

Dennis F. Dunne
Abhilash M. Raval
Evan R. Fleck
MILBANK, TWEED, HADLEY & M^cCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000

Andrew M. Leblanc
MILBANK, TWEED, HADLEY & M^cCLOY LLP
1850 K Street, NW, Suite 1100
Washington, DC 20006
Telephone: (202) 835-7500

*Proposed Counsel for Official Committee of
Unsecured Creditors of Arcapita Bank B.S.C.(c), et al.*

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

<p>In re</p> <p>ARCAPITA BANK B.S.C.(C), <u>et al.</u>,</p> <p>Debtors.</p>	<p>Chapter 11</p> <p>Case No. 12-11076 (SHL)</p> <p>(Jointly Administered)</p>
<p>In re</p> <p>FALCON GAS STORAGE COMPANY, INC.,</p> <p>Debtor.</p>	<p>Chapter 11</p> <p>Case No. 12-11790 (SHL)</p>

**JOINDER OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO DEBTORS' REPLY TO TIDE'S OBJECTION TO
DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTION 105(A) OF
THE BANKRUPTCY CODE DIRECTING THAT CERTAIN ORDERS IN THE
CHAPTER 11 CASES OF ARCAPITA BANK B.S.C.(C), ET AL. BE
MADE APPLICABLE TO SUBSEQUENT DEBTOR**

The Official Committee of Unsecured Creditors (the “Committee”) of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases hereby joins in the Debtors’ reply (Docket No. 178; the “Reply”) to Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP’s (collectively, “Tide”) objection (Docket No. 170; the “Objection”) to the Debtors’ *Motion for an Order Pursuant to Section 105(a) of the Bankruptcy Code Directing that Certain Orders in the Chapter 11 Cases of Arcapita Bank B.S.C.(c), et al. Be Made Applicable to Subsequent Debtor* (Docket No. 132; the “Motion”)¹ and respectfully states as follows:

JOINDER

1. The Committee joins in the Reply for each of the reasons set forth therein. In addition, the Objection should be overruled because the Committee can, and will, represent the interests of the unsecured creditors of Falcon in satisfaction of its fiduciary duties to all of the Debtors’ unsecured creditors, and has no known conflicts of interest with the Falcon estate or its creditors.

2. The Committee has a fiduciary duty to the entire class of unsecured creditors, regardless of the claims held by its members or the number of debtors in the consolidated cases. *See, e. g., In re Bohack Corp.*, 607 F.2d 258, 262 (2d Cir. 1979) (“[T]he committee owes a fiduciary duty to the creditors, and must guide its actions so as to safeguard as much as possible the rights of minority as well as majority creditors.”) (internal citation omitted); *Pan Am Corp. v. Delta Air Lines*, 175 B.R. 438, 514 (S.D.N.Y. 1994) (“The Creditors Committee owed a fiduciary duty only to the class

¹ Capitalized terms not defined herein shall have the meanings attributed to them in the Reply.

of creditors it represents”) (internal citation omitted); *In re MF Global Holdings Ltd.*, Case No. 11-15059 (MG), 2012 Bankr. LEXIS 898, *13 (Bankr. S.D.N.Y. Mar. 6, 2012) (“[C]ommittee members owe a fiduciary duty to their constituents—and, in the case of an official committee of unsecured creditors, its duty extends to all of the debtor’s unsecured creditors.”) (citing *In re Refco Inc.*, 336 B.R. 187, 195 (Bankr. S.D.N.Y. 2006)). This fiduciary responsibility inures to the benefit of the unsecured creditors of Falcon as much as it does to the unsecured creditors of each other debtor in these cases.

3. The existence of a claim by Falcon against Arcapita does not create a conflict between Falcon’s creditors and the Committee. Tide asserts that the Committee would be unable to represent the creditors of Falcon “for the simple reason that Falcon’s gain is Arcapita’s loss.” (Objection ¶ 26.) Accordingly, Tide suggests that the existence of a single intercompany claim, and nothing more, should be grounds for the disqualification of the Committee with respect to Falcon.

4. This Court has explicitly rejected a similar argument in a case with significantly more complex inter-debtor issues and recognized that “with one body having a fiduciary duty to all unsecured creditors, the parties are placed on even ground in their commonality as unsecured creditors with a goal toward maximizing recovery.” *In re Enron Corp.*, 279 B.R. 671, 689 (Bankr. S.D.N.Y. 2002) (internal citation omitted); *see also In re Nat’l R.V. Holdings, Inc.*, 390 B.R. 690, 700 (Bankr. C.D. Cal. 2008) (“While the committee may be motivated to investigate the inter-company transaction between [two debtors], there is no evidence that the Creditors’ Committee is unable to properly discharge its fiduciary obligations”). Tide cannot proffer any evidence of a conflict other than the existence of an intercompany claim, which, by itself, proves

nothing, let alone that the Committee would be unable to meet its fiduciary duties and seek to maximize the recovery of all unsecured creditors in these cases.

5. The Committee will continue to discharge its fiduciary responsibilities to protect the interests of *all* unsecured creditors, including Tide and any other creditor of Falcon. Additionally, the relief requested promotes efficiency and minimizes the costs of administering these cases.

6. For all of the foregoing reasons, the Court should grant the Motion and overrule the Objection.

Dated: New York, New York
May 29, 2012

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Dennis F. Dunne

Dennis F. Dunne

Abhilash M. Raval

Evan R. Fleck

MILBANK, TWEED, HADLEY & M^cCLOY LLP

1 Chase Manhattan Plaza

New York, NY 10005

Telephone: (212) 530-5000

Andrew M. Leblanc

MILBANK, TWEED, HADLEY & M^cCLOY LLP

1850 K Street, NW, Suite 1100

Washington, DC 20006

Telephone: (202) 835-7500

*Proposed Counsel for Official Committee of
Unsecured Creditors of Arcapita Bank
B.S.C.(c), et al.*