

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 12-11076-shl

4 Adv. Proceeding No. 12-01662-shl

5 Adv. Proceeding No. 13-01355-shl

6 - - - - - x

7 In the Matter of:

8

9 ARCAPITA BANK B.S.C.(C), et al.,

10

11 Debtor.

12 - - - - - x

13 HOPPER,

14 Plaintiffs,

15 v.

16 FALCON GAS STORAGE COMPANY, INC.,

17 Defendant.

18 - - - - - x

19 TIDE NATURAL GAS STORAGE I, LP, et al.,

20 Plaintiff,

21 v.

22 HOPPER CLAIMANTS,

23 Defendants.

24

25 - - - - - x

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

January 21, 2014
11:18 AM

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

1 Hearing re: Doc. #1051 (THIRD) Motion for Omnibus Objection
2 to Claim(s) - Debtors Third Omnibus Objection to Claims.
3
4 Hearing re: Doc. #1707 (NINTH) Motion for Omnibus Objection
5 to Claim(s) - Ninth Omnibus Objection to Claims.
6
7 Hearing re: Doc. #1251 Confirmation of Second Amended Joint
8 Plan of Reorganization of Arcapita Bank B.S.C. (c) and
9 Related Debtors Under Chapter 11 of the Bankruptcy Code
10 (With First Technical Modifications) as it Relates to Falcon
11 Gas Storage.
12
13 Hearing re: Adversary Proceeding: 13-01355-shl Tide
14 Natural Gas Storage I, LP et al. v. Hopper Claimants. Doc.
15 #11 Motion to Approve Compromise Motion to Approve Falcon
16 Settlement with Tide, the Hopper Parties, and HSBC (This
17 Administrative Entry was Entered to Reflect the Accurate
18 Docket Event Code; See Lead Case No. 12-11076-shl Doc. 1721.
19
20 Hearing re: Adversary Proceeding: 12-01662-shl Hopper v.
21 Falcon Gas Storage Company, Inc. Doc. #27 Motion to Approve
22 Compromise Motion to Approve Falcon Settlement with Tide,
23 the Hopper Parties and HSBC (This Administrative Entry was
24 Entered to Reflect the Accurate Docket Event Code; See Lead
25 Case No. 12-11076-shl Doc. 1721.

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Transcribed by: Nicole Yawn

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

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5 the Falcon Settlement with Tide Natural Gas Storage

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated.

So we're here this morning for Arcapita Bank BSC, a few matters that are on, including the so-called Falcon plan. So let me get appearances from counsel, starting on this side of the room.

MR. MILLET: Good morning, Your Honor. Craig Millet and Jeremy Graves, of Gibson, Dunn & Crutcher, on behalf of Falcon Gas Storage Company.

MR. FLECK: Good morning, Your Honor. Evan Fleck and Lena Mandel, of Milbank, Tweed, on behalf of the reorganized debtors, and, Your Honor, in the Falcon case, on behalf of the official committee of unsecured creditors.

THE COURT: All right.

MS. KARPE: Good morning, Your Honor. Karel Karpe, of Karpe Law, representing Ace American Insurance Company.

MR. WOOD: Good morning, Your Honor. Tray Wood, on behalf of the Tide entities. With me is my partner, Brad Benoit.

THE COURT: All right. Good morning.

MR. VAN TOL: Good morning, Your Honor. Pieter Van Tol, from Hogan Lovells, for HSBC Bank.

THE COURT: All right. Good morning.

MS. PORSCHE: Good morning. Cassandra Porsch, from

1 Andrews Kurth, on behalf of the Hopper parties.

2 THE COURT: All right. Good morning to you all,
3 and we'll hope to finish here before we all get snowed
4 under.

5 (Laughter)

6 THE COURT: Which has happened a little more
7 quickly than folks anticipated, at least according to
8 weather reports that I saw.

9 MR. FLECK: Good morning once again, Your Honor.
10 Evan Fleck, from Milbank, Tweed. I just wanted to, if I
11 may, give a very brief update on matters, and the way we set
12 up the agenda for today is to first handle matters for the
13 reorganized debtors. That'll be very brief, and then, we
14 can move on, with the Court's permission, to the Falcon
15 portion of the agenda.

16 THE COURT: All right.

17 MR. FLECK: The reorganized debtors are the equity
18 owners of the Falcon debtor, and so, we look keenly upon the
19 events of today and look forward to, hopefully, the
20 resolution of the Chapter 11 case, at least in terms of the
21 plan for the Falcon debtor.

22 In connection with the reorganized debtors,
23 though, Your Honor, I did want to update the Court, as we
24 have in the past, with respect to consummation of the plan
25 that the plan has been consummated, except with respect to

1 distributions of the SECOOK (ph), and I know that creditors
2 follow that closely, which is appropriate, because it's the
3 first level of consideration that's going out to creditors.
4 There had been a brief delay in working through some of the
5 Europe clear (sic) and Clearstream systems and getting the
6 SECOOK instrument out to the creditors.

7 The equity instruments had been distributed in the
8 other forms of consideration, but the SECOOK was somewhat
9 delayed, and, just this morning, we received confirmation
10 from the service providers that all of the tests have now
11 gone through successfully, and we are confident that the
12 SECOOK will be in the hands of the creditors by this Friday.
13 So we're getting quite a few calls from creditors, and this
14 is a convenient way to update the Court as well the parties
15 that follow the case here quite closely.

16 THE COURT: All right.

17 MR. FLECK: With that, Your Honor, I'd cede the
18 podium to my colleague, Ms. Mandel, to take up the claims
19 matter that's on the agenda for the reorganized debtors.

20 THE COURT: All right.

21 MR. FLECK: Thank you.

22 THE COURT: Thank you.

23 MS. MANDEL: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MS. MANDEL: Lena Mandel, Milbank, Tweed, on

1 behalf of the reorganized debtors. The first four matters
2 of the agenda are omnibus objections to claims one through
3 four. With respect to certain claims that have not yet been
4 resolved, and they still have not been resolved. So they're
5 being adjourned to February and/or March --

6 THE COURT: All right.

7 MS. MANDEL: -- omnibus hearing, as indicated on
8 the agenda. Matter number five of the agenda -- it's
9 another adjourned matter. It's a pretrial conference in an
10 adversary proceeding. There's a motion to dismiss that we
11 have filed, and the plaintiffs asked for additional time to
12 respond, and so, this whole matter has been adjourned to the
13 March omnibus hearing, and the pretrial conference has been
14 adjourned as well.

15 Then, number six on the agenda is a couple of
16 claims from omnibus objection number three. These have been
17 resolved, and I understand that Gibson Dunn will be
18 submitting an order resolving these claims.

19 Finally, number seven is the ninth omnibus
20 objection to claim that we have filed. We have not received
21 any responses. So we're moving forward with all claims,
22 other than claim number 577 by Ace Insurance Company. The
23 resolution of that claim has been adjourned to the March
24 omnibus hearing, and we believe it will be resolved by then.

25 With respect to all the other claims that were

1 objected to by omnibus objection number nine, we're
2 requesting either expungement or reduction of those claims,
3 based on the facts set forth in the declaration by
4 Mr. Rinaldi (ph), who is on the phone if Your Honor has any
5 questions about the grounds for objection. If not, then we
6 will be submitting an order.

7 THE COURT: All right.

8 Let me just back up for one minute to the third
9 omnibus objection claim. I was just checking my numbers of
10 claims and trying to cross-reference things. Am I safe in
11 saying that those all relate to Tide?

12 MS. MANDEL: That is my understanding, Your Honor,
13 yes.

14 THE COURT: That's what I gleaned through the
15 papers as well. So, for the ninth omnibus objection -- let
16 me just get the paper out here. There's a variety of
17 matters that are objected to.

18 MS. MANDEL: All technical, Your Honor.

19 THE COURT: Yes.

20 MS. MANDEL: Yes.

21 THE COURT: Some late filed claims, some claims
22 that are superseded, some claims that are duplicates, no
23 liability claims, books and records claims through (sic)
24 classified. I didn't see, as you mentioned, any objection
25 or response to the ninth omnibus, and I take it, from your

1 presentation, that you didn't get any informal responses,
2 either?

3 MS. MANDEL: No, Your Honor, no.

4 THE COURT: All right. And that objection is
5 supported by a declaration from Mr. Rinaldi, who I
6 understand is on the phone, and so, in case we have a
7 necessary evidentiary basis to any prima facie validity to
8 the claims that they may or may not have, depending on what
9 they look like.

10 All right. Is there anything else you want to
11 add?

12 MS. MANDEL: No, Your Honor.

13 THE COURT: All right.

14 I will grant the ninth omnibus objection to
15 claims.

16 MS. MANDEL: Thank you.

17 THE COURT: And dealing with duplicative claims,
18 superseded claims, late filed claims, no liability claims,
19 books and records claims and those to be reclassified, based
20 on the declaration as well as the information contained in
21 the objection itself, and so, if you'd just submit a
22 proposed order, that would resolve the ninth omnibus
23 objection to claims, other than for claim 577, which we'll
24 deal with in the future.

25 MS. MANDEL: Thank you very much, Your Honor.

1 THE COURT: Thank you.

2 MR. MILLET: Again, Your Honor, Craig Millet, for
3 Falcon. It looks like we're ready to move onto the Falcon
4 matters then.

5 THE COURT: All right. I think we are.

6 MR. MILLET: All right. Hopefully, Your Honor,
7 we're here today to finish what we started approximately two
8 years ago since this is the final piece of the Arcapita plan
9 that the Court has already confirmed. As the Court, of
10 course, recalls back in June of last year when we were
11 addressing confirmation, we did proceed with confirmation as
12 to all debtors, except Hopper, but there were certain issues
13 that required resolution in various courts and other places
14 before we could address that, including matters under
15 submission to this Court.

16 I'm pleased to tell the Court we've now resolved
17 all of those matters, and we believe we have cleared the
18 path then to move to confirmation. The first step, of
19 course, of which is a 9019 motion that's currently before
20 the Court today to approve the resolution of those matters
21 between Tide and Hopper and others.

22 With respect to that motion, Your Honor, we've
23 laid everything out in detail in the motion as to the terms
24 of the settlement. We've received no opposition, formal or
25 informal, of any kind to that, and we believe that all the

1 standards of certainly 9019 have been met here quite easily
2 since all parties are represented by competent counsel, and
3 everything was routinely (sic) negotiated with respect to
4 tricky issues as to the property of the estate and as to the
5 meaning of the contract with respect to the escrow money,
6 and we've come up with a division of the money that resolves
7 the issues, and, with that, Your Honor, I'd submit that the
8 motion should be granted since it does resolve all of the
9 elements necessary for us to move on to confirmation,
10 subject to, of course, any comments that anyone has here or
11 questions of the Court.

12 THE COURT: All right. I do not have any
13 questions.

14 Let me ask if anybody else wishes to be heard on
15 the 9019 motion as to the Falcon settlement with Tide, the
16 Hopper claims, and the HSBC.

17 MS. PORSCHE: Your Honor, Cassandra Porsch, Andrews
18 Kurth, on behalf of the Hopper --

19 THE COURT: You might just want to come a little
20 bit closer, just so we can --

21 MS. PORSCHE: Sorry.

22 THE COURT: As long as you're picked up by any
23 microphone at all.

24 MS. PORSCHE: Okay. I actually don't have anything
25 substantive to add. I just wanted to put on the record that

1 we fully support the motion.

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

3 Anyone else?

4 All right. I looked at the motion. I saw the
5 details of the settlement. I think it easily satisfies the
6 lowest range of reasonableness under 9019, although that
7 sounds like it's (indiscernible - 12:53), so I'll go further
8 than that. I think it's a very reasonable settlement.

9 It sounds like a very sensible way to resolve a
10 dispute that had many complicated aspects. It sounds like
11 the trial is going to be a complicated endeavor, based on
12 the description in here and from Judge Wood.

13 Certainly, the subordination issues were tricky,
14 to use your term, as well as other issues, property of the
15 estate and such, and I am fairly confident we have made
16 substantial progress in putting together and paying (sic),
17 which I will not discuss for obvious reasons, but I'm fairly
18 confident that however I rule it would not have been the end
19 of this litigation because interesting issues lead to
20 further litigation.

21 So I have no doubt in our work on it here that it
22 would not have been the last word for any party, and further
23 litigation would have resulted. So, for many reasons set
24 out in the motion, I join with you in saying I think it's a
25 very reasonable settlement. I appreciate the parties'

1 cooperation on all of these issues and your time before this
2 Court and in your time before Judge Woods. So I'm happy to
3 approve the settlement.

4 MR. MILLET: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. MILLET: That then allows us to move then to
7 confirmation because of the settlement just approved by the
8 Court. We now have resolved a number of issues, none the
9 least of which, as the Court just mentioned, is the
10 subordination issue that was pending before the Court and
11 the district court litigation, but also, this will allow us
12 to resolve an adversary proceeding that was brought by the
13 Hopper parties during the case, an adversary proceeding that
14 was brought by the Tide parties during the case, claim
15 objection proceedings pending, even provides for the
16 satisfaction of claims of various parties.

17 It also allows for the resolution of two
18 objections that were filed to confirmation of the Falcon
19 plan, one by Tide, which has, of course, been resolved by
20 the settlement, and one by the Ace companies, which we have
21 resolved by putting in certain agreed language in the order
22 that they've agreed and approved. Of course, they're
23 represented by counsel, and they can confirm that, but they
24 have approved the language that we put in the order, and
25 that then resolves their claim objection.

1 With that then, we're moving into basically having
2 an uncontested plan before the Court. Of course, the Court
3 has seen this plan before. This is not a new plan. This is
4 not a different plan. This is the same plan that was
5 presented to the Court in June as to all debtors together
6 just as to Falcon with confirmation that was split up.

7 We very carefully have tried not to modify the
8 plan and not to reopen any issues. What we're seeking here
9 today in the confirmation order does not modify the plan in
10 any respect as to the Arcapita parties, other than Falcon,
11 to which the plan has already been confirmed.

12 To be clear, we're not reopening any doors to
13 appeals or that type of thing that might occur as to those
14 parties. The plan remains the same, remains unmodified,
15 remains unaffected by this order as to those parties.

16 So we're just seeking to finish off the
17 confirmation of the same plan that was already disclosed and
18 solicited with the approval of the Court as to all parties,
19 and, for all the same reasons that the Court found that the
20 plan satisfied all the elements of 1129 as to all other
21 debtors, now with the resolution of the matters before the
22 Court, we believe it satisfies all of the elements of 1129
23 in the bankruptcy code as to Falcon as well. So, in the
24 interest of brevity, rather than track through all of it as
25 we did before, I would say that, for those same reasons

1 discussed, this plan also satisfies the elements and should
2 be confirmed.

3 THE COURT: All right.

4 Anyone wish to be heard in connection with the
5 confirmation of the Falcon plan?

6 I see no one rising, and I will take that to mean
7 that no one disagrees with the statements made by counsel,
8 particularly as to the resolution of the objections,
9 including Tide's, given the settlement, as well as Ace, the
10 limited objection and reservation of rights that was on the
11 record, and, in the -- I always go through the confirmation
12 statements, but here, given that it is exactly the same
13 plan, in the interest of brevity, I am not going to do so.

14 I am, however, going to find that it satisfies all
15 applicable provisions of the bankruptcy code, obviously
16 section 1129 and -- god bless you -- and all of the relevant
17 provisions for the same reasons that I set forth on the
18 record at the confirmation hearing and all the other
19 Arcapita debtors, including that plan, and here, I just note
20 that the only thing that is new is the settlement, which
21 I've already approved, and I think the settlement allows the
22 plan, the same plan, to go forward as to this entity, and I
23 appreciate the parties' flexibility in dealing with the
24 issues when we had the objections to the prior confirmation
25 hearing, and I think it's a sensible and efficient way for

1 everyone's benefit. So thank you for that, and I'm happy to
2 confirm the plan.

3 MR. MILLET: Thank you, Your Honor, very much.

4 THE COURT: Thank you very much.

5 So is there anything else on for today?

6 MR. MILLET: Nothing I'm aware of, Your Honor.

7 That's correct.

8 THE COURT: Yeah.

9 MR. FLECK: I agree. We don't have anything on
10 the agenda, Your Honor. I did want to mention in connection
11 with the Falcon plan, as you'd expect, we will bring before
12 the Court a process forward dealing with administrative
13 claims of professional fee matters. As well, Your Honor may
14 recall, although it hasn't had much air time in this Court,
15 the Thronson (ph) parties had filed certain claims, and
16 there is an objection outstanding.

17 We have had discussions with them and are hopeful
18 that we can formalize a settlement of those claims and the
19 objection and do that on a consensual basis and bring it
20 before the Court for approval as appropriate. If not, we'll
21 move through the usual claims reconciliation process before
22 Your Honor.

23 There are some other objections to claims that I
24 expect -- that have not been resolved by the plan, as is
25 customary, and we'll bring those before the Court pursuant

1 to the claim objection procedures that are in place.

2 THE COURT: All right. And just, obviously, let
3 us know -- I know there's some that were adjourned as of
4 today for other times in February and March. As we get
5 closer to any dates, we're going to address those, what
6 those proceedings should look like. If they're argument or
7 just decide whether it's a contested matter, if they're
8 evidentiary. No two of those are exactly the same. So I
9 just want to make sure to give you the necessary time and
10 clearance to everybody, procedure-wise, of what's going to
11 happen when they step in the courtroom. So just, obviously,
12 talk to all the relevant parties, and just let us know how
13 you want to proceed, and, to the extent you need any
14 additional time that might not be satisfied on the day
15 you've got it scheduled, we can figure it out how to most
16 efficiently do it, if you have witnesses coming or any of
17 that.

18 MR. FLECK: Of course. Thank you, Your Honor.
19 We'll do that.

20 THE COURT: Thank you very much.

21 All right. If there's nothing else, thank you
22 very much, and congratulations on confirmation of the plan
23 and resolution of these very interesting issues.

24 (Laughter)

25 THE COURT: I appreciated the high level of

1 argument on the subordination issues, but I do think a
2 resolution is definitely a very sensible step for all the
3 parties. Thanks again.

4 MR. FLECK: Thank you, Your Honor.

5 (Whereupon, these proceedings were concluded at 11:36
6 AM)

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I N D E X

RULINGS


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

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

Nicole
Yawn

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Date: January 22, 2014