

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 12-11076(SHL)

4 - - - - - x

5 In the Matter of:

6

7 ARCAPITA BANK B.S.C. (C) , ET AL. ,

8

9 Debtors.

10

11 - - - - - x

12

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 August 16, 2012

18 2:13 PM

19

20 B E F O R E :

21 HON SEAN H. LANE

22 U.S. BANKRUPTCY JUDGE

23

24

25

1 Hearing re: Doc. # 351 Motion to File Under Seal Debtors
2 Motion for Order Authorizing the Debtors to File Unredacted
3 EuroLog IPO Term Sheets Under Seal

4

5 Hearing re: Doc. #350 Motion to Authorize Debtors Motion
6 for an Order Pursuant to Sections 105(a) and 363(b) of the
7 Bankruptcy Code Authorizing the Debtors to Launch the
8 EuroLog IPO

9

10 Hearing re: Doc. #365 Debtor's Motion For Authorization for
11 Arcapita to Fund Lusail Joint Venture Lease Payment

12

13 Hearing re: Doc. #377 Motion to Authorize - Debtors Motion
14 for Order Confirming the Debtors Authority to Pay Certain
15 Transaction Expenses Incurred in Connection With the EuroLog
16 Initial Public Offering (related document(s) 351, 350)

17

18

19

20

21

22

23

24

25 Transcribed by: Jamie Gallagher

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

2 GIBSON, DUNN & CRUTCHER, LLP

3 Attorneys for the Arcapita Debtors

4 200 Park Avenue

5 New York, NY 10166

6

7 BY: MICHAEL A. ROSENTHAL, ESQ.

8 JOSH WEISSER, ESQ.

9

10 GIBSON, DUNN & CRUTCHER, LLP

11 Attorney for the Arcapita Debtors

12 3161 Michelson Drive

13 Irvine, CA 92612

14

15 BY: CRAIG H. MILLET, ESQ.

16

17 DECHERT LLP

18 Attorneys for Standard Chartered Bank

19 1095 Avenue of the Americas

20 New York, NY 10036

21

22 BY: NICOLE B. HERTHER-SPIRO, ESQ.

23 BRIAN E. GREER, ESQ.

24

25

1 MILBANK, TWEED, HADLEY & MCCLOY, LLP
2 Attorneys for the Official Committee of Unsecured
3 Creditors
4 One Chase Manhattan Plaza
5 New York, NY 10005

6
7 BY: EVAN R. FLECK, ESQ.
8 DENNIS DUNN, ESQ.

9
10 ALSO APPEARED TELEPHONICALLY:

11 BENJAMIN CHAPMAN, ESQ.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Good afternoon. Please be seated.
All right, we're here this afternoon for Arcapita Bank.
Good afternoon.

MR. ROSENTHAL: Good afternoon, Your Honor.
Michael Rosenthal with Craig Millet and Josh Weisser on
behalf of the Arcapita debtors. Also here, Your Honor, are
some various representatives of the IPO deal team for
Arcapita and several Linklater's lawyers.

THE COURT: All right. Begin appearances from
everybody else who intends to speak.

MR. DUNN: Good afternoon, Your Honor. Dennis
Dunn from Milbank, Tweed, Hadley & McCloy on behalf of the
official committee of unsecured creditors. And I'm here
with my partner, Evan Fleck.

MR. GREER: Good afternoon, Your Honor. Brian
Greer of Dechert LLP for Standard Chartered.

MR. ROSENTHAL: Your Honor, I'd like to start with
two thank you's and an apology.

The first thank you is to Mr. Millet who held down
the fort at last -- at the last hearing and he tells me that
I wasn't missed a bit.

(Laughter)

THE COURT: I didn't say that but I think
everything went exceedingly smoothly.

1 MR. ROSENTHAL: Second, Your Honor, thanks for
2 scheduling this hearing. We know it's not an omnibus
3 hearing date. These are very important matters that we need
4 to get resolved today.

5 THE COURT: Well, you had given me a preview that
6 there were certain deals and certain assets that were going
7 to require special treatment and decisions as to how to deal
8 with them, and that that was -- that was coming, so I had
9 gotten a preview that we were going to end up needing to
10 chat about some of these.

11 MR. ROSENTHAL: Okay, now the apology. You know,
12 we are -- we're very sorry that we cannot give you something
13 meaty to rule on and have argument about.

14 THE COURT: Well, I -- I have plenty of other
15 things that will keep me busy, so no apology required.

16 MR. ROSENTHAL: Yeah. I'm happy to report, Your
17 Honor, that as a result of the hard work of everybody in
18 this room, we have built a consensus and we're here to get
19 today once again on an uncontested basis and --

20 THE COURT: Well, I -- you know, folks call
21 chambers to let us know that. I appreciate the heads up
22 because it allowed me to read all the papers in a very
23 different light, but as I was reading the papers before I
24 knew that, I was struck by that the parties are obviously in
25 the best position to figure out the appropriate way to

1 resolve this kind of dispute. So, I'm very happy to hear
2 that you reached that conclusion.

3 MR. ROSENTHAL: Okay. Can I give you just a brief
4 update about the case?

5 THE COURT: Sure.

6 MR. ROSENTHAL: One matter that will be coming to
7 your attention is a matter involving the Cayman protocol.
8 The JPL's and the debtors entered into a procedural protocol
9 regarding the Cayman proceeding and it has some impact on --
10 on this proceeding. It's procedural -- it was required by
11 the Cayman order appointing the JPL's.

12 Yesterday the JPL's filed that -- that protocol
13 with a -- an -- you know, an approval request in the Cayman
14 Court, and we intend to file a motion in this Court for
15 approval of that. So that will be up, I believe it will be
16 up on the September 5 --

17 THE COURT: All right.

18 MR. ROSENTHAL: September 5 hearing.

19 We continue to work with the JPL's on a settlement
20 between the AIHL estate and the Arcapita Bank estate. We're
21 not there yet, but we're getting close, Your Honor. We've
22 involved the committee. I can't tell you we're going to
23 have a fully consensual deal, but in any event, I want the
24 Court to know that that's coming down the pipe.

25 We have -- as you know, we had committed to

1 provide valuation information, business plan information to
2 the committee as part of the exclusivity motions. KPMG was
3 doing the various valuation reports on the debtors'
4 principal assets.

5 I'm happy to report that all of the valuation
6 reports have been made available and uploaded to the data
7 room, with the exception of one which should be uploaded
8 today. And discussions have begun -- follow-up discussions
9 have begun between KPMG, the company, and the financial
10 advisors for the -- the various interested parties. And for
11 this purpose, Your Honor, it's the committee advisors,
12 Standard Chartered and the JPL's, that we're trying to bring
13 along. They are the ones who -- the only ones who've been,
14 you know, active -- active in the case.

15 There's still a lot of information to be provided
16 and a lot of work between -- between the committee, the
17 JPL's, Standard Chartered, and the debtors, and the various
18 teams that the debtors and our professional advisors to make
19 sure that everybody understands the KPMG report.

20 We still expect to be able to circulate a business
21 plan by the end of August, which is something that we had
22 mentioned to the Court. And this would be followed by
23 discussions in earnest on the terms of the plan.

24 We had previously talked about the DIP. We have
25 initiated a rigorous DIP marketing effort and have received

1 several proposals. Our current time table is to present the
2 financing to the Court at the October 2nd hearing.

3 And finally, we continue to be careful about the
4 use of our cash. Our cash position as of mid-August is
5 about \$71 million. We are tracking better than budget by
6 about \$32.5 million.

7 So, let's get down to what's -- what's on the
8 agenda. First matter, Your Honor, is the Lusail funding.
9 This Court knows this is the second motion we filed with
10 respect to authorizing the debtors to fund obligations
11 related to the Lusail Joint Venture.

12 As you will recall, the Lusail Joint Venture owns
13 a large, valuable piece of property in Lusail Qatar, which
14 is -- just happens to be adjacent to where the World Cup
15 Stadium for the 2022 World Cup will be.

16 Earlier in the case, we filed a motion for
17 approval of -- to authorize us to pay about \$30.4 million to
18 make an underlying land payment. We presented that to the
19 Court ultimately on an unopposed basis and the Court
20 approved the order and that payment was made.

21 There's now a \$10 million lease payment due on
22 September 5, and that's the subject of the second motion,
23 the motion up today. All of the parties have agreed this
24 payment should be made. It will ensure that the debtors
25 continue to receive the benefit of the repurchase option for

1 the Lusail land.

2 And just to -- I'm sure you may -- you've read it
3 in the papers, Your Honor, but as the Court will recall,
4 this was a form of Islamic financing. The property was sold
5 to Qatar Islamic Bank. In return there was a lease -- there
6 was a lease back, it was actually the shares that were sold.
7 The shares were leased back to us. The lease had
8 obligations, one of which is payment of this \$10 million on
9 a semi-annual basis, and there was also a repurchase option.
10 And it's the repurchase option that allows us to protect the
11 underlying value of the land and preserve it for the benefit
12 of the estate.

13 Your Honor, payment of this semi-annual payment is
14 necessary to prevent a default in the lease, and we would
15 ask the Court to approve the debtors making this \$10 million
16 payment on the same terms as were approved in the initial
17 order.

18 THE COURT: All right. Anyone want to be heard?

19 MR. DUNN: Your Honor, if I may be heard --

20 THE COURT: Sure.

21 MR. DUNN: -- just briefly.

22 For the record, Dennis Dunn from Milbank Tweed on
23 behalf of the creditors' committee.

24 The committee supports the payment today. I
25 wanted to note a couple of things for the Court. You'll

1 recall that last time we discussed Lusail, it was critically
2 important that the committee had comfort that the call
3 right, the ability to buy back the underlying property, was
4 still viable. And we had a -- an admission and a
5 recognition by QIB, the bank, that they -- that there was no
6 default at the time. They brought down that no default
7 statement as part of this deal, as well, recognizing that
8 the parties reserve all of their respective litigation and
9 other rights, including as to the propriety of the sale, the
10 appropriate characterization of the transaction, all of
11 which I think are -- are properly the subject of discussions
12 when we get into September on the plan and maybe they'll be
13 resolved and we all hope that we can reach a settlement as
14 part of the plan.

15 And the committee ultimately concluded, based on
16 its own financial advisor's review, that the potential value
17 of this property justified today's payment.

18 THE COURT: All right. Anyone else?

19 (Pause)

20 THE COURT: All right. I'm going to grant the
21 debtors' motion. I believe it's appropriate under Section
22 365 and 363, and given the value -- potential value here and
23 the way the repurchase option works.

24 MR. ROSENTHAL: Thank you very much, Your Honor.

25 The next matter, Your Honor, relates to -- we have

1 several matters, obviously relating to the EuroLog IPO. I
2 would like to take up the approval motion itself.

3 Your Honor, by the IPO -- EuroLog IPO motion, we
4 seek to obtain authority to engage in what will be the
5 single largest monetization transaction that has occurred or
6 will occur at least in the near future with respect to these
7 debtors. We seek authority to enter into this transaction
8 pursuant to Section 105 and 363 of the Bankruptcy Code.

9 In the EuroLog IPO, the debtors are offering for
10 sale their interest in a variety of warehousing assets
11 located in several countries in Europe. These assets are
12 intended to be transferred to a new entity that we've called
13 Lisco(ph) in the motion that will be listed on the London
14 Stock Exchange.

15 The debtors believe that the EuroLog IPO maximizes
16 the value of these assets. As the listed company, Lisco
17 will be a leading pan-European provider of warehouse
18 facilities from -- from the get-go.

19 Notably, all of the entities that are actually
20 sellers or transferees -- transferors in the IPO are non-
21 debtor subsidiaries. They're not -- they're not debtors.

22 We're seeking Court approval of the transaction,
23 Your Honor, even though these are non-debtors because
24 debtors, most notably AIHL will be asked to sign various
25 agreements, including the underwriting agreement to make

1 certain representations and warranties to give certain
2 indemnities. That's typical in an IPO transaction. We are
3 considered the sponsor of the properties that are being --
4 that are being sold.

5 We did receive, Your Honor, one objection to the
6 motion from Standard Chartered Bank that's been resolved.
7 And I'm going to talk about that. And a statement with
8 respect to the motion from the committee and it -- I'm going
9 to talk about that as well.

10 Your Honor, as a result of discussions with
11 Standard Chartered, we believe that Standard Chartered will
12 either withdraw, or has withdrawn its objection, or
13 certainly will not pursue it and it is -- it is in agreement
14 with the order to be entered today.

15 The committee statement was focused to some extent
16 on the IPO transaction. More importantly, I think the
17 committee's primary focus was on having sufficient
18 information to evaluate the IPO and wanting to be involved
19 in the process of the final documentation with respect to
20 the IPO. And we're prepared to address that and I'll talk
21 about that again.

22 THE JPL's are -- the joint provisional liquidators
23 are fully supportive of the order that the Court's asked to
24 enter today, as is the United States' Trustee.

25 Your Honor, the way we've set up this motion is

1 rather unique but we think it's -- it's absolutely necessary
2 in the context of the IPO. We're asking the Court to
3 approve -- authorize the debtors to enter into the IPO based
4 on the term sheets. Now, those term sheets have been
5 heavily negotiated, contain the principal economic terms of
6 the transaction. The committee and the joint provisional
7 liquidators, and to some extent Standard Chartered have been
8 involved in the negotiation of the term sheets. So, they've
9 had -- they've had involvement as well.

10 But as you know, you don't close a transaction on
11 term sheets. So, you close a transaction on definitive
12 documentation. For timing reasons, we believe and what we
13 have asked for in this motion is that the Court should
14 approve the transaction based on the term sheets, and then
15 leave the debtors with the interested parties, who I would
16 define as the committee, the joint provisional liquidators,
17 and Standard Chartered, to negotiate with the underwriters
18 the terms of the definitive documents.

19 Now, obviously the debtors are the ones doing the
20 negotiations, but what we have provided in the order is that
21 only if the underlying final documentation is acceptable to
22 Standard Chartered, the Joint Provisional Liquidators, and
23 the committee, can we go forward without coming back to this
24 Court. So, that is the safeguard, we believe, that protects
25 the interest of -- of these interested parties. And at the

1 same time, meets the time table that is required for an IPO.

2 When I say meets the time table, you know, this
3 proceeds very quickly. You often times have a very narrow
4 window for the marketing of an IPO. And it's also often the
5 case that the final documents aren't completed until shortly
6 -- shortly before the window -- you know, shortly before you
7 -- you go to market. So, this puts us in a position where
8 we have Court authority, we have the Court process out of
9 the way, if you will, and then we have a process that
10 doesn't require Court involvement unless we hit a glitch.
11 And that's where we are.

12 Now, based on the way we've set this up, Your
13 Honor, we fully understand that if we want to avoid coming
14 back to Court, we have to have sign-off from all the
15 interested parties on the documents. And we also understand
16 that in order to do that, we have to provide them with
17 enough information to make the decision and evaluate these
18 documents.

19 So, what I can say about that is the IPO is a very
20 complex transaction. The companies that are the subject of
21 it are complex. The distribution of proceeds is complex.
22 And we understand that -- that we have to share sufficient
23 information with the interested parties and we are, in fact,
24 committed to do that.

25 We acknowledge that they have, in various

1 occasions, made requests for information from us. We are
2 setting up a process so that we can consolidate all of those
3 information requests and respond to them in a timely manner,
4 recognizing that what keeps us on track is that we want to
5 do this in the most efficient way, and we want to do it
6 without having to come back to Court.

7 So, if I can hand up the -- a red-line of the
8 order, I can walk you through the changes that we have made.

9 THE COURT: That would be helpful. Thank you.

10 MR. ROSENTHAL: All right, Your Honor.

11 If you'd look at the top, paragraph 2 on page 2,
12 we have clarified that all of the debtors are authorized to
13 execute the documents needed to consummate the IPO. We had
14 -- had AIHL previously, but it may be that -- that
15 authorizations will be required from others of the -- of the
16 debtors.

17 Then if you go down to paragraph 4, I guess
18 paragraph 4, page 3, we have added in Standard Chartered as
19 a party whose approval would be necessary for the -- for the
20 documents to avoid a further hearing. We've provided that
21 if we cannot get the approval of all of the interested
22 parties, we can come back to Court, but we have to do it
23 upon at least seven business days' notice, and an
24 opportunity to be heard, obviously.

25 And then we've added a -- a lengthy sentence that

1 starts with for the avoidance of doubt. And this -- this
2 does nothing more than clarify what I just described to the
3 Court, that if everyone agrees with the provisions of the
4 IPO documentation, we can enter into it without any further
5 order of Court. If the interested parties do not agree, we
6 cannot enter into the documents or consummate the
7 transactions without coming back to the Court.

8 And then the final sentence, Your Honor, was added
9 at the request of Standard Chartered to confirm what we had
10 intended all along. Frankly, that we are -- everyone is
11 reserving the rights with respect to priority of proceeds,
12 pledge of collateral, and the like.

13 As you know, Standard Chartered is our only
14 secured creditor and has a pledge of some interest that --
15 that are involved in this transaction.

16 THE COURT: Yeah, I -- I saw that in their
17 objection.

18 MR. ROSENTHAL: Yes.

19 And then the -- the final -- the final sentence
20 that we added, again, something that we emphasized in my
21 opening that we will cooperate with the interested parties
22 regarding the IPO and provide them with the documentation
23 that -- and information they need in a timely manner.

24 Those are the changes, Your Honor. With those, we
25 -- as I stated, all of the objections we believe have been -

1 - have been resolved and we would ask the Court to approve
2 the IPO. We think it is a -- is a valuable transaction for
3 these estates.

4 THE COURT: All right. Anyone want to be heard?

5 MR. DUNN: Your Honor, briefly. Dennis Dunn for
6 the committee again.

7 We understand the need for the authority today.
8 We support it. We support the debtors' attempt to monetize
9 this asset at this time.

10 I think, in essence, as Mr. Rosenthal was saying,
11 basically the nature of IPO's is that the market window to
12 close may be of a short duration and we may all -- all the
13 reviewing parties may be in agreement to kind of lock down a
14 price and we need to do so quickly. And so that's the
15 reason to come to Your Honor in advance. But if we are not
16 satisfied with the price or the documentation, we'll be back
17 before Your Honor on an expedited basis, not less than 7
18 days.

19 Quickly, we did detail in our pleadings the need
20 to receive and review certain information in order to be in
21 a position to make an educated decision. The debtors have
22 not disputed the propriety or the relevance of our request.
23 We expect that the information will be forthcoming shortly
24 because I think we all share the objective that we want to
25 avoid a situation where we're back in front of Your Honor,

1 solely due to the lack of sufficient transparency into the
2 underlying data.

3 And with that, Your Honor, we support entering the
4 motion.

5 THE COURT: All right.

6 MR. GREER: Your Honor, Brian Greer of Dechert LLP
7 for Standard Chartered Bank.

8 We are supportive of the debtors' motion at this
9 point in time with the safeguards that have been put in
10 place in the order. I'll second the committee statement
11 that, you know, we also did highlight the various issues of
12 concern for us and we anticipate working in good faith with
13 the debtors, and if we cannot reach agreement, we'll be back
14 before Your Honor.

15 THE COURT: All right. Thank you. Anyone else?

16 (Pause)

17 THE COURT: All right. I'm happy to grant the
18 motion consistent with the agreement that the parties have
19 worked out and Section 363(b) and 105(a) of the Code, it's
20 clear that there's a need for authority to -- to seek the
21 opportunity to monetize these assets through this IPO and it
22 sounds like everyone agrees that it's appropriate to use
23 these term sheets as a basis subject to further agreement on
24 the final documentation by the interested parties as defined
25 in the papers, and also consistent with the needs of

1 transparency on that documentation, as well as on matters
2 such as price.

3 MR. ROSENTHAL: Yes, Your Honor, and you know the
4 -- with respect to Mr. Dunn's statement, I mean we -- we --
5 obviously as we said in our -- in our pleadings with the
6 Court, it's in our interest to make sure that everybody --
7 everybody gets sign off. You know, to the extent that there
8 are -- there are price discussions, those will be
9 discussions that take place, not at the final minute because
10 that's not the way -- we can't have a committee negotiating
11 price, but we will -- we will have discussions with the
12 committee in advance so we know -- we know the minimum price
13 that we're -- that all of us would be prepared to sell these
14 assets.

15 Your Honor, the next motion is the -- the motion
16 to seal. We've asked for very limited relief. I know the
17 Court's position on this, but we've asked for very limited
18 relief. One is to seal the indemnity provisions of the term
19 sheets. And the second is the names of the non-debtor
20 entities.

21 And I -- our basis for this, Your Honor, is that
22 it constitutes confidential commercial information. Let's
23 talk about the indemnity provisions. They were heavily
24 negotiated. And both the banks and the debtors -- the
25 underwriters and the debtors, have an interest in not making

1 those public. They may -- that we want to avoid any
2 precedential impact from something like that.

3 This is -- this is confidential commercial
4 information. And the way we were able to negotiate these
5 provisions was by agreeing to -- to keep them confidential.
6 The interested parties, as I defined them, the United
7 States' Trustee, the Court, have all been the recipient of
8 the information on the indemnity provisions.

9 To the identity of the non-debtor entities,
10 similarly, this is a pre-IPO process. And what we do not
11 want to do is undermine marketing efforts with respect to
12 the -- the entities that will be the subject of the IPO. We
13 don't want to give third parties an opportunity to lure
14 customers away. We don't want to give contract
15 counterparties the opportunity to exercise leverage because
16 of the proposed transaction. We don't want to give
17 competitors the opportunity to poach our employees. And it
18 is for that reason that we, at this point, believe that the
19 identity of the non-debtor -- non-debtor entities should be
20 sealed as well.

21 As we said in our motion, anyone who can
22 demonstrate a need to have access to this information has an
23 ability to come before the Court. The four parties who have
24 appeared in this case -- the only four parties that have
25 really appeared in this case since the first hearing, have

1 access to this information. We do not think there are any
2 -- we believe that there are commercial advantages to
3 sealing this information and that no party would be harmed.

4 We ask the Court to enter the order.

5 THE COURT: All right. Anyone want to be heard in
6 connection with this motion?

7 (Pause)

8 THE COURT: All right. I will grant that motion.
9 I think we've laid -- laid out a basis for treating the
10 subject information as confidential business information and
11 there's no objection to the treatment of that information as
12 such.

13 MR. ROSENTHAL: Thank you, Your Honor. Now the
14 final matter relates to the application that was filed with
15 respect to Linklater's fees, and I'd like to turn that over
16 to my partner, Mr. Millet.

17 MR. MILLET: Good afternoon again, Your Honor.
18 Craig Millet on behalf of the debtors.

19 Now that we have an IPO that is ready to go down
20 the tracks, we need our IPO lawyers to drive that train and
21 get it done. Without the engineers, we really wouldn't have
22 much of a prospect of delivering the IPO. That led us to
23 the dispute with respect to the Linklater's fees. When I
24 was here last time before the Court, I explained that there
25 was a budget item in our last budget of \$2.35 million.

1 There was in the nature of (indiscernible - 00:25:42) --

2 THE COURT: Excuse me.

3 MR. MILLET: Bless you, Your Honor.

4 THE COURT: Thank you.

5 MR. MILLET: -- that was to be used as deal
6 funding, for the debtors to provide funds to the EuroLog
7 non-debtors, as they're phrased in the motion, which then in
8 turn would be used to pay the expenses of the IPO, and in
9 this specific case it was to be the Linklater's fees.

10 We, of course -- we had the dispute that we
11 discussed at the last hearing that led to this motion. The
12 budget item at that time was \$2.35 million that was to be
13 funded down to the EuroLog non-debtors. Through
14 considerable discussions and the very hard work of
15 Mr. Fleck, who aided us in these discussions with his
16 constituents, we've reached an agreement as to how the fees
17 for Linklater should be handled, and I'll just briefly go
18 through those terms if I may. We will have an order for the
19 Court to consider at the end of all this, of course.

20 Right now, there is approximately \$4.7 million in
21 fees and expenses that are owed Linklater for the work done
22 thus far. And whether -- and we had requested permission to
23 pay about 2.35 of that. Instead of doing that, the terms
24 are now going to be that there will be a payment upon entry
25 of the order of 1.5 million to be applied against the fees

1 due for work performed through August 1 of this year.

2 Now, if the IPO is successful, of course, all fees
3 are paid through the proceeds of the IPO. The further fees
4 of Linklater will be paid using IPO proceeds and this \$1.5
5 million will be reimbursed to the debtor.

6 If we get into the situation, though, where the
7 IPO is not successful and aborts, then we have the situation
8 where there won't be any IPO proceeds. So, what do we do
9 then? The parties have agreed that in addition to the \$1.5
10 million payment I just mentioned to get paid now, that upon
11 the IPO abort, which is defined in the order as either the
12 IPO being decided it just can't go forward or November 12th,
13 the sooner of those two events, that an additional \$1.5
14 million will then be paid. That again is applied to the
15 outstanding fees.

16 Now with respect to fees, the -- the third
17 component -- with respect to fees that are incurred from
18 August 1 going forward, to the extent those fees exceed \$1
19 million, then to the part that's in excess of \$1 million,
20 50% of that excess will be added to that last payment.

21 So, for example, if the fees proved to be \$1.5
22 million for the going forward period, we had \$500,000 over
23 the 1 million, 50% of that, \$250,000 that would be added to
24 the \$1.5 million piece.

25 And then that's going to obviously leave us with a

1 -- an amount due at the -- at the end. The parties have
2 agreed that they would address that at that time and that
3 the JPL's, as well as the committee and Linklater, would
4 engage in good faith negotiations to discuss how much of
5 that remaining part should be funded such that Linklater can
6 be reasonably expect to be paid, what would be paid normally
7 or typically in an aborted IPO situation of this nature, and
8 also that would take into account and the discounts and such
9 that are already in the engagement letter would still apply.
10 So, in other words, we're not going back and adding those
11 back in. They would still apply. And if the parties cannot
12 reach agreement, then the parties can bring it before the
13 Court and the Court could seek resolution.

14 Hopefully if the track record we've established so
15 far works, we may have to have a hearing set to get us
16 there, but we get things worked out.

17 And with that then, we've agreed to resolve this
18 matter at this point. We have quickly here this morning
19 exchanged forms of an order. The JPL has agreed to the form
20 of the order. I talked to Mr. Morrissey(ph), he's fine. He
21 has no objection to what's going on here. And we did get a
22 couple of comments back from the committee when we were on
23 the way here. We've looked at those quickly. We don't see
24 any problem with those, so we may have a tiny amount of
25 word-smithing to do, but the concepts are all -- all agreed

1 upon.

2 So with that, we believe that we'll -- we have an
3 agreement we'll -- it will (indiscernible - 00:29:29) an
4 order shortly.

5 THE COURT: All right. Anyone want to be heard as
6 to this motion?

7 MR. DUNN: Just to say, Your Honor, that that's
8 accurate. I think all of our hermeneutical issues have been
9 resolved for the moment.

10 THE COURT: All right. That -- that's good to
11 hear. You hate to have any of those still hanging around.

12 All right. With that said, I'm happy to grant
13 that motion. It sounds like an eminently sensible way to
14 proceed, protecting everybody's rights, but also making sure
15 that the path forward can continue.

16 So, what I will do is if you would send me an
17 electronic copy of all of the orders. It sounds like I may
18 have to wait a little bit for that last one, but that's --
19 that's fine. You can either send the first -- first couple
20 first, and then send the last one, or you can wait and send
21 them all together, whatever works for you.

22 Anything else we need to chat about this
23 afternoon?

24 UNIDENTIFIED SPEAKER: Nothing else, Your Honor.
25 Thank you.

1 THE COURT: All right. Thank you very much and
2 again I appreciate everybody's efforts to work these --
3 these things out as to these transactions which are really
4 the central part of the case.

5 Thank you.

6 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

7 (Whereupon these proceedings were concluded at 2:44 PM)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

	Page	Line
Debtor's Motion For Authorization for Arcapita to Fund Lusail Joint Venture Lease Payment	11	20
Motion to Authorize Debtors Motion for an Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code Authorizing the Debtors to Launch the EuroLog IPO	19	17
Motion to File Under Seal Debtors Motion for Order Authorizing the Debtors to File Unredacted EuroLog IPO Term Sheets Under Seal	22	8
Motion to Authorize - Debtors Motion for Order Confirming the Debtors Authority to Pay Certain Transaction Expenses Incurred in Connection With the EuroLog Initial Public Offering	26	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

Jamie
Gallagher

Digitally signed by Jamie
Gallagher
DN: cn=Jamie Gallagher, o, ou,
email=digital1@veritext.com,
c=US
Date: 2012.08.20 14:34:56 -04'00'

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: August 20, 2012