Murphy

2 knowledge as to whether it would be the judge
3 would just say, I have ordered this already, don't
4 come back to me again.

5 They could do that. I would imagine
6 a judge could do that. I'm not an expert in
7 bankruptcy.

8 Q Despite the existence of this IPO
9 order, you were aware that it was possible that
10 Freshfields may need to take additional steps in
11 order to get paid its fees?

12 MR. STUART: Objection.

13 A I don't think -- you know, again, we
14 did not need to take additional steps. This is
15 the debtors' motion. This is not my motion. It's
16 not Freshfields' motion. It's the debtors'
17 motion.

18 So, you know, from my perspective,
19 the debtors should make the motion, has asked us
20 to support the motion, which we are doing.

21 Q But you are aware that a motion may
22 be necessary, is all I am asking.

23 A I was surprised a motion was
24 necessary. Obviously, it has been necessary,
25 because that's where we are today. That's what

1 S. Murphy

2 has happened.

3 Q Do you know roughly how much in fees
4 Freshfields had incurred at the time the order was
5 entered?

6 A I think we can look to -- if you look
7 to my e-mail, it probably gives a fairly rough
8 guide to where we were. Now I can't find it.

9 MR. STUART: It's marked as 6.

10 A So, this is obviously a rough guide,
11 but given the e-mail was sent on the 19th of
12 September.

13 It said the work we were asked to do
14 through mid August resulted in our time costs
15 increasing to approximately 600,000 pounds, so I
16 think that would be a rough estimate at least at
17 the time the order was sought.

18 Q And at the time the order was granted
19 in September of 2012?

20 A Remind me of when the court hearing
21 took place.

22 Q The order was entered on
23 September 10th.

24 A Yeah, but I am more interested in the
25 court hearing, because the transcript includes a

1 S. Murphy

2 detailed debate of the order, and the question
3 about the fees was not challenged, so -- and I
4 think I would be going from that date.

5 Maybe we can look at the date of the
6 transcript which is attached. Is the transcript
7 attached --

8 Q No, it's not.

9 A -- to the reply?

10 Certainly somebody here knows the
11 date of the hearing.

12 MS. DiLUIGI: Mid August.

13 A Mid August. So that's why I chose
14 the date that I did. Mid August was chosen for
15 the September 19th e-mail because that's when the
16 court order was -- the court -- that's when the
17 hearing took place.

18 Q And so that's the 600,000-pound
19 amount, roughly?

20 A Yes.

21 Q At the time of the hearing?

22 A Yes.

23 Q And in the month between the time of
24 the hearing and the time the order was entered, do
25 you know approximately how much in fees

1 S. Murphy

2 Freshfields incurred?

3 A I would have to look back at the --
4 the time sheets to give you an estimate of that.

5 Q Do you know if you had exceeded the
6 725,000-pound cap at that point?

7 A We had exceeded -- I don't know when
8 we exceeded the 725,000-pound cap.

9 Q Is it fair to say you were probably
10 close to the cap by the time the order was
11 entered?

12 A I don't think so, because I don't
13 think we did a substantial amount of work in late
14 August, early September.

15 Q You were already at 600 of the 725 by
16 the time of the hearing; right?

17 A Yes, but we -- there was a push to
18 get the term sheets agreed with the committee, so
19 there was quite a bit of work that was done in the
20 lead-up to the hearing. Following the hearing,
21 there was not very much work done until people
22 reassessed the markets in September, and
23 determined that it was appropriate to push forward
24 with the IPO, at which time we had to do a
25 substantial amount of work, because we had

1 S. Murphy
2 effectively suspended -- not suspended. We had
3 not been doing -- with the agreement of Arcapita,
4 we did not start work, for example, on the actual
5 underwriting agreement itself until they asked us
6 to do so.

7 So, that would not have been a
8 particularly busy time, between mid August and mid
9 September. I think the time sheets will bear that
10 out, if you wanted to examine them.

11 Q We can put that aside for now.

12 Let me turn to Exhibit 2, which is
13 the debtors' fee motion, paragraph 14.

14 A It's 2? Okay.

15 Q In paragraph 14, see where it states,
16 "Accordingly, all of the IPO professionals
17 providing valuable services that inure to the
18 benefit of the debtors' estates did so with the
19 understanding and expectation that they would be
20 paid for those services the way they always had,
21 with funds contributed by the debtors."

22 Do you agree with that statement?

23 A Yes.

24 Q Why?

25 A Because all funding for Arcapita

1 S. Murphy

2 Limited, we were told, always came from the
3 debtors.

4 Q Has Freshfields been paid for any
5 services with the debtors' funds?

6 A No, we have not. Linklaters and KPMG
7 have been, I understand.

8 Q And you have not -- but Freshfields
9 has not received payment of its fees from any
10 funds of the debtors; correct?

11 A Not to date.

12 Q Work on the EuroLog IPO began in
13 July 2011?

14 A It did.

15 Q Is that right?

16 And you are aware that Arcapita had
17 gone into bankruptcy during the course of
18 Freshfields' work on the IPO?

19 A Yes.

20 Q And how did you become aware of that?

21 A Did I first become aware because
22 somebody told me or did I first become aware of it
23 from seeing it in the news reports? I'm not sure.

24 Q Was there any expectation that as a
25 result of the bankruptcy, that funding would work

1 S. Murphy

2 in any way that was different from the way it had
3 in the past?

4 A We obviously needed to understand
5 that. We asked questions about that, and that we
6 were told that Arcapita -- the debtors were
7 continuing to fund the portfolio companies as
8 necessary.

9 Q Would you agree that despite the
10 intervening bankruptcy, that Freshfields expected
11 to be paid for those services in the way that
12 those services always had been paid for?

13 A Yes, because that's what we were told
14 would happen and had always happened. It was
15 continuing to happen.

16 Q So you were told it was business as
17 usual and the debtors will continue to pay?

18 MS. DiLUIGI: Objection.

19 A I think we were told that the -- the
20 debtors were discussing with the committee the
21 value of this particular monetizing event, and
22 that there was a decision to seek a court order
23 getting approval of the monetizing event, and all
24 that was necessary to achieve the monetizing
25 event, one of which was the funding of fees should

1 S. Murphy

2 the monetizing event not occur. That was what we
3 understood the process to be.

4 Q And you understood that from
5 discussions with who?

6 A I think we would have to say there
7 was a series of discussions. So we had our first
8 call with Arcapita and Gibson Dunn. We had a
9 number of calls that the banks had had with
10 Arcapita separately without us, and then there was
11 a call that took place between Arcapita and Gibson
12 Dunn.

13 We initially were told that
14 everything was business as usual, that -- that
15 there wasn't going to be any change in -- in what
16 was happening. I think it was really the banks
17 becoming concerned that it was going to be
18 difficult to achieve a public market transaction
19 without some kind of formal approval from the
20 court, where the work was done to try to get a
21 better understanding of what that process would
22 be.

23 Of course, right after the order --
24 right after the case was filed, there seemed to be
25 a fair bit of activity that needed to go on in

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2 terms of things like hiring counsel and advisors,
3 all within the bankruptcy process. So, there was
4 not a lot of clarity until sometime after the
5 bankruptcy case was filed, where I -- where I
6 would say that we were necessarily getting
7 satisfactory answers about how things would
8 proceed and what the arrangements would be.

9 I don't think -- we didn't know who
10 was going to be on the committee. We didn't know
11 who the committee's advisors would be. We didn't
12 know what arrangements were being made with the
13 committee. So, so it -- it's probably a bit
14 inappropriate for me to be suggesting that the
15 initial representations made to us were the ones
16 that we ended up with in the end.

17 But certainly my understanding is
18 that the debtors have continued to fund the
19 properly incurred obligations of the portfolio
20 companies as needed.

21 Q Are those conversations you are
22 referencing, these are all after the filing of the
23 bankruptcy petition?

24 A Yes.

25 Q Who initially told you that

1 S. Murphy

2 everything was business as usual?

3 MS. DiLUIGI: Objection.

4 A That would have been said by both
5 Arcapita and by Gibson Dunn.

6 Q Do you recall who at Arcapita?

7 A There would have been a number of
8 people at Arcapita that would have made statements
9 like that. And this -- this was all made over
10 phone calls, so in terms of identifying the
11 individuals, probably I would be speculating, so I
12 would rather not do that.

13 Q How about Gibson Dunn?

14 A That would have been Mike Rosenthal.
15 But I -- you know, I have to say, in fairness, I
16 don't hold them to that, because that was early
17 days, and they subsequently came back being very
18 much in favor of the idea of the court order to
19 insure that things could continue, that the IPO
20 could proceed. So they may well have changed
21 their views on that.

22 And the court order was the solution
23 to that. It had been proposed by Freshfields and
24 the banks, but I -- all parties seemed to think it
25 was a good idea with -- with further thought.

1 S. Murphy

2 Q The court order being the EuroLog
3 launch order?

4 A Yes.

5 Q Did you -- strike that.

6 Did your expectations of payment of
7 fees change at all as a result of the filing for
8 bankruptcy?

9 A Not as to payment. Perhaps as to
10 process.

11 Q In what way, in what way would
12 payments not be affected?

13 A Well, nearly all the work that we
14 were doing was work that was for the benefit of
15 the estate, effectively, in the ordinary course,
16 fees that would be in the ordinary course of
17 monetizing the assets, which was in -- the
18 business really that Arcapita was in.

19 So, we expected that our fees would
20 be funded as per usual Arcapita practice, in the
21 ordinary course.

22 Q You felt that that process would
23 change, how so?

24 A Well, it -- it -- whether it changed
25 legally -- I don't think it changed legally. I

1 S. Murphy

2 think it would have changed practically, when we
3 did see that things appearing on the docket tended
4 to be a bit heated at times. There seemed to be a
5 fair bit of emotion involved, that they -- and so,
6 so that we did -- we did -- you know, we
7 weren't -- again, not -- we have been surprised by
8 the process, but it built up, seeing the extent of
9 objections that have been raised at all stages to
10 the -- any efforts that the debtors have made
11 to -- to monetize or fund their usual obligations,
12 in the ordinary course.

13 So, I think we -- over time we
14 realized that the process here might have -- might
15 be a bit more involved than a usual process would
16 be because of the bankruptcy.

17 Q And isn't one of the changes as a
18 result of the bankruptcy the fact that post
19 petition a court order may be necessary in order
20 to fund certain payments?

21 MS. DiLUIGI: Object to the question.

22 MR. STUART: Objection.

23 A That -- I am not an expert in
24 bankruptcy. But I thought these were -- again,
25 Arcapita is in the business of investing and

1 S. Murphy

2 selling assets. That's what its business is.
3 That usually entails hiring lawyers to help you
4 with those processes.

5 This was ordinary course activity in
6 Arcapita's business for anyone that understands --
7 if you understand the nature of their business.
8 So we wouldn't necessarily have reasonably
9 expected there needed to be a specific court order
10 for the funding of those expenses.

11 Q Would Freshfields have had to seek a
12 court order in order to permit the debtors to fund
13 the payment of its fees in the absence of a
14 bankruptcy?

15 MR. STUART: Objection.

16 MS. DiLUIGI: Objection.

17 MR. STUART: Calls for speculation.

18 A In the absence of a bankruptcy,
19 seeking a court order? That would be a very
20 unusual circumstance, to go to court to get -- to
21 order your fees to be paid, if that's what you're
22 asking me.

23 I think in the bankruptcy, the
24 purpose of the court order -- you know, one of the
25 purposes of a court order was to give comfort to

1 S. Murphy

2 the market that the bankruptcy should not
3 interfere with the successful delivery of
4 unencumbered assets to investors, and that --
5 whether that was needed as a legal matter or as a
6 market matter, that was -- you know, it -- it
7 probably served both purposes.

8 But one of the reasons for seeking
9 the IPO order was indeed to be able to assure the
10 market that the assets could be delivered free and
11 clear, without objections from the UCC, and that
12 is not a small issue in any kind of a public
13 marketing process, as to whether what you are
14 asking people to pay you money for is actually of
15 any value.

16 So, you know, I -- whether the IPO
17 order was essential as a legal matter is something
18 I would defer to the bankruptcy professionals, but
19 certainly the IPO order was quite important from a
20 marketing perspective to help to realize value.

21 Q Okay. If Freshfields knew that
22 funding for its fees was ultimately going to be
23 required by the debtors, then why wasn't the fee
24 provision of the engagement letter amended to
25 include AIHL or Arcapita Bank?

1 S. Murphy

2 A Arcapita Limited -- Arcapita put
3 forward to us that Arcapita Limited was always the
4 contracting party in Europe, and that they would
5 be the ones that signed all their letters,
6 incurred all their obligations and received their
7 funding from Arcapita Bank. That was accepted by
8 our clients.

9 Q And you never sought to include
10 Arcapita Bank or AIHL as one of the fee-paying
11 entities in the engagement letter?

12 A No.

13 Q And why is that?

14 A Well, actually, in fairness, I think
15 at the initial phases, even before the bankruptcy
16 occurred, there was a question as to who was the
17 appropriate contracting party, and obviously, from
18 the perspective of the banks, the top legal entity
19 would have been -- was their initial request, but
20 the -- they accepted the position of Arcapita that
21 it should be Arcapita Limited.

22 But, so -- so, it -- Arcapita Bank
23 would have been requested to be the original party
24 at the -- probably at the outset, very early on.
25 I have to say I wasn't involved in any negotiation

1 S. Murphy

2 of the engagement letter at that time personally.

3 Q Who was involve in the negotiation at
4 that point?

5 A That would have been Simon Witty, but
6 ultimately, it wasn't signed until April 30th, so
7 it was -- what is relevant is who were the parties
8 at that time.

9 Q And at that time, you were aware that
10 Arcapita Limited generally received funding from
11 the debtors?

12 A That is certainly what we were told
13 by Arcapita Limited. And that's what Arcapita
14 Limited represented to our clients as well.

15 Q And it didn't concern you to only
16 have the fees paid by Arcapita Limited as opposed
17 to the entity funding Arcapita Limited?

18 A Pre-bankruptcy, it had been
19 fundamental to Arcapita that Arcapita Limited be
20 the contracting party, so that was not a change.

21 Q Did that concern you at all, is my
22 question, that you weren't -- that the payment of
23 fees wasn't the responsibility of the ultimate
24 funding entity?

25 MR. STUART: At what point in time?

1 S. Murphy

2 MS. DiLUIGI: Objection.

3 MR. TROY: Objection.

4 A Did it concern me that the ultimate
5 funding entity -- we relied upon the
6 representations of Arcapita Limited that the
7 funding -- that they would have the funding
8 available at the time that they needed to pay us,
9 so, either -- there are always concerns.

10 Of course, the bankruptcy would have
11 raised some further concerns, mostly about the --
12 how things would work going forward, and also what
13 funding indeed was available. But we were assured
14 that there was money that would be used for the
15 purpose and should be used for the purpose.

16 Q Do you know whether Arcapita
17 Industrial Management, Arcapita Limited and P3
18 have the funds to pay Freshfields' fees?

19 A My understanding is Arcapita Limited
20 does not have funding available. It has some
21 funds, but they are owed to other parties.

22 P3 does not have any funding, and we
23 have not pursued Arcapita Industrial Management,
24 as the debtors have made it clear that they
25 wanted -- that they were going to pursue the money

1 S. Murphy

2 in this manner, rather than in that manner.

3 Q Why haven't you pursued Arcapita
4 Industrial Management for payment of fees?

5 A The debtors have chosen to make the
6 motion. We are supporting the motion, as that
7 would be the usual practice of Arcapita Bank and
8 the other Arcapita entities.

9 Q Have you had any conversations with
10 anyone about pursuing payment from Arcapita
11 Industrial Management?

12 A We have been -- when we have
13 approached Arcapita Limited about payment, they
14 have said that they would -- they were seeking
15 payment from the debtors, funding from the
16 debtors.

17 Q Arcapita Industrial Management is
18 also jointly and severally liable for the payment
19 of Freshfields' fees; correct?

20 MS. LIU: Objection.

21 A The contract says that.

22 Q Do you believe that they have the
23 means to pay Freshfields' fees?

24 A I am not aware of what their cash
25 position is. I would be very happy to accept a

1 S. Murphy

2 wire from them this afternoon.

3 Q If you're happy to accept a wire from
4 them this afternoon, then why hasn't any attempt
5 been made to collect fees from Arcapita Industrial
6 Management?

7 A Well, Arcapita Limited has been
8 running this process. Arcapita Limited has told
9 us that this is the manner in which they want this
10 bill to be paid, and to date, we have accepted
11 that.

12 Q Why is Arcapita Limited running the
13 process?

14 A Arcapita Limited was the contracting
15 party, and is the party in Europe that does all of
16 Arcapita's business, we have been told.

17 Q But they are not the only entity that
18 is contractually responsible for the payment of
19 fees.

20 A Yes. And indeed, if we were to
21 receive fees, a fee payment from Arcapita
22 Industrial Management this afternoon, we would
23 have to let you know that we had received payment
24 with respect to that. We are not necessarily debt
25 collectors.

1 S. Murphy

2 Q So, despite the possibility of
3 payment from Arcapita Industrial Management,
4 Freshfields has not taken any steps to even
5 investigate whether payment could be obtained from
6 them?

7 A That isn't really our decision as to
8 who should be paying. As far as we are concerned,
9 it is Arcapita who is the appropriate party to
10 pay, and we are following Arcapita's guidance on
11 that. They have told us the funding should be
12 coming from the debtors and that they will be
13 paying it, so that's what we have -- that's how we
14 have proceeded.

15 Q Did you specifically raise with
16 anyone at Arcapita Limited the prospect of
17 Arcapita Industrial Management paying the fees?

18 A We have not raised that issues since
19 we have invoiced. Arcapita Industrial Management
20 is a party to the invoice. They would be free to
21 pay it.

22 Q When did you invoice last?

23 A We invoiced once. And we invoiced --
24 I don't have the invoice with me. I'm sure you
25 have the invoice. I can't believe you don't have

1 S. Murphy

2 that.

3 But it would have been sometime
4 before five days from the end of November.
5 Whatever date that Karim told me that he needed to
6 have the bill for that purpose.

7 Q So you invoiced in the end of
8 November, and you invoiced to which entities?

9 A We invoiced -- technically, the bill
10 is addressed to Deutsche and Credit Suisse as our
11 clients, and is expressly payable by the three
12 entities that we have -- that are parties to the
13 engagement letter.

14 Q And that's Arcapita Industrial
15 Management, Arcapita Limited and P3?

16 A It is.

17 Q At that point, the end of November,
18 were Freshfields' fees at the 725,000 pound cap?

19 A As you will -- if you look at my
20 declaration, it states the total time cost that we
21 had at the time we stopped working on the matter.

22 Q When you invoiced in November, were
23 there any discussions surrounding payment of the
24 invoice, or did you just simply send it in?

25 A We discussed sending the invoice, and

1 S. Murphy

2 we -- to Karim, and we sent Karim the invoice.

3 We -- there was an e-mail exchange, and I frankly

4 don't remember the content of that, so I would

5 have to -- I have to -- I wouldn't want to say on

6 the record what explicitly that was.

7 Q An e-mail exchange concerning

8 potential payment by Arcapita Industrial

9 Management?

10 A Again, we invoiced. It is up to

11 Arcapita to determine which of the parties should

12 be paying the fee. If Arcapita has chosen to seek

13 that from the debtors, we are not -- we are

14 supporting that.

15 Q Who did you invoice at Arcapita

16 Industrial Management?

17 A I would have to look at the invoice.

18 It's -- it's an organization.

19 Q You didn't speak with anyone, any

20 individual?

21 A I think it was -- I believe the

22 invoice was sent care of Karim. So I think Karim

23 would have been the person who was the identified

24 person who was an Arcapita Limited employee.

25 Q And so Arcapita, to your knowledge,

1 S. Murphy

2 Arcapita Industrial Management may or may not have
3 the means to pay Freshfields' fees?

4 A It may or may not have the means to
5 pay Freshfields' fees.

6 Q And you have not -- "you" being
7 Freshfields -- have not investigated that because
8 Karim says that they prefer to go through the
9 court?

10 A It is up to Arcapita as to how they
11 choose to obtain the funding for this, and that,
12 you know, there might be some point where actually
13 we would want to take this on, on our own, make
14 our own decisions about this, but we are willing
15 to defer at this point to what is best for
16 Arcapita.

17 Q Well, the amended engagement letter,
18 the -- Arcapita Industrial Management is a party
19 to the October 8th engagement letter, is it not?

20 A It is.

21 Q So, why is Arcapita Industrial
22 Management not equally responsible for deciding
23 whether or not fees are paid if they are both
24 signatories to the agreement?

25 MS. DiLUIGI: Objection.

1 S. Murphy

2 A I think that is really up to the
3 Arcapita entities to determine, which entity is
4 going to wire us the money.

5 Q If the fee motion -- if the court
6 doesn't grant Linklaters' request to pay the fees,
7 will Linklaters seek payment from Arcapita
8 Industrial Management?

9 MS. DiLUIGI: Objection. I think you
10 mean Freshfields.

11 A I will answer if you want.

12 Q Let me reask it. Strike that.

13 If the court denies Freshfields'
14 request for payment of fees, does Freshfields
15 intend to seek payment from Arcapita Industrial
16 Management?

17 MR. STUART: Objection. Calls for
18 speculation.

19 A We would have to determine what the
20 appropriate action is to take at that time.

21 Q But that would be a possibility?

22 A Everything is a possibility.

23 MR. STUART: Objection.

24 Q Well, you said earlier that you would
25 happily accept a million dollar check if Arcapita

1 S. Murphy

2 Industrial Management wired it to you today. If
3 they have the means to pay, that's not something
4 Freshfields would consider?

5 A There is a difference between taking
6 the steps that would be necessary to enable
7 Arcapita Industrial Management to have the funds
8 available to pay us and -- or -- or to pay us, if
9 that wasn't what their choice was. There is a
10 difference between that and receiving money from
11 them.

12 Q But the prospect of payment,
13 regardless of the process, Arcapita Industrial
14 Management may in fact have the funds to pay
15 Freshfields' fees.

16 A It may. I suspect --

17 MR. STUART: Objection.

18 A -- it doesn't have a lot of cash.
19 That is speculation. I suspect it would have to
20 sell off some of its assets, perhaps at under
21 value, because it was in a -- one of the things to
22 understand about the processes in Europe, if
23 people don't have the money to pay things, there
24 is not as benign a system as Chapter 11 in Europe.

25 Q But Freshfields has not investigated

1 S. Murphy

2 whether or not Arcapita Industrial Management has
3 the funds to pay its fees because Arcapita Limited
4 has directed Freshfields to pursue this route; is
5 that right?

6 MS. LIU: Objection.

7 MR. TROY: Objection.

8 A We are merely asking that our fees be
9 paid, and that is all we are asking, that it be
10 paid from the contracting parties. The
11 contracting parties need to figure out where that
12 money is coming from.

13 They have told us that the money
14 should be coming from the debtors, and they have
15 told us that they are going to file a motion to
16 that effect, and they have asked us to support
17 that motion, which we have done.

18 Q When did this -- I want to turn to
19 the underwriting agreement, briefly. When did the
20 parties begin drafting the underwriting agreement?

21 A The specific dates for that, I would
22 have to look at the -- at the time sheets. There
23 obviously were the detailed term sheets, which you
24 were very much a part of the discussions
25 regarding, or at least some of your colleagues

1 S. Murphy

2 were, so that happened in a couple of phases. The
3 term sheets happened in a couple of phases, one
4 which was in May, and the other which was July.

5 Q This is 2012?

6 A Yes. The actual underwriting
7 agreement itself in its full form was produced
8 in -- sometime in September, and first had to be
9 discussed with the banks, and then had to be
10 discussed with, with -- with Arcapita, and
11 ultimately with the committee. Not by us, but
12 Linklaters and Gibson Dunn, I presume, had
13 discussions with the committee.

14 Q When was the agreed-upon version of
15 the underwriting agreement entered into?

16 A The underwriting agreement was never
17 entered into.

18 Q Rather, when was the final
19 agreed-upon version finished?

20 A The -- the day before the Creditors
21 Committee submitted their acceptance of the terms
22 of it. So, I think you can look to the record to
23 see what that date was.

24 Q The agreed-upon underwriting
25 agreement does not contain a provision requiring

1 S. Murphy

2 any of the debtors to pay any portion of
3 Freshfields' fees; correct?

4 A The underwriting agreement would only
5 be signed at the point that the IPO had priced,
6 which would mean that the deal was at that stage
7 successful, at which point that the only relevance
8 to fees is a deduction from the IPO proceeds,
9 which is what the underwriting agreement
10 contemplates.

11 Q That's not my question. My question
12 is not whether it was signed or what happens upon
13 a successful IPO.

14 My question is whether the agreement
15 itself contains a provision that requires the
16 debtors to pay any portion of Freshfields' fees.

17 MS. LIU: Objection.

18 MR. STUART: Objection.

19 A It does not -- it does not contain a
20 provision for them to pay the fees. It contains a
21 provision for our fees to be deducted from the IPO
22 proceeds.

23 Q Does it contain a provision that
24 requires any of the debtors to pay any portion of
25 Freshfields' fees in the event of an unsuccessful

1 S. Murphy

2 IPO?

3 MS. LIU: Objection.

4 MR. STUART: Objection.

5 A It would only have been signed -- it
6 would have only been signed when there was an IPO,
7 so therefore, that provision would be irrelevant
8 and unnecessary.

9 Q Whether the provision operates or not
10 is not my question. I'm asking if such a
11 provision exists.

12 A I'm telling you it doesn't exist.
13 I'm telling you why it doesn't exist.

14 Q Did any drafts of the underwriting
15 agreement contain a provision that would require
16 the debtors to pay any portion of Freshfields'
17 fees in the event of an unsuccessful IPO?

18 MS. LIU: Objection.

19 A They did.

20 (Murphy Exhibit 10 marked for
21 identification as of this date.)

22 Q Do you recognize this document?

23 A I certainly do.

24 Q What is it?

25 A I will look to see what it is.

1 S. Murphy

2 It looks like it's draft eight,
3 October 2012, Underwriting and Sponsor's
4 Agreement.

5 Q This is a blackline; correct?

6 A Yes.

7 Q And can you tell from this what
8 drafts the blackline is comparing?

9 A Let's see. That is going to be a
10 hard one. Okay. It -- I personally can't read
11 what this says, but I'm sure it must be a
12 blackline against a previous version. Which
13 previous version, I do not know.

14 Q Can you go to clause 10.7, that is on
15 page ten. Do you see that?

16 A Um-hum.

17 Q And do you see the last sentence at
18 the end of clause 10.7 which is struck out?

19 A Indeed.

20 Q And it says, "In the event that
21 admission does not occur, Arcapita shall pay or
22 procure the payment of such legal fees, expenses
23 and disbursements, plus VAT thereon, subject in
24 the case of legal fees to the caps set out in this
25 clause 10.7, within ten days of the date of this

1 S. Murphy

2 agreement."

3 Was that a provision that was
4 proposed by Freshfields?

5 A It was.

6 Q And that provision was removed from
7 the underwriting agreement?

8 A It was.

9 Q And "Arcapita" here means AIHL, one
10 of the debtors?

11 A Let me look at the defined terms.

12 Yes.

13 Q And so Freshfields had proposed that
14 AIHL be responsible for the payment of
15 725,000 pounds in Freshfields' legal fees in the
16 event that the IPO failed to launch?

17 A Yes.

18 Q And that provision was objected to by
19 the committee; correct?

20 A I understand that it was objected to
21 by the committee.

22 Q And that provision was not in fact in
23 the agreed-to version of the underwriting
24 agreement; is that right?

25 A It was not.

1 S. Murphy

2 Q Therefore, there is no provision in
3 this underwriting agreement that provides for the
4 payment of Freshfields' fees by the debtors in the
5 event of an IPO that failed to launch?

6 MS. LIU: Objection.

7 MR. STUART: Objection.

8 A There is not.

9 Q Do you recall when Freshfields first
10 proposed this, the inclusion of this provision?

11 A It would be difficult to pinpoint the
12 date, for me to pinpoint the date here. It was
13 certainly sometime before the version of this
14 agreement. You might have a blackline that does
15 it. I'm sure it's an ascertainable fact.

16 Q I don't, actually.

17 Was it before the -- was the
18 agreed-to version of the underwriting agreement
19 agreed to before the amended engagement letter was
20 entered into?

21 A The amended engagement letter was
22 entered into the -- on the 8th, and I think this
23 is dated the 8th. Yes, this has the 8th on it.
24 And I think the engagement letter has the 8th on
25 it, yes.

1 S. Murphy

2 Q I believe this is a blackline to the
3 last version. Do you know if this issue had been
4 raised before the 8th?

5 A Well, if it's a blackline, the
6 blackline at the top of the draft says eight,
7 underscored, so the eight is new, so that means
8 this agreement in front of us was something that
9 was produced on the 8th. It's blacklined against
10 something that was produced before the 8th.

11 If we had a calendar, we could
12 probably speculate a little bit better.

13 MR. MARECKI: Exhibit 11.

14 (Murphy Exhibit 11 marked for
15 identification as of this date.)

16 Q Do you recognize this document?

17 A I am not sure I do. I'm not sure
18 this was shared with us. It may have been. But
19 this looks like something that Linklaters would
20 have been keeping to mark the status of the
21 various points for themselves and Arcapita and
22 presumably for the committee.

23 Q You can see in the top left corner,
24 it's a Linklaters draft, and it's dated October 4,
25 2012.

1 S. Murphy

2 A Um-hum.

3 Q Do you see that?

4 A Yes.

5 Q And item three here --

6 A Um-hum.

7 Q -- at the bottom, do you see that
8 it's referring to clause 10.7? Do you see that?

9 A Yes.

10 Q And in the third column under
11 "Issue" --

12 A Um-hum.

13 Q -- it says that "if admission does
14 not occur, AIHL shall pay 725,000 pounds of legal
15 fees for the investment banks."

16 A Yes.

17 Q Do you see that under the fifth
18 column, under "Proposal Explanation," it says, "We
19 have suggested deleting this and are awaiting
20 confirmation from Freshfields that this deletion
21 is accepted. Please confirm the remainder of the
22 clause 10.7 is acceptable, and we will also
23 discuss it with Arcapita."

24 A I see that.

25 Q And this is dated October 4th,

1 S. Murphy

2 2012 --

3 A Um-hum.

4 Q -- which was before the amended
5 engagement letter was entered into. Do you recall
6 at what point Freshfields agreed to remove that
7 provision from the underwriting agreement?

8 MR. STUART: Objection.

9 A I suspect it was on the 7th or 8th.

10 Q Okay. So on or shortly before the
11 engagement letter was signed, the amended
12 engagement letter was signed?

13 A Yes.

14 Q Okay. So certainly by the time the
15 amended engagement letter was entered into, if not
16 a little bit before, Freshfields had specifically
17 requested that AIHL pay Freshfields' fees in the
18 event of a failed IPO?

19 A We had requested that a provision be
20 included in the underwriting agreement, which
21 would only have been signed after the deal was
22 successful, which made the provision not
23 particularly important.

24 Q But the provision you requested
25 stated that AIHL would pay Freshfields' fees in

1 S. Murphy

2 the event of a failed IPO; right?

3 A And it would only be signed after the
4 IPO was successful, for all intents and purposes.

5 Q I'm asking if that's what the
6 provision stated.

7 A It is what the provision stated.

8 Q And that provision that request that
9 AIHL pay Freshfields' fees in the event of a
10 failed IPO was denied, and it was removed from the
11 underwriting agreement; correct?

12 A The request was not denied. Its
13 inclusion in the underwriting agreement was
14 denied. It was represented to us that by putting
15 this into the underwriting agreement, we would be
16 receiving favor over all other service providers,
17 and that nobody else had a specific contractual
18 provision with AIHL with regard to their fees, and
19 that it would open a whole lot of other issues for
20 other people, for us to have this and them not.

21 That was what was represented to us
22 as the basis for the objection, when we asked why
23 they thought that was unreasonable.

24 In reality, that was not an important
25 provision to us, because it would have been

1 S. Murphy

2 largely an irrelevant provision, so its inclusion
3 in the underwriting agreement, which would only be
4 signed once the IPO was successful -- I think you
5 can figure out it only was for circumstances where
6 the IPO wasn't successful. So therefore, it was
7 not a particularly crucial provision for anybody
8 to have in the underwriting agreement.

9 Q But the agreed-upon version of
10 clause 10.7 does not include the provision
11 providing that AIHL pay Freshfields' fees in the
12 event of a failed IPO.

13 MR. STUART: Objection. Asked and
14 answered.

15 MR. TROY: Objection.

16 A I have answered that question.

17 Q You are aware that Linklaters filed
18 an application in the bankruptcy court to have its
19 fees paid for work in connection with the EuroLog
20 IPO; right?

21 A I indeed am.

22 Q When did you first become aware of
23 that?

24 A I think when the papers showed up in
25 the court docket.

1 S. Murphy

2 Q Okay.

3 A So that would be whatever date you
4 have in the docket for the motion.

5 Q When Freshfields first saw that, did
6 Freshfields consider asking for authority to be
7 paid?

8 A We certainly considered whether it
9 would be appropriate for us to seek a similar
10 motion. We were not as exposed financially as
11 Linklaters was. We also were quite, and our
12 clients were quite concerned that that kind of a
13 dispute appearing on the record in advance of a
14 public offering process was potentially very
15 damaging to the public offering process.

16 So we determined at that time that we
17 were willing to not proceed with an order
18 specifically relating to Freshfields at that time.

19 We were concerned, with all due
20 respect to Linklaters, and understanding why they
21 would have sought the order, that there was
22 potential considerable damage to IPO valuation,
23 having those kinds of disputes on the record in
24 the run-up to the IPO. That was probably more of
25 a concern that we faced than Linklaters, because

1 S. Murphy

2 the banks were much more focused on marketing.

3 Q You are also aware that the
4 bankruptcy court ultimately did enter an order
5 with respect to the Linklaters fee motion?

6 A Yes.

7 Q And you are aware that that motion
8 only applies to Linklaters, are you not?

9 A Yes.

10 Q It doesn't speak directly to
11 Freshfields' fees?

12 A No.

13 Q Did you have any conversations with
14 anyone at Arcapita about payment of Freshfields'
15 fees after the entry of the Linklaters fee order?

16 A Probably prior to the order, or maybe
17 around the time of the order, the banks and
18 Freshfields had a conference call with Arcapita
19 regarding what was going on, and they assured us
20 at that time that Linklaters seeking the fee order
21 was very specific to their circumstances, very
22 specific to the fact that they had so much at that
23 stage exposed, and that they urged us not to take
24 similar steps, but did suggest that, of course,
25 the fees would be -- our fees would be payable.

1 S. Murphy

2 Q Just to be clear, so you -- it is
3 your view that the Linklaters fee order only
4 speaks as to Linklaters getting paid and not other
5 IPO professionals.

6 A That's right. And I think we thought
7 that the -- the Linklaters order in part was
8 because they had -- our fees at that time were not
9 expressed to be payable.

10 It was my understanding that
11 Linklaters had an arrangement to get paid monthly
12 and was not receiving that money, so that they
13 actually had amounts extended and overdue that
14 were not paid. That was not our situation.

15 So the Linklaters order was sought in
16 a very different context than any order we would
17 have sought at the time, and the -- the IPO order
18 that had been submitted, the EuroLog IPO order
19 submitted to the court included a provision for
20 fees to be funded. So we didn't feel it was
21 necessary for us to seek a separate order for
22 ourselves, as amounts were not currently due.

23 Q Are you aware of any objection that
24 has been raised with respect to the underwriters
25 paying Freshfields' fees?

1 S. Murphy

2 A I don't know what that would mean.

3 Q Is it your understanding that the
4 committee does not oppose Freshfields getting
5 paid, that the committee objects to Freshfields
6 getting paid by the debtors? Is that your
7 understanding of the dispute?

8 A I don't -- actually, I don't have a
9 clear understanding of the dispute. It is the --
10 it is the case that -- I obviously know what the
11 objection says. I know things that I have been
12 told by Arcapita.

13 But it's a little bit unclear to me
14 whether -- even whether the committee would be
15 happy if Arcapita Limited had the funds and did
16 pay our fees. That's not 100 percent clear to me.

17 Q Are you aware of any objection to
18 Arcapita Limited or Arcapita Investment Management
19 or P3 paying Freshfields' fees?

20 MR. STUART: By anyone?

21 MR. MARECKI: By themselves, as --

22 A Well, Arcapita, they have always --

23 MR. STUART: Wait. I'm not sure I
24 understand the question.

25 Q The question is: Are you aware of

1 S. Murphy

2 any objection to Arcapita Limited, Arcapita
3 Investment -- Industrial Management or P3 funding
4 Freshfields' fees?

5 MS. DiLUIGI: Objection.

6 MR. STUART: Same objection.

7 A Is it by whom?

8 Q I'm not trying to be tricky here.
9 I'm saying, are you aware of any objection to them
10 paying Freshfields' fees?

11 A I think I have been told that the
12 usual process for Arcapita is to discuss any
13 significant amounts of money leaving, even the
14 subsidiaries, would be discussed with the
15 committee, so, for all I know, the committee would
16 object if Arcapita Limited were to pay our fees
17 today. I don't know that. But I wouldn't -- that
18 wouldn't surprise me, given the history.

19 Q Okay. Could you turn to the fee
20 motion, which is Exhibit 2. Paragraph 45, which
21 is the last sentence there. Let me know when you
22 are there.

23 A Um-hum.

24 Q It states, "When the debtors'
25 investment and the EuroLog affiliates are

1 S. Murphy

2 monetized, there is little risk that the funding
3 of the IPO fees will not be eventually repaid."

4 Do you agree with that statement?

5 A That is not really a statement that I
6 can substantively comment upon, because I don't
7 have specific knowledge as to monetization events
8 or access to information regarding the overall
9 value of the debtors' estate.

10 So this is a statement that Gibson
11 Dunn could make and Arcapita could make, but not
12 one that I would be making.

13 Q So you have no view as to the -- the
14 potential risk of nonpayment upon monetization?

15 A It's -- it would be speculating.

16 Q Do you think there is a risk that
17 Freshfields would not get paid upon a monetization
18 of the EuroLog assets?

19 A Given the history, there is always a
20 risk that the UCC will object.

21 Q Aside from the UCC objecting, do you
22 view that there is any risk that Freshfields
23 wouldn't get paid on a monetization?

24 MR. STUART: Objection.

25 A I can't speculate as to how the money

1 S. Murphy

2 flows would work on any monetization.

3 Q Do you view that -- is it your view
4 that there would be enough cash available to fund
5 Freshfields' fees in the event of a monetization?

6 MR. STUART: Objection.

7 A It depends what that monetization is.

8 Q If the fee motion is granted and
9 Arcapita, the debtors, fund money to pay
10 Freshfields' fees, then the risk of nonpayment to
11 Freshfields is eliminated.

12 A Once paid, we are no longer at risk
13 for being not paid. However, I don't know that
14 there is a bankruptcy point about whether
15 creditors can come and try to seek that money back
16 or something like that. I don't -- that is a
17 bankruptcy question which I don't know the answer
18 to.

19 Q Is it your understanding that in
20 order to -- that the risk would be the transfer to
21 Arcapita Bank in the event of the debtors' funding
22 of Freshfields' fees?

23 MR. STUART: Objection.

24 MS. DiLUIGI: Objection.

25 Q Let me reask that.

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2 If the debtors fund the payment of
3 Freshfields' fees, then aren't the debtors now the
4 parties at risk of not being paid back --

5 MS. DiLUIGI: Objection.

6 MS. LIU: Objection.

7 Q -- for that expense?

8 A That's an unusual question. In the
9 ordinary course, the debtors fund the Arcapita
10 Limited obligations. These are obligations that
11 have arisen and are due to be paid.

12 I'm not sure what this risk sharing
13 is that you are referring to.

14 Q When the debtors fund -- when the
15 debtors fund payments to Arcapita Limited or
16 another entity, what's your understanding of what
17 happens when that occurs?

18 A I would assume a receivable would
19 arise or some kind of intercompany note would
20 arise, so that if it was an obligation of Arcapita
21 Limited, that if it was funded by another party,
22 that other party would be owed a return of -- of
23 those funds.

24 That would be the normal way
25 intercompany transactions work in the usual

1 S. Murphy

2 business market.

3 Q And if a receivable arises because
4 Arcapita Bank funds -- provides the funds to pay
5 Freshfields' fees, then there remains a risk that
6 that receivable won't be satisfied.

7 MR. STUART: Objection.

8 MS. LIU: Objection.

9 MS. DiLUIGI: Objection.

10 A I think there are any number of risks
11 involved, and the debtors may well conclude that
12 it is a better opportunity for them to pay the
13 Freshfields invoice rather than have that residual
14 liability sitting within the portfolio companies,
15 which might actually have a negative impact on
16 monetization.

17 So I think risk sharing is
18 complicated, and risks -- analyzing risks are best
19 left to the experts, such as people at Arcapita
20 who are experts in these things, and so it's not
21 for me to say.

22 There are certainly risks having
23 significant debts at the portfolio company level,
24 if there is any desire to monetize and get benefit
25 up to the debtors' estate. That would be -- I'm

1 S. Murphy

2 not making that statement specific to this
3 circumstances. It's as to my knowledge about how
4 the commercial investing and business world works,
5 and it's something that I am sure that all of the
6 banks and financial advisory people to this
7 transaction are quite aware of.

8 Q Do you have any knowledge about
9 potential future monetization events?

10 A I have no specific knowledge.

11 Q You are not aware of another
12 attempted IPO or sale of assets?

13 A From time to time, we are asked to
14 provide the banks with certain things, which would
15 suggest that there was some activity going on
16 between Arcapita, which they are using the banks
17 services for, which might indeed be monetization
18 events. We have no specific knowledge.

19 Q Would it be possible for a
20 monetization event to occur if the fee motion is
21 denied?

22 MR. STUART: Objection.

23 MS. LIU: Objection.

24 MS. DiLUIGI: Objection.

25 A That would call for significant

1 S. Murphy

2 speculation. That's even beyond what I would
3 speculate, and I am quite a speculator.

4 MR. STUART: That's quite a lot.

5 Q I'm just asking, is it impossible?
6 Is it impossible?

7 MR. STUART: Objection.

8 MS. DiLUIGI: Objection.

9 A Shall I say that anything is
10 possible?

11 Q Is Freshfields currently performing
12 any services in connection with the
13 monetization --

14 A No.

15 Q -- of assets?

16 If you could look back at
17 paragraph 45 of Exhibit 2. There is a reference
18 to "potential reimbursement agreements."

19 Do you have any familiarity with
20 this?

21 A I'm not familiar with that.

22 Q You are not familiar with any
23 proposal for PointPark and Arcapita Limited to
24 execute reimbursement agreements?

25 A Have I been saying ParkPoint as

1 S. Murphy

2 referring to PointPark? I may have been reversing
3 those two. It's embarrassing.

4 This is not something that has been
5 discussed with me.

6 Q So you don't have any knowledge about
7 potential reimbursement agreements?

8 A No.

9 Q Do you have any knowledge about a
10 potential reimbursement agreement with Arcapita
11 Industrial Management or P3?

12 A No.

13 Q Are the debtors the only party that
14 Freshfields has sought to obtain payment from?

15 A We are not seeking payment from the
16 debtors. The debtors are seeking permission or
17 the agreement of the UCC to fund payments that
18 their subsidiaries owe to us. We have not sought
19 any money from the debtors.

20 Q But you are aware that money to pay
21 Freshfields' fees would be coming from the
22 debtors.

23 A Consistent with Arcapita practice,
24 yes.

25 Q And have -- has Freshfields sought

1 S. Murphy

2 payments for its fees in any other context or from
3 any other source?

4 A No.

5 MR. STUART: Patrick, I need about
6 two minutes, whenever it's convenient.

7 MR. MARECKI: We can take it now.
8 There is not a ton left. It would be a good
9 time.

10 (Recess taken.)

11 MR. MARECKI: Back on.

12 Q Ms. Murphy, I understand there is an
13 answer you would like to clarify.

14 MR. STUART: Could you just read the
15 question back into the record? I'm sorry,
16 do you want me to direct you to it?

17 It's the question that says, "And
18 have -- has Freshfields sought payment for
19 its fees in any other context or from any
20 other source?"

21 The answer was "no."

22 A And I think I was answering in the
23 context of my previous answer. I think you might
24 have been asking the question in the context of
25 your previous question.

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2 We have invoiced the three parties we
3 have been discussing, and those are the parties
4 that we are seeking payment from.

5 Q Understood.

6 And you are not seeking payment now
7 from Arcapita Industrial Management because
8 Arcapita Limited has indicated that that is not
9 its preferred choice?

10 A We have invoiced Arcapita Industrial
11 Management. We have not taken additional steps
12 beyond the invoicing because Arcapita, the
13 Arcapita representatives that we have been
14 discussing this matter with have proposed this
15 manner of proceeding, and we are supporting their
16 manner of proceeding, which is the motion and our
17 supporting declarations.

18 Q If their manner of proceeding was for
19 Arcapita Industrial Management to send you a check
20 for the outstanding fees, would you object to
21 that?

22 A I don't think I would have any basis
23 for objecting to that.

24 Q So you would accept payment from
25 Arcapita Industrial Management?

1 S. Murphy

2 A Particularly if it was this
3 afternoon, as I said earlier.

4 Q I know you are running short on time,
5 so I will try to blow through this quickly.

6 I want to turn to your declaration,
7 Exhibit 1, and to talk about payments. If we
8 could turn to paragraph seven.

9 What's the total amount of fees that
10 Freshfields incurred in connection with work on
11 the EuroLog IPO?

12 A The amount that is reflected in the
13 time sheets attached to the declaration is
14 1,060,276 pounds.

15 Q And the fees that Freshfields is
16 seeks here is 725,000 dollars -- 725,000 pounds?

17 A Yes.

18 Q And that is obviously less than the
19 1,060,276 pounds of fees incurred.

20 A Yes.

21 Q And am I correct that Freshfields is
22 only seeking the 725,000 dollar amount because --

23 A Pounds.

24 Q 725,000-pound amount, because there
25 is a cap on the amount of fees that Freshfields is

1 S. Murphy

2 entitled to claim?

3 A We are seeking to recover the agreed
4 and invoiced amounts.

5 Q Those agreed amounts are reflected in
6 the amended engagement letter; correct?

7 A Yes.

8 Q And the agreed amount in the
9 October 8th engagement letter is a cap of
10 725,000 pounds?

11 A That's right.

12 Q Why was that cap agreed to?

13 A It's usual practice in the European
14 IPO market to -- for underwriter's counsel fees to
15 be done on a capped basis, subject to assumptions,
16 and in this case the 725 was agreed based on
17 assumptions which were in fact not stuck to, were
18 not -- so, we could have gone back, we justifiably
19 could have gone back to ask for more on the basis
20 of the e-mail exchange that I had with Karim.
21 However, we made the determination that given how
22 the process was going, that we would not seek more
23 money, whether the IPO was successful or
24 unsuccessful.

25 We determined to ask for -- it was

1 S. Murphy

2 effectively the same amount, both amounts of which
3 reflected a substantial discount, as one could
4 calculate with a calculator using the two figures
5 that are in paragraph seven.

6 Q Why a cap instead of discounted
7 rates?

8 A We had initially discussed discounted
9 rates with Arcapita. It is usual practice in the
10 European IPO market for underwriter's fees to be
11 done on a capped basis. Ultimately, that's what
12 Arcapita asked us to do, so that is what we did.

13 It -- you know, it is a way that IPO
14 sellers can effectively fix their risk in terms of
15 underwriter's counsel fees. And at -- if we'd
16 agreed a discount, it would have -- it would have
17 effectively been a -- you know, would get
18 reflected in any case.

19 But I think this amount -- and if you
20 look at the e-mail exchange with Karim, you will
21 see that we have reflected that when we were
22 quoting for our caps initially, we did assume some
23 discount. That was really in our explanation of
24 what the fees would be, and therefore what cap we
25 were willing to agree to, and then we obviously

1 S. Murphy

2 ended up in a much more -- with a much more
3 significant discount, which we decided to accept
4 regardless of -- of success.

5 Q Okay. Let's talk about the discount.
6 So, there was no cap in place before the
7 October 28th engagement letter?

8 A We had agreed a cap of 475 in April,
9 and that -- although that isn't in the engagement
10 letter, it was agreed through -- through a series
11 of e-mails with Jonathan Farrell, and I think --
12 yeah, it was -- and it's referred to in my -- my
13 e-mail, if we wanted to go back to that, if one
14 wanted to look at the history. I think it's
15 probably easiest to look at the history as opposed
16 to try to remember the history.

17 Q The 725,000 dollar cap, that was
18 initiated as of the October 8th engagement letter?

19 A Well, on the 19th of September, it
20 was included in my e-mail to Karim on the 19th of
21 September.

22 Q Had it been agreed to at that point?

23 A Well, you can see that on the 26th of
24 September, Karim came back to me saying, "Sarah,
25 we are agreed. Regards, KS."

1 S. Murphy

2 Q And you took that as agreement for
3 the specific cap issue as well, as to your entire
4 e-mail?

5 A The only thing at that stage which
6 was in question was his language about paragraph,
7 clause five. He previously on the 24th of
8 September had said he was comfortable with the fee
9 proposal, so I think the cap was agreed by him on
10 the 24th of September, if you look at the series
11 of e-mails.

12 Q So this cap was agreed to at
13 approximately the time of the amended engagement
14 in October?

15 A It was -- it was actually agreed to
16 before then. There are some assumptions in this
17 proposal on the 19th that did not turn out to
18 be -- and actually, we indicated -- let's see,
19 what have I said here? Okay.

20 Okay. It looks like in mid October,
21 we agreed that we -- we proposed the cap of 725 in
22 mid August, I'm sorry. In mid August we had
23 proposed the cap of 725 based on assumptions, and
24 the reality is those assumptions, it didn't turn
25 out that those were true. The deal was delayed

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2 longer, there were more issues than we had
3 expected that took place in the month of -- well,
4 actually things that took place in the month of
5 September, and then things that took place late
6 after this, in October, that were not -- we could
7 have gone back and legitimately gone back and
8 asked for more money, but we didn't.

9 Q The end result, though, is a cap of
10 725,000 pounds on Freshfields' fees, which is
11 reflected in the October 8, 2012, engagement
12 letter?

13 A And in our invoice, yeah.

14 Q And that is the same amount that you
15 are seeking in connection with the fee motion; am
16 I right?

17 A Yes.

18 Q And there has been no concession made
19 below the cap on Freshfields' fees?

20 A The cap was a very substantial
21 concession. We can calculate that, but I think
22 it's a 30 percent discount to -- to our time cost,
23 which is less than the abort fee that we had
24 agreed, which was time cost less 20 percent, so
25 it's now time cost -- the amount we are seeking is

1 S. Murphy

2 time cost less 30 percent. I think it was
3 68 percent. Does that math work?

4 Q But the amounts -- the amount sought
5 now has not been reduced as a result of the failed
6 IPO?

7 A The failed IPO was taken into account
8 when reaching the 725. It is a discounted fee.
9 The math will show you that it is a 30 -- there's
10 a 30 percent discount -- 30 percent plus discount
11 built into the 725.

12 Q And this was -- when you say it was
13 taken into account, it was taken into account at
14 the time of the engagement, well before the --

15 A Standard practice in the IPO market
16 is that you agree a cap, and then you agree, as we
17 did and as expressed in this letter, in the e-mail
18 that you have in front of you, which is, to be
19 very formal here, Exhibit 6 -- in this e-mail, it
20 says that if the deal aborted, we would discount
21 our time costs by 20 percent subject to the cap.

22 So that is the abort fee. That would
23 have resulted in a higher fee than the 725, which
24 we would be very happy to charge if people would
25 like us to do that. We are always happy to seek

1 S. Murphy

2 to have more money than -- but that was the
3 original agreement, was 20 percent to our time
4 costs, which would have resulted in a higher
5 number than 725. I'm happy to open that up.

6 We have taken into account the
7 situation that the debtors are in, the situation
8 that the debtors are in both in the bankruptcy and
9 in this process, and made a determination that we
10 should go -- we should not seek to increase our
11 fees other than what was here. But we certainly
12 had, based on the -- what was agreed with Arcapita
13 Limited, we could have asked them for more money
14 on the abort. We could have asked them for more
15 money on the success. We decided to stick to the
16 725.

17 Q But there have not been any further
18 concessions made by Freshfields since this cap was
19 created.

20 A There's a 30 percent concession in
21 the cap.

22 Q After the cap.

23 A There have been no further
24 concessions after the cap was agreed. The cap was
25 agreed to be the same number for both the abort

1 S. Murphy

2 and the success, which the debtors and the
3 creditors should be very pleased with.

4 Q And the cap was agreed to on
5 October 8th, 2012?

6 A It was memorialized in the engagement
7 letter on October 8th, 2012. It was agreed on the
8 24th of September.

9 Q And since it was memorialized on
10 October 8th, 2012, Freshfields has not made
11 further concessions to the amount of fees it is
12 seeking?

13 A The fees that we are seeking are a
14 substantial concession, and we have not sought --
15 we have not made further concessions.

16 Q And Freshfields is seeking the
17 maximum amount it is entitled to under that cap?

18 MR. STUART: Objection.

19 A We are not seeking the maximum amount
20 that we are entitled to. We are seeking the
21 amount that we agreed was the amount that we would
22 seek if the IPO did not succeed. That is what we
23 are seeking. That is what the record shows.
24 That's what the correspondence shows.

25 Q The October 8th, 2012, amended

1 S. Murphy

2 engagement letter, it contractually prohibits
3 Freshfields from seeking payment of more than
4 725,000 pounds.

5 A Does it?

6 MR. STUART: Murphy 4.

7 A It's doesn't. That's not my
8 contractual interpretation of that language, but
9 we have not sought to obtain any more funds.

10 Q Well, it says that payments --
11 Freshfields may obtain payment subject to a cap of
12 725,000 pounds.

13 A No, it doesn't. It actually says
14 that these amounts are payable subject to a cap.
15 It doesn't mean that we are prohibited from
16 seeking any more money. I don't see that language
17 in here.

18 Q But Freshfields is seeking the
19 725,000 pounds in connection with this motion.

20 A That is what we have invoiced, and
21 that is what is included in the debtors' motion.

22 Q To your knowledge, has Freshfields
23 ever put a client into bankruptcy in the United
24 States?

25 MR. STUART: Objection.

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2 MS. DiLUIGI: Objection.

3 A That's not something I necessarily
4 would know.

5 Q Are you aware of any instance?

6 A I'm not aware of an instance.

7 Q Are you aware of any instance where
8 Freshfields has put a client into an insolvency
9 proceeding elsewhere?

10 A I am not aware.

11 I would point out to you that
12 Arcapita is not our client.

13 Q Has Freshfields notified P3, Arcapita
14 Limited or Arcapita Industrial Management that it
15 may initiate insolvency proceedings against them
16 if the Freshfields fees are not paid?

17 A We have not. I think it is in all
18 parties' best interests that we do not. I don't
19 know how much you understand about English
20 insolvency law, but if we were to claim these
21 amounts against Arcapita Limited at a time when
22 they had no reasonable expectation of receiving
23 the money from the debtors, they might have to
24 initiate their own insolvency proceedings.

25 So we have chosen not to precipitate

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2 a crisis within the Arcapita group, and one which
3 might cause damage to value for all creditors,
4 including ourselves, but also including all the
5 members of the -- all the creditors of the current
6 debtor group.

7 Q So you have not had any conversations
8 with anyone at Arcapita about Freshfields
9 initiating a proceeding?

10 A There have been no conversations, and
11 I would only have conversations like that after
12 seeking detailed advice from insolvency experts
13 and the people advising the directors to -- to
14 Arcapita Limited. Not that that couldn't happen
15 at some stage. Anything is possible.

16 Q If the fee motion is denied, will
17 Freshfields attempt to enforce any Arcapita entity
18 into insolvency proceedings?

19 MR. STUART: Objection. Calls for
20 speculation.

21 A We would have to consider that at the
22 time.

23 Q Are you aware of any contingency
24 plans wherein if the fee motion is denied,
25 Freshfields will consider initiating such action?

1 S. Murphy

2 A We think it is appropriate to make
3 the determination once we have all the facts in
4 front of us, and that's what we will do.

5 Q So there are no current plans to do
6 that?

7 A There are no current plans to do
8 that. It's -- there are also no current plans not
9 to do that.

10 Q Do you have any view as to whether
11 Arcapita Industrial Management will be rendered
12 insolvent if the IPO fees sought in connection
13 with the debtors' motion is not granted?

14 A I don't know that.

15 Q Do you have any information at all
16 regarding the solvency or insolvency of Arcapita
17 Industrial Management?

18 A I don't. Well, actually, I should
19 say that I -- I believe it was concluded by the
20 banks that it was not insolvent at the time, on
21 April 30th, 2012.

22 Q This is at the time of the initial
23 engagement?

24 A Yes. They wouldn't -- I don't think
25 they would have chosen to request the joining of

1 S. Murphy

2 an insolvent party.

3 Q Do you have any knowledge as to the
4 change in Arcapita Industrial Management's
5 position since then?

6 A No.

7 Q So you are not aware of any evidence
8 that Arcapita Industrial Management may be
9 rendered insolvent?

10 A As I think I have said, I am not
11 aware of Arcapita Industrial Management's
12 financial position at the current time. They do
13 have to file accounts someplace publicly, but
14 those would be likely to be out of date, I think.
15 I think they can file accounts sort of eight
16 months after or a year after the year ends, so,
17 the information available to me on that entity is
18 limited.

19 Q How about P3, do you have any
20 information concerning P3's solvency?

21 A P3 is a shell company at this stage,
22 so it would not have any -- any assets to speak
23 of.

24 Q And how about Arcapita Limited?

25 A My understanding is Arcapita Limited

1 S. Murphy

2 does not have sufficient assets to -- to fund the
3 fees. We have not gotten -- we have not asked
4 them to provide us with information. I'm not sure
5 it would be accessible to us, information backing
6 that up.

7 Q From where do you have that
8 understanding?

9 A I think Karim has said we need to
10 obtain the money, as per usual practice, from the
11 debtors.

12 Q But you did not receive similar
13 information with respect to Arcapita Industrial
14 Management?

15 A Well, in fairness, the -- Karim, who
16 is the Arcapita representative who has been
17 presented to us by the Arcapita group as the
18 person to discuss fees with, has simply said
19 what -- what we have told you, that they need to,
20 as per usual practice, get their funding from the
21 debtors. So that's what I know.

22 Q But you were nevertheless provided
23 with information on Arcapita Limited's solvency?

24 A We -- Arcapita Limited, as with every
25 English company, is required to file with

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2 Companies House accounts annually. That is the
3 information that I believe the banks looked at,
4 and asked us to look at, at the time of the
5 April 30 engagement letter.

6 That -- but I don't have specific
7 knowledge about the current Arcapita Limited
8 financial position. I have been told that as per
9 usual practice, they need to get their funding
10 from Arcapita Bank, and that's what they would
11 usually do.

12 Q And have you been told by anyone that
13 they may be forced into -- that Arcapita Limited
14 may be forced into insolvency proceedings if the
15 funding here is not granted?

16 A That has not been specifically stated
17 to me in person, so, I think there are -- there
18 are references in the papers to concerns that
19 Arcapita has about Arcapita Limited needing to put
20 itself into insolvency in order to protect the
21 entity and the directors from -- from liability.
22 Whether -- but I don't have specific -- I do have
23 some knowledge of the way U.K. insolvency works,
24 and I do know that it's wrong -- its directors are
25 criminally liable if they are incurring

1 S. Murphy
2 obligations which they have no reasonable
3 expectation to be able to pay.

4 But, you know, that's not -- I
5 haven't -- that has not been specifically
6 represented to me with respect to Arcapita
7 Limited.

8 Q Is it fair to say that your knowledge
9 of this is based on the -- the papers filed in
10 support of this motion?

11 A We do not have any specific access to
12 any financial information with regard to Arcapita
13 Limited, other than what they might file with
14 Companies House, which I have previously said
15 would be considerably out of date, and so we know
16 what we have been told, and so there is the
17 information in these papers. There is some
18 information that has been provided to us in
19 conversations.

20 Q What would be the impact of Arcapita
21 Limited's insolvency?

22 MR. STUART: Objection.

23 MS. DiLUIGI: Objection.

24 A I -- I would expect that that would
25 be very damaging to the Arcapita group, as that is

1 S. Murphy

2 the primary contracting party in Europe. I think
3 that would not be a very good thing for anyone who
4 was trying to realize value out of Arcapita
5 entities.

6 Q Would it cause a diminution in the
7 value of the EuroLog assets?

8 MS. DiLUIGI: Objection.

9 A This is speculation on my part, but
10 if Arcapita Limited were to go into insolvency, I
11 think it would make it much more difficult for
12 Arcapita to monetize those assets.

13 Q In what way?

14 A Parties are usually reluctant to
15 contract with parties who have -- who are in
16 financial difficulties, and that usually has a
17 negative impact on valuation. You can discuss
18 that probably better with the financial advisors
19 to the committee. I think that they are probably
20 more sophisticated with regard to -- to that. But
21 certainly I have been told that by parties in the
22 past who are financial experts.

23 Q Can the EuroLog assets still be
24 monetized without Arcapita Limited?

25 MS. LIU: Objection.

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2 MS. DiLUIGI: Objection.

3 A You can sell anything at a price, so
4 anything can always be monetized.

5 Q Can you quantify the difference in
6 price that an insolvency would have on the value
7 of the assets?

8 MR. STUART: Objection.

9 MR. TROY: Objection.

10 A We are generally told that a fire
11 sale is not a good way to realize value.

12 Q Arcapita Limited does not own the
13 underlying assets; is that right?

14 A It does not own -- it does not own
15 the underlying assets, no. Those are owned by the
16 various Arcapita funds, which my understanding is
17 Arcapita Limited manages those funds.

18 Q Why does Freshfields want to get paid
19 now rather than waiting for a monetization event
20 to occur?

21 A Our fees were due five days after the
22 end of November.

23 Q Do you feel that there is a
24 significant risk involved in waiting for a
25 monetization event to occur?

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2 MS. DiLUIGI: Objection.

3 A I think our fees are due and payable,
4 and that we would like to be receiving them sooner
5 rather than later. It's already considerably long
6 after the five business days after the end of
7 November already.

8 Q Do you think there is additional risk
9 associated with waiting until a monetization event
10 to get paid?

11 A I don't see what the relevance of the
12 monetization event has to the Freshfields fees.
13 They were incurred in the ordinary course, they
14 should be paid in the ordinary course.

15 Q That wasn't my question, though.

16 Do you find that there is an
17 additional risk associated with waiting until a
18 monetization event to get paid?

19 A There is always risk in waiting to be
20 paid.

21 Q Would Freshfields get paid faster if
22 Arcapita Limited were forced into insolvency?

23 MS. LIU: Objection.

24 A I think that there is a lot of
25 speculation involved in that, and I wouldn't want

1 S. Murphy

2 to answer that.

3 Q Do you recall what's -- what assets
4 Arcapita Industrial Management holds?

5 A I don't know what assets it holds.

6 Q Do you think there is any continuing
7 value to the debtors of the services that
8 Freshfields provided in connection with the
9 EuroLog IPO?

10 A As I stated earlier, the debtors now
11 have a means, a mechanism, a way of monetizing
12 those assets. It cost an awful lot of money for
13 the advisors to put together a package that was
14 saleable. They now have that package. If the
15 market was right, they could sell it via an IPO.
16 And if they wanted to sell it via a trade sale,
17 they now have a package that works as well.

18 You can look at the fees to see how
19 much -- how much it took to get that.

20 I think that the debtors still would
21 like to monetize those assets. That is the
22 business that Arcapita is in, is in monetizing
23 assets, investing in and monetizing assets.

24 So, a substantial amount of the work
25 done for that monetization to occur has now been

1 S. Murphy

2 done and has not been paid for.

3 Q Can you point to any statement in
4 your declaration where it states that
5 Freshfields -- where it states that Freshfields'
6 services provide any value to the debtors?

7 A I would have to look at my statement.

8 Q Exhibit 1.

9 MR. STUART: I'm going to object.

10 The document speaks for itself.

11 Q You can answer.

12 A In paragraph nine, it says the fees
13 were necessary and required in connection with the
14 EuroLog IPO.

15 Q And that's the closest statement you
16 can find to the services providing value to the
17 estate?

18 A I think if one were to look at the
19 statements that were put on the record by both the
20 committee and the advisors to the committee at the
21 hearing with regard to the IPO, it was very clear
22 that the monetization event was a very significant
23 one for -- for the debtors, and therefore, for the
24 creditors, one which the creditors supported.

25 I think it's pretty obvious that the

1 S. Murphy

2 value was there, and it wasn't included in -- that
3 statement is not included in the declaration. We
4 took it as -- as a given.

5 Q So it says that there are
6 necessary -- the services were necessary and
7 required in connection with the EuroLog IPO. But
8 is there anywhere that says that those services
9 ended up providing value to the debtors?

10 A It does not specifically say that,
11 no.

12 MR. MARECKI: That's all I have got,
13 with one minute to spare.

14 THE WITNESS: You are good.

15 (Continued on next page with witness
16 jurat.)

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1 S. Murphy

2 MR. STUART: Can we get a copy of
3 this so that we can review and correct any
4 errata?

5 THE REPORTER: I will have the office
6 forward you the original.

7 (Time noted: 11:59 a.m.)

8 I, SARAH MURPHY, the witness herein, do
9 hereby certify that the foregoing testimony of the
10 pages of this deposition to be a true and correct
11 transcript, subject to the corrections, if any,
12 shown on the attached page.

13 _____
SARAH MURPHY

14
15 Subscribed and sworn to before me this
16 _____ day of _____, _____.

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18 NOTARY PUBLIC

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C E R T I F I C A T E

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

I, BONNIE PRUSZYNSKI, a Notary
Public with and for the State of New York,
do hereby certify:

That SARAH MURPHY, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such deposition
is a true record of the testimony given by
the 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 15th of March, 2013.

Bonnie Pruszyński

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