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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 12-11076(shl)

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In the Matter of:

ARCAPITA BANK, et al.,

Debtor.

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U.S. Bankruptcy Court
One Bowling Green
New York, New York 10004

November 21, 2013
11:12 AM

B E F O R E :
HON SEAN H. LANE
U.S. BANKRUPTCY JUDGE

1 HEARING RE: Motion for Omnibus Objection to Claims

2

3 HEARING RE: First Application for Interim Professional

4 Compensation for Alvarez & Marsal North America, LLC

5

6 HEARING RE: Application for Final Professional

7 Compensation/Fourth and Final Application of FTI Consulting,

8 Inc.

9

10 HEARING RE: Application for Final Professional

11 Compensation/Fourth and Final Application of Maurant Ozannes

12 as Special Cayman Islands Counsel for the Debtors for

13 Approval and Allowance of Compensation for Services Rendered

14 and for Reimbursement of Actual and Necessary Expenses.

15

16 HEARING RE: Application for Final Professional

17 Compensation/Fourth and Final Application of Hassan Radhi &

18 Associates, Bahraini Counsel to Official Committee of

19 Unsecured Creditors

20

21 HEARING RE: Application for Final Professional

22 Compensation/Fourth Interim and Final Fee Application of

23 KPMG LLP, as Valuation Advisor to the Debtors

24

25

1 HEARING RE: Application for Final Professional
2 Compensation/Fourth and Final Fee Application of KPMG LLP,
3 as Tax Consultants to the Debtors and Debtors in Possession,
4 for Interim Allowance and Compensation for Professional
5 Services Rendered and Reimbursement of Actual and Necessary
6 Expenses Incurred from April 1, 2013 through September 17,
7 2013 and Final Allowance and Compensation for Professional
8 Services Rendered and Reimbursement of Actual and Necessary
9 Expenses Incurred from March 19, 2012 through September 17,
10 2013 for KPMG LLP, Other Professional, period: 3/19/2012 to
11 9/17/2013, fee \$432,762.71, expenses: \$0

12
13 HEARING RE: Application for Final Professional
14 Compensation/First and Final Application of Antony Zacaroli,
15 QC, as Special Counsel for the Debtors, for Final Allowance
16 of Compensation for Services Rendered and for Reimbursement
17 of Actual and Necessary Expenses Incurred from December 1,
18 2012 through September 17, 2013 for Antony Zacaroli, Special
19 Counsel, period: 12/1/2012 to 9/17/2013, fee \$119,394.00,
20 expenses: \$11,843.84

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22 HEARING RE: Motion to Authorize/Motion to Estimate
23 Unliquidated Claims for Purposes of Establishing Reserve in
24 Connection with Distributions Under Chapter 11 Plan.
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Transcribed by: Sheri Monroe

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A P P E A R A N C E S :
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UNITED STATES TRUSTEE'S OFFICE

BY: RICHARD C. MORRISSEY, ESQ.

1 A P P E A R A N C E S : (Telephonically)

2

3 WILLIAM ABINGTON, ESQ.

4 ZINOVIA LAZARIDIS, ESQ.

5 ANTONY ZACAROLI, ESQ.

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P R O C E E D I N G S

THE COURT: We are here for an omnibus hearing in Arcapita Bank B.S.C.

MR. FLECK: Good morning, Your Honor. Evan Fleck of Milbank Tweed on behalf of the reorganized debtors as well as the Falcon debtor. I'm here with my colleague Lena Mandel. Good morning, I don't know if anyone else needs to make an appearance.

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

THE COURT: All right. Is there anyone else in the courtroom who will be speaking?

MS. SPIGEL: Probably not, but --

THE COURT: That's all right.

MS. SPIGEL: Robin Spigel, Willkie Farr & Gallagher, counsel for KPMG, LLP in United Kingdom. Also on the phone is Douglas McFee a partner at KPMG.

THE COURT: All right. I know there are some folks who have live lines this morning to the extent that there are questions that are raised in connection with certain matters, but they don't intend on arguing, is my understanding, on any issues.

So, we'll address -- if there's anybody who speaks just -- who's on the phone, just make sure to identify yourself before you chime in, but I don't think we need to

1 go through that list at this point.

2 MR. FLECK: Great, thank you, Your Honor. There's
3 really not much -- I know the tradition of the case has been
4 to provide an update at the beginning of each Omnibus
5 hearing. Things are moving forward as planned and the
6 connection with respect to the claims process, the board has
7 formed a committee to deal with claims and they are
8 providing direction to the advisors of RA as well as in the
9 case of Falcon to move that process forward to hopefully
10 have distribution move forward as quickly as possible.

11 We have some matters on the agenda that relate to
12 claims and to estimation to facilitate that process. The
13 only other --

14 THE COURT: All right. And I know you have the --
15 there's still is a subordination issue that's sub curia with
16 me. I don't know if there's -- what the status is for
17 litigation. I believe it's in front of Judge Wood on the
18 merits. I don't know if there's any updates on that, there
19 might not be.

20 MR. FLECK: Your Honor, the parties are preparing
21 for trial in that case. I believe we're -- there's a
22 deposition, actually taking place this morning in Houston in
23 that matter and fact discovery has taken place, an expert
24 discovery is about to take place. I think things are moving
25 forward --

1 THE COURT: Do you have a trial date yet?

2 MR. FLECK: I don't know that the trial date --
3 We can get back to chambers with it. It's not -- it's not
4 imminent, I believe it's in the spring, but it was a tight
5 timeframe and the parties are preparing to move forward with
6 trial.

7 THE COURT: All right. Thank you.

8 MR. FLECK: You're welcome.

9 The only other matter I'd mention, Your Honor,
10 with respect to the case is in terms of an update, is that
11 we do have an appeal that's pending before the District
12 Court. There has been no oral argument scheduled for that,
13 the reorganized debtors did file a motion to dismiss on the
14 basis of mootness. That's been fully briefed and is before
15 the court as well. There has not been an oral argument
16 scheduled on that either.

17 THE COURT: All right. And I do anticipate
18 issuing just a short decision and order on the Captain
19 (inaudible) claim objection sometime this week.

20 MR. FLECK: Thank you, Your Honor.

21 In terms of today's agenda we have certain final
22 fee applications for the professionals in the Chapter 11
23 estates.

24 As you know, Your Honor, we had -- at the last
25 omnibus hearing we addressed most of the applications for

1 final allowance and professional compensation claims, so we
2 have the balance of them before the court today.

3 There's one interim fee application in the Falcon
4 estate and as I mentioned earlier we do have the claims
5 matters and so with Your Honor's permission I'll proceed
6 with the agenda as filed.

7 THE COURT: All right.

8 MR. FLECK: I wanted to mention in connection with
9 the fee application matter that, as we discussed, there is a
10 professional fee escrow that's been established. It was
11 funded, initially, with some \$40,000,000 -- in excess of
12 \$40,000,000 and that was based upon estimates that were
13 provided by the professionals along with some cushion to
14 avoid having to go back to RA to provide funding for
15 professional fee claims.

16 As of yesterday there was \$7,423,083.66 in that
17 account. That accounts for the fact that the professionals
18 whose applications were approved at the last hearing have
19 accessed the escrow pursuant to the procedures and that
20 there is that balance remaining.

21 If the applications that are before the court
22 today are approved, we expect that there will be just over
23 \$6,000,000 remaining in that account and pursuant to the
24 plan, a confirmation order and the escrow procedures the
25 reorganized debtors will request that those funds be

1 released to reorganized Arcapita.

2 After today's hearing we believe that all of the
3 professional will have sought final allowance of their fees.
4 In the Chapter 11 cases there will be no need to have an
5 escrow remain outstanding.

6 THE COURT: What about Falcon? Isn't Falcon still
7 open?

8 MR. FLECK: It was never intended that the Falcon
9 debtors professionals would be accessing the escrow for
10 their fees and so those fees will be handled --

11 THE COURT: Separately.

12 MR. FLECK: -- pursuant to the plan in the Falcon
13 case.

14 One last point with respect to the escrow is that
15 the confirmation order does provide for what I just
16 mentioned, that the funds would be released. It does
17 reference in the escrow procedures that we would have an
18 order from the court that would indicate that all of the
19 professionals have sought allowance of fees and that we
20 could then submit that to the escrow agent.

21 We think that the confirmation order will suffice.
22 If there's any issue we'll contact chambers to find out.

23 THE COURT: That's fine. I imagine you could do
24 some sort of proposed order on presentment for something
25 like that, just to confirm that fact, but that's fine. Let

1 me know if you need anything on that.

2 MR. FLECK: Great. Thank you, Your Honor.

3 Okay. Moving into the applications then, Agenda
4 Item Number 3, which is Docket Number 1593 is Alvarez &
5 Marsal Global -- the legal name A&M Global Forensic and
6 Dispute Services. This is their first interim fee
7 application in the Falcon case. A&M Global Forensic and
8 Dispute Services is providing litigation support in
9 connection with the District Court litigation before Judge
10 Wood.

11 Their application deals with the period from June
12 1st through September 30th, 2013. All amounts will be paid
13 directly from the Falcon estate and not from the escrow
14 account. The total fees requested are \$53,337.50 with
15 expenses of \$4,200.67. Pursuant to the procedures that have
16 been placed in the case, they have been paid 80 percent of
17 their fees. If not already they are authorized to be paid
18 that amount and 100 percent of the expenses and they are not
19 seeking the release of the hold back at this time, which
20 accounts for \$10,667.50.

21 Mr. Abington of A&M Global is available on the
22 phone should Your Honor have any questions with respect to
23 that application.

24 THE COURT: All right. Anyone wish to be heard in
25 connection with the first interim application of Alvarez &

1 Marsal?

2 MR. MORRISSEY: Your Honor, Richard Morrissey,
3 again, for the U.S. Trustee. With the holdback in place,
4 the U.S. Trustee has no objection.

5 THE COURT: All right. I'm satisfied in the
6 merits of the application based on the information that's
7 been provided and the continuing hold back and given the
8 scope of A&M's retention in this case in connection with the
9 District Court litigation so I will approve this
10 application.

11 MR. FLECK: Thank you, Your Honor.

12 Next on the agenda is Item Number 4, it's Docket
13 Number 1637 and that's the application of KPMG US. This is
14 a final fee application for KPMG as tax consultants to the
15 debtors. The total request for KPMG is \$432,762.71 in fees.
16 For the fourth compensation period, the portion of that
17 total amount accounting for that period is \$197,445.30.
18 They are not seeking the reimbursement of any expenses.

19 The total fees and expenses to be paid from the
20 escrow subject to Your Honor's approval would be
21 \$192,994.89. That consists of certain amounts for the third
22 period holdback as well as unpaid fees for the fourth
23 interim compensation period.

24 I understand that there have been discussions with
25 the Office of the United States Trustee and KPMG US has

1 agreed to a reduction in their fees of \$3,064.50. Mr.
2 Lazaridis, I believe, is on the phone from KPMG US and is
3 available to address any questions about the application.

4 THE COURT: All right. Let me hear from the U.S.
5 Trustee's Office, what's the scope of the reductions?

6 MR. MORRISSEY: Your Honor, I'm not sure exactly
7 what the issues were there, but before we had issues such as
8 transitory time keepers things like that, they were
9 diminimus. There was another issue that arose and was
10 resolved. The issue was that although the fee application
11 covered a four month period, out of the \$197,000 for the
12 entire fee period 178,000 was attributable to one month,
13 namely the last month, which was September of 2013.

14 I asked for an explanation of that and basically
15 what I understand to have happened there is that they just
16 billed all the time during that last month. So, it was
17 actually worked on during the four months covered by the
18 application period and with that explanation the total
19 amount did appear reasonable to the U.S. Trustee and
20 therefore the U.S. Trustee did not lodge an objection.

21 THE COURT: All right. Thank you for explanation,
22 that's helpful to know. All right. Anyone else who wishes
23 to be heard in connection with the fourth interim and final
24 fee application of KPMG LLP US as tax consultants to the
25 debtors?

1 All right. With the explanations provided both
2 here this morning as well as in the documents and
3 application contained in my binder here, I will grant the
4 fourth interim and final fee application for KPMG.

5 MR. FLECK: Thank you, Your Honor.

6 Next on the agenda, Number 5 is Docket Number 1638
7 is the first and final fee application of Mr. Zacaroli, who
8 is special Cayman counsel -- special counsel to the debtors,
9 the barrister representing AIHL in connection with the
10 proceedings in the Cayman Islands and I believe he is on the
11 line if there are questions about this application.

12 The request being made on behalf of Mr. Zacaroli
13 is for payment of \$74,621 British pounds and \$.25, which is
14 the equivalent, approximately, as of the date of the filing
15 of the application to \$119,394.00.

16 I'm going to give the rest of the amounts in
17 dollars if that's okay, Your Honor.

18 THE COURT: That would be just fine.

19 MR. FLECK: Okay. The expenses were \$11,843.84,
20 which brings the total fees and expenses to be paid from the
21 escrow to approximately \$23,878.62.

22 Mr. Zacaroli, respectfully, requests the payment
23 of his fees. The contributions of Mr. Zacaroli were
24 significant in this case. Fortunately for the estates the
25 amount of his fees are not compensary with the amount of his

1 contribution which was critical to having proceedings in the
2 Cayman Islands move forward at pace with these proceedings.
3 And as Your Honor will recall, we had the proceeding in the
4 Caymans and it was then subject to Your Honor's confirmation
5 order and I think it was generally perceived within the
6 Cayman bar that the work that Mr. Zacaroli did was novel and
7 first rate and was essential to the successful conclusion of
8 the Chapter 11 cases.

9 For the reorganized debtors as with the other
10 applications are fully supportive of the application and ask
11 that Your Honor approve the request.

12 THE COURT: All right. Anyone wishes to be heard
13 in connection with the request of the first and final
14 application of Antony Zacaroli as special counsel?

15 MR. MORRISSEY: Your Honor, again, Richard
16 Morrissey for the US Trustee. It's nice to hear counsel for
17 the committee speak in such glowing terms with respect to
18 counsel to debtors.

19 The U.S. Trustee has no objection to this fee
20 application except there is one item that we want to
21 clarify. We ask that the entry of the order be delayed
22 until this matter is cleared up and it's on the expense
23 side. It's a discrete issue and I'm sure it can be cleared
24 up relatively quickly.

25 Among the disbursements there was a return flight

1 from London Heathrow to Grand Cayman Island business class,
2 which was \$6,258.80 and I'm looking on Page 3 of the
3 application.

4 THE COURT: I have it in front of me.

5 MR. MORRISSEY: Then a few lines down, Your Honor,
6 there's a business class flight upgrade, which is valued at
7 \$2,350.72. And that if interpreted one way could be
8 problematic for the U.S. Trustee. But I propose that we do,
9 Your Honor, is have a discussion between us and Mr. Zacaroli
10 or perhaps a intermediary such as the Gibson Dunn firm to
11 clarify what that means. As Your Honor knows, generally, we
12 believe that even if someone flies business class or first
13 class that they should only bill the estate for the coach
14 fare.

15 But the other issue that we want cleared up is
16 what that business class flight upgrade is.

17 THE COURT: I actually had noticed that, that was
18 the one question I had too. All right. So, I'm happy to,
19 with that caveat and subject to any additional discussions
20 that they parties need to have and if for some reason
21 there's still a need to discuss it with the court, you can
22 just call me and let me know.

23 But I think we should -- I have that concern and I
24 know when we're talking about fees of this large size in a
25 case that's very complex, it may seem like a small amount

1 and it is thousands of dollars, but it's important to police
2 those lines, I think, for purposes of all cases. So, I did
3 have the same question as well. Anything else from the U.S.
4 Trustee's Office on this particular application?

5 MR. MORRISSEY: Apart from that, Your Honor, the
6 U.S. Trustee has no objection.

7 THE COURT: All right. And certainly, I am very
8 familiar with the Cayman Island proceedings from the many
9 discussions we've had in this case and understand the
10 important place that those proceedings played in the overall
11 restructuring of the debtors, so certainly his services were
12 very important to the case.

13 So, with that caveat I will approve everything
14 else in the first and final application and you can just
15 give chambers a ring and let us know where you end up on
16 that and if there's any need for further discussion with the
17 court you can let me know that as well.

18 MR. FLECK: Thank you, Your Honor.

19 Next is Agenda Number 6, Docket Number 1640 and
20 we're staying in the Cayman Islands for the time with the
21 application of Mourant Ozannes. This is a final fee
22 application. The total fees requested are \$2,200,306. The
23 total expense request is \$33,285.41.

24 With respect to the escrow, Your Honor, Mourant,
25 if approved would receive \$337,146.40 from the escrow and

1 that represents certain amounts from the third holdback as
2 well as its unpaid fees for the fourth interim compensation
3 period.

4 I don't want to make light of the contributions of
5 that firm verse Mr. Zacaroli, I think they were quite
6 significant as well. Mr. Simon Dixon, I believe, is on the
7 phone from the firm to accept if there are any questions.
8 And I'm not aware of any reductions as a result of
9 discussions with the United States Trustee.

10 THE COURT: All right. Let me hear from the U.S.
11 Trustee.

12 MR. MORRISSEY: Your Honor, the U.S. Trustee has
13 no objection. I would point out, however, that my
14 understanding is that the Mourant Ozannes firm had a
15 different role than Mr. Zacaroli did.

16 Also Mourant Ozannes was involved since the
17 beginning of the case, whereas Mr. Zacaroli was not, thus
18 there's a big discrepancy in the amount of the fee
19 application. I'm not aware of any overlap between the two,
20 as a result the U.S. Trustee has no objection.

21 THE COURT: All right. Thank you for that
22 explanation. I am aware of the distinct role that these two
23 firms played in the case and I appreciate the U.S. Trustee's
24 Office considering that as well. And based on all the
25 information before me, I will grant the fourth and final

1 application of the firm of the special Cayman Islands
2 counsel for the debtors.

3 MR. FLECK: Thank you, Your Honor. There's just a
4 few more applications left on the agenda today. The next is
5 Number 7 on the agenda, Docket Number 1643, that's the
6 application of KPMG, LLP UK as valuation advisor to the
7 debtors. The total fees requested by KPMG, LLP UK are
8 \$4,112,551 that represents a total voluntary reduction by
9 KPMG of \$1,031,041.12. That was based upon an agreement
10 early on in the cases and we talked about it with the court
11 --

12 THE COURT: Right.

13 MR. FLECK: -- in connection with the resolution
14 of the Euro Log fee dispute. The expenses --

15 THE COURT: I remember the Euro Log fee dispute
16 well, yes.

17 MR. FLECK: We all do.

18 The total expenses requested are \$69,026.97 which
19 brings the total fee and expense request to \$4,181,577.97.
20 There's just a small amount that will be sought from the
21 escrow to the extent that application is approved, that
22 would \$23,104.20.

23 Mr. Doug McFee and/or Mr. Andrew Power of KPMG UK
24 are available telephonically. I believe counsel is also in
25 the courtroom to the extent there are questions.

1 I would just like to note on behalf of RA that
2 we're appreciative of the continuing work of KPMG. They
3 have made themselves available to assist RA and its auditors
4 in preparing an additional audit for 2012 and a fresh start
5 for 2013 and KPMG has made itself available to assist with
6 that transition, so that's appreciated.

7 THE COURT: All right. Anyone wish to be heard on
8 the fourth interim and final fee application of KPMG as
9 valuation advisor?

10 MR. MORRISSEY: Your Honor, the U.S. Trustee has
11 no objection. I would point out that KPMG in this case
12 played a -- not only an important role, but also a discrete
13 role in the case as opposed to other financial advisors.
14 They valued the assets --

15 THE COURT: Yes.

16 MR. MORRISSEY: -- which was necessary to getting
17 to a plan, an overall valuation of the debtors and the U.S.
18 Trustee has no objection.

19 THE COURT: All right. Yes, I remember that --
20 the importance before it was done in terms of hiring them to
21 do it as well as the role they played in the discussions in
22 terms of understanding the valuations and how to work out
23 the alternate plan. So, it's important work in the case and
24 does anybody else wish to be heard on the application?

25 All right. Based on the information I have in

1 front of me, I will grant the fourth and final fee
2 application of KPMG LLP as valuation advisor and again, I
3 appreciate the efforts of parties to work out the fee issues
4 in connection with the Euro Log fees as well, so that the
5 debtors and the estate could get the benefit of the work but
6 at the same time resolve the issues of fees as appropriate.

7 MR. KLECK: Thank you, Your Honor. The last two
8 applications for approval of final fee applications with
9 respect to advisors who were retained by the Official
10 Committee of Unsecured Creditors and the first of those two
11 is the application of FTI, that's Agenda Number 8, Docket
12 Number 1644.

13 FTI is seeking total fees of \$4,553,445.45. They
14 have taken a voluntary reduction based upon discussions with
15 Mr. Morrissey and his office of \$19,566 and I understand now
16 that the United States Trustee's Office has no objection to
17 the approval of the application.

18 FTI is also seeking final approval of its expenses
19 in the case, \$59,520.86. With respect to the escrow FTI
20 would receive if the application is approved, \$639,344.64 on
21 account of the third holdback and unpaid fees for the fourth
22 period.

23 I recall, as I'm sure Your Honor does, the
24 beginning of the case we had -- they weren't lengthy
25 discussions but there was argument before the court with

1 respect to the retention of two advisors for the committee.
2 Houlihan's application was approved at the last hearing and
3 it is certainly the case that the role of FTI was critical
4 to the work of the creditors committee and was distinct from
5 the work and services that were provided by Houlihan. And
6 on behalf of RA we, respectfully, request the court approve
7 the application. Mr. Sam Star who led the engagement on
8 behalf of FTI is in the courtroom today and available to the
9 extent there are any questions.

10 THE COURT: All right. Anyone wish to be heard in
11 connection with this application?

12 MR. MORRISSEY: Your Honor, the U.S. Trustee has
13 no objection and what Mr. Fleck just said about dividing up
14 the labor between FTI and Houlihan, in this case, I think is
15 very instructive for future cases where if we make it clear
16 what each firm is to be doing at the retention stage, we
17 have a whole lot fewer problems at the fee application
18 stage.

19 THE COURT: No, I think that's right. I think it
20 was well handled here. I've had other cases where it's
21 become a bit more of a train wreck in terms of trying to
22 sort that out after folks have already done work and similar
23 overlapping issues. And there are times when it is very
24 useful to have different firms to different discrete slices
25 of work, so I appreciate that that was well handled here.

1 Anyone else wish to be heard as to the fourth and
2 final application of FTI Consulting?

3 All right. Hearing no one, based on the
4 information I have in front of me and remember discussions
5 about the retention of FTI in this case, I will grant the
6 fourth and final application of FTI Consulting.

7 And I think that leaves one more.

8 MR. FLECK: That's correct, Your Honor. Number 9
9 on the agenda is the final fee application of the Hassan
10 Radhi firm. They were Bahraini counsel to the Official
11 Committee of Unsecured Creditors. The total fee request is
12 \$70,167 and they are not seeking the reimbursement of any
13 expenses. That 70,000 figure represents the total fees for
14 the case. They -- if approved, would receive from the
15 escrow, \$30,840.28 on account of third period hold back fees
16 as well as the fourth interim compensation period fees.

17 As I'm sure the court is aware, having Bahrainian
18 counsel was essential for the committee. There was also
19 Bahrainian counsel on the side of the debtors. They worked
20 together well, there were issues that divided us during the
21 cases and some of those were over issues of Bahrainian law
22 where it was important to have counsel. In fact, we had a
23 declaration filed, I believe, on at least one occasion from
24 Bahrainian counsel and their work was very much appreciated.

25 Mr. Jalil Al-Aradi is on the phone from Bahrain if

1 there are any questions. I don't believe there have been
2 any objections by the Office of the United States Trustee.

3 THE COURT: All right. Let me hear from that
4 office.

5 MR. MORRISSEY: Your Honor, the U.S. Trustee has
6 no objection and I'd just -- I guess I will add since this
7 is probably the last time I'm speaking at this hearing
8 today, that what we still have to hear from, there was some
9 colloquy about that earlier today, are some of the Falcon
10 Gas Storage Professionals and I guess not only the fee
11 applications but progress from that case as well.

12 But, obviously, it's been a long road, literally,
13 for Mr. Fleck and his colleagues taking the long road to
14 Bahrain and other places during the course of the case. But
15 it wasn't a sure thing that this case was going to make it
16 and it did and there are a lot of people who are responsible
17 for bringing that about.

18 So, the U.S. Trustee has no objection to the
19 Hassan Radhi application. Thank you.

20 THE COURT: All right. I agree with those
21 comments. It always matters the quality of counsel and
22 professionals involved in the case and I think you'd be hard
23 pressed to find a case where that mattered more than it did
24 in this case, so I think -- only to think back to the first
25 day of hearing and various other hearings shortly after that

1 to show the level of uncertainty involved in the whole
2 endeavor.

3 So, with that, anyone else wish to be heard on the
4 fourth and final application of the Hassan Radhi Firm?

5 All right. I will grant that fourth and final
6 application as well.

7 MR. FLECK: Thank you, Your Honor.

8 As a housekeeping matter, for the purposes of the
9 order, with your permission we'll prepare the order, deal
10 with the issue with respect to Mr. Zacaroli and hopefully
11 submit it without issue for Your Honor's approval.

12 THE COURT: All right. Thank you.

13 MR. FLECK: Okay. Thank you.

14 We're next moving to the Category 3 on the agenda,
15 it's uncontested matters related to claims reconciliation
16 beginning with Item Number 10 and my colleague Ms. Mandel
17 will handle those matters.

18 THE COURT: All right.

19 MS. SPIGEL: Your Honor, may I be excused?

20 THE COURT: Certainly.

21 Yes, anyone who was here for the fee applications
22 who has other things to do in life, which I assume is the
23 case, should feel free to move on to those other things.

24 MS. MANDEL: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. MANDEL: Lena Mandel, Milbank Tweed Hadley &
2 McCoy on behalf of the reorganized debtors.

3 The first couple of items on the agenda dealt with
4 the claims that was still remaining subject to the second
5 and third omnibus objections that have been adjourned and
6 the order that we will be submitting will reflect that.

7 So, the first item that I'm going to address is
8 Item 10 on the agenda which has to do with the fifth omnibus
9 objection to claims.

10 Your Honor may recall that the bulk of the claims
11 that was subject to the fifth omnibus objection were heard
12 at the hearing in October. There was an issue of the
13 supporting affidavit Your Honor requested, it was somehow
14 not filed by the debtors when they originally filed the
15 fifth omnibus objection, so we have submitted an affidavit
16 of Mr. Steve Catabar (ph) in support of those claims and so
17 we don't think there's any remaining matters related to
18 those claims.

19 The only other open claim on the fifth omnibus
20 objection is claim number 305 filed by one of the employees
21 who did file a response to the omnibus objection.

22 THE COURT: That's the Charles Eibern (ph).

23 MS. MENDEL: That is the Charles Eibern, Your
24 Honor, that's correct.

25 THE COURT: We are happy to report that we have

1 reached a settlement with Mr. Eibern and we will be
2 submitting an agree stipulation for Your Honor's approval
3 where Mr. Eibern has agreed to accept the scheduled claim,
4 the original scheduled claim, as his allowed claims entitled
5 to distribution under the plan and has agreed that the rest
6 of his claim was really based on equity investments and we
7 have now agreed what equity investments they are and it will
8 all be in the stipulation.

9 THE COURT: All right.

10 MS. MENDEL: So, with that I am asking Your Honor
11 to approve the stipulation which we will be submitting later
12 on.

13 THE COURT: All right. Anyone wish to be heard on
14 the fifth omnibus objections claims?

15 I see no one rising. And I will grant the fifth
16 omnibus objection to claims as modified and discussed here
17 this morning. I will await the stipulation dealing with the
18 claim of Charles Eibern and I will grant the remainder of
19 the claims objection in light of the declaration of Steve
20 Catabar that was submitted to give me appropriate evidence
21 to address the claims and the prime facie validity of the
22 claims and I find that the claims are appropriately expunged
23 at this point.

24 MS. MANDEL: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MS. MANDEL: Yes, Item 14, Your Honor. It is one
2 of the claims subject to the second omnibus objection claim
3 number 236, which we addressed in our reply. The Claimant
4 did not file any further pleading in response to our reply,
5 so we are asking today to move forward on that.

6 This is a claim filed by Combined National
7 Industries Holding Company and the objection was based on
8 the fact that this claimant is really a holder of an equity
9 interest in a non-debtor Arcapita affiliate and does not
10 have an actual claim against any of the debtors.

11 In their response, CNI, the claimant conceded that
12 to the extent there was no cash remaining in its investment
13 account, it didn't have a claim. But it was under the
14 impression that there still was cash remaining in its
15 account and it was pointing to a letter that it received
16 from the debtors post-petition. So, out of the originally
17 asserted claim for \$75.6 million, the claimant was now
18 asserting that it has a claim to \$16.7 million based on this
19 information in the letter.

20 We have investigated this matter and as set forth
21 in the affidavit of Mr. Samuel Star, we have, again,
22 confirmed that the balance of this claimant's investment
23 account of the petition date was zero.

24 In fact, the letter that the claimant received,
25 reflected a claim of an Arcapita entity called District

1 Holding Capital Limited. It's not actually an Arcapita
2 entity it's a deal company.

3 THE COURT: Right.

4 MS. MANDEL: In which among others this claimant
5 has invested and, again, as explained in Mr. Star's
6 affidavit, the bank has scheduled an undisputed claim for
7 that entity and that claim indirectly encompasses CNI's
8 claim, which is an equity rather than a claim against any of
9 the debtors.

10 Based on that information we are asking today that
11 the claim be expunged. Mr. Star is here today and is
12 prepared to testify as to what is set forth in his
13 affidavit, to the extent Your Honor or anybody else has any
14 questions.

15 THE COURT: All right.

16 Let me first ask if there's anybody here who
17 wishes to be heard in connection with this dispute as part
18 of the second omnibus claims objection?

19 All right. I don't see anybody rising.

20 My only question is, I just want to understand --
21 it's implied but it's not specifically stated that the money
22 is in one of two places, if it's not in the bank account
23 then it has been invested.

24 MS. MANDEL: That's correct.

25 THE COURT: In other words, there's no interim

1 accounts anywhere where it might be held in anyway -- if
2 it's not in your personal account that means it's invested.
3 If it hasn't been invested it would be in that entities
4 personal bank account.

5 MS. MANDEL: That is my understanding, Your Honor.

6 THE COURT: All right. Can your witness confirm
7 that today? That would just be so that --

8 MR. STAR: Yes, Your Honor.

9 THE COURT: And I assume you are Mr. Star?

10 MR. STAR: I am.

11 THE COURT: All right. Thank you very much.

12 So, that was my one question. Again, I -- that
13 was my understanding based on other information I've
14 received in the case in connection with other matters. I
15 just realized this objection teed it up in a way that I
16 wasn't -- I really hadn't thought about before, just make
17 sure I understood. It's a bipolar world, you're either in
18 the account established for that individual investor or
19 you've been invested. So, with that, I think that answers
20 my question. So, thank you for that clarification, sir, I
21 appreciate it.

22 All right. Anything else that you'd like to tell
23 me in connection with that?

24 MS. MANDEL: No, Your Honor, that's pretty much
25 it.

1 THE COURT: All right. With that clarification --
2 well let me ask one other thing. I assume that's the way
3 it's done for all of the investments, that is when you talk
4 about equity investments, you establish a bank account for
5 the investor, the money is put in there and when it's
6 invested it's invested, so if it hasn't been invested it
7 would be in the "bank account."

8 MR. STAR: Samuel Star for the record. That's
9 correct, Your Honor. The issue is, money will come into
10 that account and then it gets invested, any return on that
11 investment will go back into that account and possibly back
12 to the investor or not, depending on their instructions.

13 THE COURT: All right.

14 MR. STAR: That's the flow.

15 THE COURT: Thank you very much, I appreciate
16 that.

17 All right. With that, I will grant the objection
18 to this claim as an equity claim given that there is no
19 balance in the bank account of the claimant corporation,
20 which is the Combined National Industries Holding Company
21 and I don't need to address whether they can really appear
22 pro se, I've considered their letter and their objection on
23 its face and the merits of it and so, to the extent they
24 want to participate in future proceedings they may have to
25 address that issue, but for purposes of today I'm not going

1 to get bogged down on that particular issue.

2 MS. MANDEL: Thank you very much.

3 THE COURT: All right. Anything else we need to
4 address here this morning?

5 MR. FLECK: Your Honor, just in connection with
6 the estimation motion, I just want to raise a procedural
7 point. In light of Your Honor's comments we will, as Ms.
8 Mandel said, we will proceed with an objection to those
9 claims that were referenced.

10 We are trying to make a distribution before year
11 end.

12 THE COURT: Right.

13 MR. FLECK: Pursuant to the claim objection
14 procedures, there's a 35 day notice of process for omnibus
15 objections, although we do have the right to file a motion
16 to seek a shortened time. With the 35 days, obviously, we
17 would not be able to have that heard before the end of the
18 year, which would mean that we could make distributions to
19 other classes, but Class 5A bank general unsecured claimants
20 would not be able to receive the distribution until those
21 claims have been dealt with.

22 THE COURT: Right.

23 MR. FLECK: I guess I would like to check with
24 Your Honor, whether you would hear a motion, if we filed a
25 motion to shorten notice, taking into account that the

1 claimants have received notice of the motion to estimate --

2 THE COURT: Right.

3 MR. FLECK: -- obviously it's different relief.

4 THE COURT: Right.

5 MR. FLECK: But that combined with there being
6 some notice for --

7 THE COURT: Well, let me ask, is the date for the
8 distribution set in the plan?

9 MR. FLECK: It is not, Your Honor. We're trying
10 to make distributions as quickly as possible.

11 THE COURT: I realize that and I applaud your
12 effort to do that. I guess the reason why I ask is that as
13 you probably have figured out over time, I'm a big fan of
14 process and I sometimes feel like haste can sometimes create
15 more problems than it solves over time.

16 So, you certainly have the right to make that
17 motion. I don't have my calendar to sort of calculate the
18 dates and see how short it would be. I wonder whether it's
19 worth it, but I don't know the mechanics and the cost
20 involved with the distribution and where you are. So, those
21 are the two things to sort of --

22 MR. FLECK: Okay.

23 THE COURT: -- weight against that. So, I'll
24 leave it to your unofficial judgment to make the right call.
25 Certainly you have the right to do it and if it's something

1 that really is a problem and that you have everything
2 together, for purposes of the estate, may be the right way
3 to go. It may also be -- some people may say well, it's not
4 worth it at this point, but I'll leave that to your
5 judgment.

6 MR. FLECK: Thank you, Your Honor.

7 THE COURT: All right. Thank you. And you have
8 the right to do that under -- under -- it's my understanding
9 based on things that we've put together in the past, but
10 I'll leave it to your judgment.

11 MR. FLECK: Thank you, Your Honor.

12 THE COURT: All right. Anything else we need to
13 address here this morning?

14 MR. FLECK: No.

15 THE COURT: All right.

16 Thank you very much. Do we have another date or
17 need another date in this case?

18 MR. FLECK: We have an omnibus hearing on December
19 17th in the afternoon and barring any unforeseen
20 circumstances that will suffice and we'll have an agenda
21 after that date.

22 THE COURT: All right. Thank you very much.

23 MR. FLECK: We also have additional omnibus dates.

24 THE COURT: All right. I'll rely on you to let me
25 know if we need some dates that you don't have.

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MR. FLECK: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon these proceedings were concluded 12:03 PM)

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

I, Sheri Monroe, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sheri
Monroe

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