

Hearing Date: March 19, 2014 at 11:00 a.m.

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

	)	
<b>In re:</b>	)	<b>CHAPTER 11</b>
	)	
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	)	<b>CASE NO. 12-11076 (SHL)</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>
	)	

**RESPONSE OF THE ACE COMPANIES TO  
NINTH OMNIBUS OBJECTION TO CLAIMS**

ACE American Insurance Company (“ACE”), Westchester Fire Insurance Company (“Westchester”), and possibly one or more additional affiliates and/or subsidiaries (collectively with ACE and Westchester, the “ACE Companies”), by and through their undersigned counsel, respond to the Ninth Omnibus Objection to Claims [Docket No. 1707] (the “**Claims Objection**”), as follows:

1. On March 19, 2012 (the “**Petition Date**”), Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID Holdings Limited, and RailInvest Holdings Limited (collectively, “**Debtors**”) commenced the above-captioned chapter 11 proceedings.

2. Prior to the Petition Date, one or more of the ACE Companies issued one or more bonds (the “**Bonds**”) to one or more Debtors and/or their respective non-debtor subsidiaries. One or more Debtors and/or their respective non-debtor subsidiaries are also parties to one or more Agreements of Indemnity (the “**Indemnity Agreement(s)**”) and Guarantees in favor of Westchester (the “**Guarantee(s)**”), which were entered into in connection with the Bonds. Some of the ACE Companies may have also entered into one or more other agreements (collectively with the Bonds, Indemnity Agreement(s) and Guarantee(s), the “**Agreements**”) with one or more of the Debtors in connection with the Bonds.<sup>1</sup>

3. The ACE Companies filed a limited objection to confirmation of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c), and Related Debtors Under Chapter 11 of the Bankruptcy Code [Docket No. 1036] (as subsequently amended and modified, the “**Plan**”), which was resolved in part by the inclusion of the following language in the Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors with Respect to Each Debtor Other than Falcon Gas Storage Company, Inc. Under Chapter 11 of the Bankruptcy Code [Docket No. 1262] (the “**Confirmation Order**”):

The limited confirmation objections of [the ACE Companies] to the Arcapita Bank Subplan are settled and resolved as follows. Notwithstanding any provision to the contrary in the Plan and/or Confirmation Order, the Debtors agree that the Guarantee dated August 12, 2011 (the “**ACE/Arcapita Bank Guarantee**”), granted

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<sup>1</sup> ACE also issued certain insurance policies to Falcon Gas Storage Company, Inc. (“**Falcon**”), an affiliate of the Debtors.

by Arcapita Bank in favor of Westchester Fire Insurance Company, is an Executory Contract and that the ACE/Arcapita Bank Guarantee and all obligations of Arcapita Bank thereunder shall be assumed on the Effective Date and assigned to New Arcapita Topco pursuant to and in accordance with sections 365(a) and (f) of the Bankruptcy Code, which assumption and assignment is hereby approved. The limited confirmation objections of the ACE Companies relating to the Falcon Subplan are preserved for the adjourned hearing on Confirmation of the Falcon Subplan.

See Confirmation Order at ¶ 77. Accordingly, New Arcapita Topco (as that term is defined in the Plan and Confirmation Order) is responsible for any ongoing obligations under the Guarantee and other Agreements.

4. Accordingly, on or about October 15, 2013, the ACE Companies filed the Request of the ACE Companies for Allowance and Payment of Administrative Expense (the “**Administrative Claim**”),<sup>2</sup> which was subsequently designated as Claim No. 577 on the Debtors’ claims register, in an abundance of caution to preserve all of their rights to payment and/or performance from the Debtors arising between the Petition Date and the Effective Date consistent with the terms of the Confirmation Order and the assumption of the Agreements.

5. In the event that New Arcapita Topco confirms that, consistent with ¶ 77 of the Confirmation Order, it will honor any ongoing obligations under the Guarantee, including any that may have arisen during the bankruptcy, the ACE Companies shall proceed to withdraw Claim No. 577. Otherwise, the Claim Objection should be denied insofar as the relief requested therein is inconsistent with ¶ 77 of the Confirmation Order.

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<sup>2</sup> As set forth in the Administrative Claim, the ACE Companies hold contingent and unliquidated claims based upon their rights to receive payment and/or performance of any and all of Debtors’ (and any other possible named insureds’) duties and obligations under the terms of the assumed Agreements. Such rights may include, without limitation, fees incurred by the ACE Companies in connection with protecting their indemnity rights under the Guarantee and premiums payable in connection with the Agreements. The amount of the Administrative Claim is currently unliquidated and is subject to further and future adjustment. The ACE Companies may also hold claims that are presently contingent and unliquidated for any and all rights to payment, rights to receive performance, actions, defenses, setoffs and/or recoupments arising from, related to, or in connection with any and all of Debtors’ (and any other possible named insureds’) duties and obligations under the terms of the Agreements.

**WHEREFORE**, the ACE Companies respectfully request that this Court deny the Claim  
Objection as to Claim No. 577.

Dated: New York, NY  
March 12, 2014

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