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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 B.S.C.(C), et al.,

Debtors.

- - - - - x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 5, 2012

12:30 p.m.

B E F O R E :

HON SEAN H. LANE

U.S. BANKRUPTCY JUDGE

1 First Application for Interim Professional Compensation -  
2 First Application of Gibson, Dunn & Crutcher, LLP as  
3 Attorneys for the Debtors and Debtors in Possession for  
4 Allowance of Interim Compensation for Services Rendered and  
5 for Reimbursement of Actual and Necessary Expenses Incurred  
6 from March 19, 2012 through July 31, 2012

7  
8 First Application for Interim Professional Compensation -  
9 First Application of Alvarez & Marsal North America, LLC, as  
10 Financial Advisor to Arcapita Bank, B.S.C.(c), et al. for  
11 Interim Approval and Allowance of Compensation for Services  
12 Rendered and Reimbursement of Expenses Incurred During  
13 Period from March 24, 2012 through and including July 31,  
14 2012

15  
16 First Application for Interim Professional Compensation -  
17 First Application of Linklaters, LLP, as Special Counsel for  
18 the Debtors and Debtors in Possession for Interim Allowance  
19 of Compensation for Professional Services Rendered and  
20 Reimbursement of Actual and Necessary Expenses Incurred from  
21 March 19, 2012 through June 30, 2012

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23  
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1 First Application for Interim Professional Compensation -  
2 First Interim Fee Application of KPMG, LLP as Valuation  
3 Advisor to the Debtors for Allowance and Compensation for  
4 Professional Services Rendered and Reimbursement of Actual  
5 and Necessary Expenses Incurred from March 19, 2012 through  
6 June 30, 2012

7  
8 First Application for Interim Professional  
9 Compensation/First Interim Fee Application of GCG, Inc., as  
10 Administrative Agent for the Debtors, for Allowance of  
11 Compensation and for Reimbursement of Expenses Incurred for  
12 the Period of March 19, 2012 through June 30, 2012

13  
14 First Application for Interim Professional Compensation -  
15 First Fee Application of KPMG, LLP (US), as Tax Consultants  
16 to the Debtors and Debtors in Possession for Interim  
17 Allowance and Compensation for Professional Services  
18 Rendered and Reimbursement of Actual and Necessary Expenses  
19 Incurred from March 19, 2012 through July 31, 2012.

20  
21 Application for Interim Professional Compensation for King &  
22 Spalding, LLP and King & Spalding International, LLP,  
23 Special Counsel, period 3/19/2012 to 7/31/2012

24  
25

1 First Application for Interim Professional Compensation -  
2 First Application of Trowers & Hamlins as Attorneys for the  
3 Debtors and Debtors in Possession for Allowance of Interim  
4 Compensation for Services Rendered and for Reimbursement of  
5 Actual and Necessary Expenses Incurred from March 19, 2012  
6 through July 31, 2012 for Trowers & Hamlins, Debtors'  
7 Attorney, period 3/19/2012 to 7/31/2012, fee \$157,238.00,  
8 expenses \$339.94

9  
10 First Application for Interim Professional Compensation -  
11 First Application of Mourant Ozannes as Special Cayman  
12 Islands Counsel for the Debtors for Allowance of Interim  
13 Compensation for Services Rendered and for Reimbursement of  
14 Actual and Necessary Expenses Incurred from March 19, 2012  
15 through July 31, 2012 for Mourant Ozannes, Debtor's  
16 Attorney, period 3/19/2012 to 7/31/2012, fee \$200,108.00,  
17 expenses \$13,917.21

18  
19 First Application for Interim Professional Compensation of  
20 Hassan Radhi & Associates, Bahraini Counsel to Official  
21 Committee of Unsecured Creditors, for Interim Approval and  
22 Allowance of Compensation for Services Rendered and for  
23 Reimbursement of Expenses Incurred During Period from April  
24 16, 2012 through and including July 31, 2012

25

1 First Application for Interim Professional Compensation of  
2 Houlihan Lokey Capital, Inc., Financial Advisor and  
3 Investment Banker to the Official Committee of Unsecured  
4 Creditors, for Interim Allowance of Compensation for  
5 Professional Services Rendered and Reimbursement of Actual  
6 and Necessary Expenses Incurred from April 12, 2012 through  
7 July 31, 2012

8  
9 Application for Interim Professional Compensation of FTI  
10 Consulting, Inc. for Allowance of Compensation and for  
11 Reimbursement of Expenses for Services Rendered in the Case  
12 for the Period April 12, 2012 through July 31, 2012 for FTI  
13 Consulting, Inc., Other Professional, period 4/12/2012 to  
14 7/31/2012

15  
16 First Application for Interim Professional Compensation of  
17 Milbank, Tweed, Hadley & McCloy, LLP for Approval and  
18 Allowance of Compensation for Services Rendered and  
19 Reimbursement of Expenses Incurred for Milbank, Tweed,  
20 Hadley & McCloy, LLP

21  
22 Application to Employ/Supplemental Application of Official  
23 Committee of Unsecured Creditors for a Final Order  
24 Authorizing Retention of Houlihan Lokey Capital, Inc. as  
25 Financial Advisor and Investment Banker Nunc Pro Tunc

1 Motion to Authorize - Debtors Motion for an Order Pursuant  
2 to Section 363(b)(1) of the Bankruptcy Code Authorizing AIHL  
3 to Enter Into a Cross-Border Protocol With the Joint  
4 Provisional Liquidators in the Cayman Proceedings

5

6 Motion to (A) Authorizing Debtors to (I) Continue Existing  
7 Cash Management System, Bank Accounts, and Business Forms  
8 and (II) Continue Ordinary Course Intercompany Transactions  
9 and (B) Granting an Extension of Time to Comply with the  
10 Requirements of Section 345(b) of the Bankruptcy Code

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25 Transcribed by: Sherri L. Breach, CERT\*D-397

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10 Linklaters, LLP

11 Attorneys for Debtors

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15 BY: RICHARD GOOD, ESQ. (TELEPHONICALLY)

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17 MILBANK, TWEED, HADLEY & MCCLOY

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22 BY: EVAN R. FLECK, ESQ.

23 DENNIS F. DUNNE, ESQ.

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7 BY: MICHAEL BURKE, ESQ.

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9 U.S. DEPARTMENT OF JUSTICE

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15 BY: RICHARD MORRISSEY, ESQ.

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17 GCG, Inc.

18 As Administrative Agent

19 1985 Marcus Avenue

20 Lake Success, New York 11042

21

22 BY: CRAIG E. JOHNSON, ESQ.

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P R O C E E D I N G S

THE COURT: Please be seated.

All right. We're here for Arcapita Bank. I appreciate your patience as it's now only an hour and a half after your scheduled time. If you sat in for that argument, you could tell that the case has more problems than your own.

(Laughter)

THE COURT: Let me pull out the binder here. Proceed.

MR. ROSENTHAL: Good afternoon, Your Honor. Michael Rosenthal with Josh Weisser from Gibson, Dunn and Crutcher on behalf of the debtors.

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

MR. MORRISSEY: And Richard Morrissey for the U.S. Trustee.

THE COURT: And here, Mr. Morrissey, you thought you might be late.

(Laughter)

MR. HENES: Good afternoon, Your Honor. Jon Henes, Kirkland & Ellis, with my partner, Nicole Greenblatt, on behalf of the ad hoc committee, holders of the syndicated

1 -- \$1.1 billion syndicated noteholders.

2 Thank you, Your Honor.

3 THE COURT: All right.

4 Anyone else? All right.

5 MR. ROSENTHAL: Well, Your Honor, I -- I was going  
6 to welcome you back from your vacation. I know things are  
7 hectic in the first days after you get back and I guess I  
8 was right about that.

9 THE COURT: Yes. That's the nature of it.

10 MR. ROSENTHAL: Your Honor, let me just give you  
11 -- I don't want to spend too much time, but, again, a brief  
12 update on where the case is.

13 The Cayman protocol is up for hearing today. We  
14 had reported previously on that. I wanted to inform the  
15 Court that the Cayman Court has actually entered an order  
16 approving the protocol as of -- the order was entered on  
17 August 30, and the Cayman Court also sent you a note, which  
18 I will give to you at the time of the -- of that hearing.

19 I've reported before that we're working on a  
20 settlement between the joint provisional liquidators related  
21 to issues that they had raised. We are also, Your Honor, as  
22 you'll hear, in plan discussions and we're considering --  
23 debtors are considering the implications of the settlement  
24 for the -- for the plan discussions, and that's where --  
25 that's where that stands right now.

1 We had talked previously about our valuations, our  
2 business plan. All the valuations have been produced.  
3 Asset by asset meetings have been held between KPMG, the  
4 committee advisors, the company and -- and the JPL.

5 We have also, as we indicated at the exclusivity  
6 hearing, we delivered to the committee the JPLs and standard  
7 chartered business plan on August 31st as we had promised to  
8 do. Although scheduling of meetings is -- is not something  
9 that I relish, Mr. Fleck and I -- I think we've -- I think  
10 we've finally managed to come up with a date that works,  
11 sometime next week for a meeting to discuss that in more  
12 detail.

13 We have provided the committee with an initial  
14 term sheet for a plan based on raising new money and we're  
15 in the process of discussing that with the committee and the  
16 joint provisional liquidators and standard charter.

17 As you know, we're involved in the equity raise  
18 process. September is a -- is a critical month for that  
19 process and if -- it's a little too early to give the Court  
20 a report on how that is going, but this -- this is a month  
21 when we hope that everything -- everything comes together.

22 Your Honor, for -- for two reasons the company is  
23 also working on a stand-alone business plan and related plan  
24 term sheet. One of the reasons is that we think that's  
25 important in order to evaluate a new money plan as a

1 comparison tool and the other, obviously, is that it will be  
2 an important, as an alternative, exit strategy in case a  
3 sufficient amount of new money is not raised.

4 To give you some advance warning, we -- we will be  
5 requesting an additional 60 day extension of exclusivity and  
6 we'll be requesting that at the hearing on October 2nd and,  
7 obviously, we'll file an appropriate motion. We would hope  
8 that by the end of that exclusive period we would be able to  
9 file either a new money plan, a stand-alone plan, or what --  
10 what we've called a toggle plan that you may have seen in --  
11 in some of the cases where it's based on new money. If new  
12 money is available at the time of confirmation, that is the  
13 plan that would be confirmed. If not, it automatically  
14 toggles to the stand-alone plan.

15 Your Honor, we -- as you know, we've been  
16 conducting a DIP process to identify DIP providers. We  
17 expect to make a final decision on the DIP provider at the  
18 end of this week. We have filed a motion in advance of  
19 making that decision, but cognizant of the notice periods  
20 seeking to pay expense reimbursement to the selected  
21 provider. The Court has scheduled a hearing on that motion  
22 for September 19th. And our goal, Your Honor, is to present  
23 the debtor in possession financing at the hearing on October  
24 2nd, or if we need a little extra time, we -- we may need to  
25 ask the Court for a special setting shortly thereafter.

1 Last -- last hearing, Your Honor, you approved the  
2 IPO motion and discussions are ongoing with the underwriters  
3 on the one hand, and with the parties who have to sign off  
4 on the definitive agreements, the committee, the JPL and the  
5 standard charter on the other hand. So -- so we will be in  
6 a position to launch the IPO if it's -- if it is  
7 appropriate.

8 Briefly, on the budget, again, I've reported on  
9 this at every hearing. As of the end of -- as of September  
10 25th, we were -- and we had \$62.9 million in the bank, and  
11 that excludes the \$35 million in replace -- that are tied up  
12 in these placement agreements. We've still not been  
13 successful in releasing that \$35 million, but we continue to  
14 work on that.

15 Over the life of the case our actual expenditures  
16 to our budgeted expenditures is a positive variance of \$29.9  
17 million. And this results from receipts exceeding what we  
18 expected by some amount and, also, expenses being lower than  
19 budgeted.

20 So that -- that's my brief report. Today, Your  
21 Honor, we have a number of interim -- first interim fee  
22 applications. We have the motion to approve the cross-  
23 border protocol. We have our seventh or eighth cash  
24 management order, and we have the hearing on Houlihan  
25 Lokey's final retention application. I would like to go out

1 of order, if that's okay with you.

2 THE COURT: Sure.

3 MR. ROSENTHAL: Yeah. I would like to take up the  
4 JPL protocol motion.

5 We filed a motion, Your Honor, authorizing AIHL to  
6 enter into a cross-border insolvency protocol with the joint  
7 provisional liquidators. And this protocol provides for the  
8 coordination of the debtors' actions in the Cayman  
9 proceedings and the U.S. proceedings. As you know, we've  
10 been working on this protocol for some time with the JPLs  
11 and it, in part, is -- arises because the Cayman Court  
12 directed the JPLs and -- and the debtor to agree upon a  
13 protocol setting forth the terms under which the debtors and  
14 the JPL would -- would coordinate and allow the JPLs to  
15 perform their role to oversee, monitor and assist the AIHL  
16 directors.

17 The protocol seeks an efficient administration of  
18 the two estates and an avoidance of duplication of -- of  
19 work and conflicts. And it addresses topics -- it's -- it's  
20 primary procedure, Your Honor, addresses topics such as  
21 exchange of information, meetings with the JPL, coordination  
22 between the two courts, notice before certain actions can be  
23 taken, things which we are doing anyway, but -- but that the  
24 court there -- the court in the Caymans wanted and we wanted  
25 to -- to put in -- put in an actual protocol. It -- it

1 doesn't purport to effect the rights or obligation of the  
2 laws of either jurisdiction, and if either court makes an  
3 order inconsistent with the protocol, the order will  
4 override the protocol.

5 We note, Your Honor, that the committee has filed  
6 a statement with respect to the protocol in which they state  
7 they have no objections to it, but they don't specifically  
8 approve it. But they've -- we believe they think it's not  
9 prejudicial to the debtors and they haven't -- they haven't  
10 objected to it.

11 The Cayman Court entered the protocol last week at  
12 -- after I had said and was informed about this substance of  
13 the committee's statement, and they -- the Cayman Court  
14 dictated and directed that a note be delivered to you. I --  
15 I don't think it's been given to you, but I would like to --

16 THE COURT: No. I haven't --

17 MR. ROSENTHAL: -- personally hand it to you.

18 THE COURT: -- seen it.

19 Yeah. And I understood the committee's statement  
20 to essentially be, this is a good thing. We would like it  
21 to be, from our point of view, a better thing and there are  
22 additional things, but I -- I don't understand that this  
23 prejudices the ability of any party to modify the protocol  
24 going forward to add additional terms that might achieve  
25 additional benefits for all stakeholders.



1 MR. DUNNE: I -- that's correct, Your Honor. Just  
2 to be clear, the committee supports entry of the order today  
3 approving the protocol and Your Honor is correct that our  
4 issues have nothing to do with the protocol. We would like  
5 there to be additional topics to be addressed by the  
6 protocol, you know, allocation of fees, dealing with cash  
7 management cross-border, things of that nature. And,  
8 hopefully, we -- you know, all the parties will make that a  
9 top priority so we can be back in front of the courts with  
10 -- with protocols that cover those topics as well.

11 THE COURT: Right.

12 MR. ROSENTHAL: May I approach, Your Honor?

13 THE COURT: Certainly.

14 Thank you. Just give me a moment.

15 MR. ROSENTHAL: The longer document, Your Honor,  
16 is the order of the Cayman Court and the protocol is  
17 attached. And the note is the one-page document. I was not  
18 at the hearing, but my understanding is that this was  
19 transcribed verbatim --

20 THE COURT: Okay.

21 MR. ROSENTHAL: -- from something that the judge  
22 said.

23 (Pause)

24 THE COURT: All right.

25 MR. ROSENTHAL: Your Honor, based on that, I mean,

1 I -- should I read the official note into the record or --

2 THE COURT: Well, do you have any objection to  
3 docketing this after --

4 MR. ROSENTHAL: I do not.

5 THE COURT: -- the hearing?

6 MR. ROSENTHAL: I do not, Your Honor.

7 THE COURT: Well, then, I think that will probably  
8 save us a bit of time. But what I understand it to say  
9 really is that -- it's directed to me saying that I  
10 understand the concerns. He doesn't seem to have any  
11 problems with the concerns. It says, understand that if  
12 these substantive issues would arise that -- and  
13 unsatisfied, that they would be addressed as they need to be  
14 addressed by the appropriate parties.

15 MR. ROSENTHAL: That's my -- that's my  
16 understanding as well, Your Honor. The committee has that  
17 note.

18 All right. Your Honor, --

19 THE COURT: I mean, certainly, if you want to read  
20 it into the record for -- for a particular purpose, I -- I  
21 don't have a problem with that, but you don't need to do it  
22 for -- for me.

23 MR. ROSENTHAL: That's fine, Your Honor. Let's --  
24 let's just enter it -- enter it on the docket, please.

25 THE COURT: All right.

1 MR. ROSENTHAL: So based on that, Your Honor, we  
2 would -- we would ask the Court to approve -- to approve the  
3 protocol motion.

4 THE COURT: All right. Anyone have anything that  
5 they want to add on this particular motion?

6 MR. BURKE: Good afternoon, Your Honor. Michael  
7 Burke, Sidley Austin for the JPLs. And we just wanted to  
8 stand to support the motion. We believe the protocol is in  
9 the best interest of the estate and also in the Cayman  
10 proceedings, and we support entry.

11 THE COURT: All right. Thank you. And I think  
12 the A's have it, so we'll -- I will grant the request for to  
13 the protocol and approve the motion.

14 Thank you.

15 MR. ROSENTHAL: The next motion, Your Honor, that  
16 I would take up -- like to take up is the interim cash  
17 management agenda, which is agenda item 16, I believe.

18 THE COURT: All right. And I have the proposed  
19 eighth interim budget.

20 MR. ROSENTHAL: Your Honor, this covers the budget  
21 period through October 5th. As -- as we have done  
22 throughout the case, we've worked with the committee, joint  
23 provisional liquidator particularly to come up with a budget  
24 that hopefully is not objectionable to them, and we've been  
25 successful with the exception of two items on the budget

1 that's before you.

2 One of the items relates to a \$470,000 projected  
3 expenditure for a DNO renewal policy. That is not an actual  
4 set in stone expenditure, Your Honor. The debtors are in  
5 negotiations now with their carrier about a renewal of the  
6 policy, and that is, in effect, a place holder because we  
7 expect there to be an agreement on the renewal and the  
8 renewal premium sometime this month.

9 When the company and its carrier agree on the  
10 renewal DNO insurance, we will notify the committee and give  
11 them 10 days to object to the order. That is, as the Court  
12 will recall, there was an insurance order entered that  
13 requires that -- that allows us to renew at our discretion,  
14 but provide a 10 day --

15 THE COURT: Notice.

16 MR. ROSENTHAL: -- notice period for the  
17 committee.

18 The second item, Your Honor, relates to a \$1.9  
19 million funding necessary to buy diesel fuel for a chilling  
20 facility in Abu Dhabi. One of the debtors' subsidiaries is  
21 in joint ventures where they -- they have cooling facilities  
22 that are used to cool complexes of buildings. We -- we have  
23 large buildings here that have cooling towers on them. This  
24 is a huge -- a huge building that provides the cooling for a  
25 number of buildings in -- in particular areas. One of those

1 is in Saadiyat Island in Abu Dhabi. The facility is in the  
2 process of being built and in the meantime there are  
3 temporary cooling facilities set up.

4 As you know, it's over a hundred degrees there  
5 now, maybe 110 at this point. There are temporary  
6 facilities that are in place that require diesel fuel. The  
7 \$1.9 is to purchase diesel fuel.

8 We have -- we -- the debtors believe, Your Honor,  
9 that there are a number of reasons, including the equity  
10 raise, to make the \$1.9 million additional investment and a  
11 number of disadvantages to not making it, including loss of  
12 a \$10 million deposit.

13 The committee disagrees at this point and there  
14 are discussions still ongoing about the need for that  
15 funding. In the meantime, Your Honor, we have asked the  
16 Court to schedule a hearing and the Court has scheduled a  
17 hearing for September 19th in case this has to be handled on  
18 a contested basis.

19 Based on that, Your Honor, we are asking the --  
20 we're proposing the following schedule:

21 We would file our brief in support of the funding  
22 by September 5th, which is Friday. The committee's  
23 opposition would be due by the 14th. Our reply would be due  
24 by the 17th, the afternoon of the 17th, and then the hearing  
25 is the afternoon of the 19th. So the Court would have about

1 a day and a half -- obviously, Your Honor is in court for  
2 some of that period, but you would have about a day and a  
3 half to look at the final pleadings.

4 We -- we will also agree to an expedited discovery  
5 schedule, but would ask the committee to provide us with  
6 their discovery requests soon after we file our motion  
7 regarding the funding. And then we would want to depose any  
8 witness that the committee would seek to -- to put on the  
9 stand as well.

10 THE COURT: All right. I don't have my calendar  
11 in front of me. I'm not sure what it looks like on the  
12 18th, if that's an omnibus hearing for some other large  
13 case. So I just want to make sure I have enough time to  
14 take a look at the reply.

15 MR. ROSENTHAL: I -- I think we talked to your --  
16 to your chambers. We had asked for the 18th and I don't  
17 believe there was enough time then, but I -- and --

18 THE COURT: No. No. In the sense of -- I'm  
19 thinking about the timing for filing and --

20 MR. ROSENTHAL: Oh, I understand. I understand.

21 THE COURT: So what I would say is -- is -- what  
22 day of the week is that? Is that a Tuesday? I'm trying to  
23 figure out when the 14th is.

24 UNIDENTIFIED SPEAKER: It's a Monday.

25 UNIDENTIFIED SPEAKER: Monday is the 17th. Yes.

1 THE COURT: Monday is the 17th.

2 MR. ROSENTHAL: The 17th is a Monday and the 19th  
3 is a Wednesday.

4 THE COURT: All right. Can you get it in on that  
5 -- at noon on the -- on that Monday?

6 MR. ROSENTHAL: Sure.

7 THE COURT: All right.

8 MR. ROSENTHAL: That's fine, Your Honor.

9 THE COURT: I think that will solve my -- my  
10 potential problem. All right. That -- that's fine, that  
11 schedule.

12 MR. ROSENTHAL: Your Honor, so with the -- we will  
13 not --

14 THE COURT: The budget is going to be with those  
15 two items --

16 MR. ROSENTHAL: The budget --

17 THE COURT: -- or to --

18 MR. ROSENTHAL: No. The budget will include those  
19 two items, but we have agreed that -- you know, that the DNO  
20 item will not be paid until the Court rules, if the  
21 committee files -- files an objection within 10 days, and  
22 that the expenditure related to the Saadiyat Island cooling  
23 project will not be paid unless we have an agreement with  
24 the committee that it can be paid or the Court rules that we  
25 can pay it.

1 THE COURT: All right. And is this briefing  
2 schedule for both items?

3 MR. ROSENTHAL: The -- no, it's not. The DNO --  
4 the DNO is -- is different. Whenever we come to an  
5 agreement on that, we will let -- let the committee know and  
6 then they will have 10 days to file --

7 THE COURT: I see.

8 MR. ROSENTHAL: -- an objection --

9 THE COURT: Okay. All right.

10 MR. ROSENTHAL: -- and then we'll have -- we'll  
11 have to go on a --

12 THE COURT: Okay.

13 MR. ROSENTHAL: -- set up a briefing schedule.

14 THE COURT: All right.

15 MR. FLECK: Your Honor, good afternoon. Evan  
16 Fleck of Milbank, Tweed on behalf of the official committee.  
17 If I may, Your Honor, just a couple of comments with regard  
18 to the budget.

19 I don't take issue with anything that Mr.  
20 Rosenthal said with respect to the process and what he's  
21 outlined in terms of the disputes we currently have on the  
22 AGUD funding issue. We don't currently have a dispute on  
23 the insurance item. What I think he's proposing and is fine  
24 with the committee is that we comply with the protections  
25 that we had requested and Your Honor ordered in -- in



1 connection with the first day order on the insurance motion  
2 which provides for the 10 days. That's absolutely fine.

3 Just as Mr. Rosenthal said, that -- they believe  
4 there are a number of reasons why AGUD funding makes sense,  
5 there are a number of reasons why we think it doesn't make  
6 sense. But we are working together as we have in the case  
7 to try to reach a resolution that doesn't require court  
8 intervention, that doesn't require the expenditure of coming  
9 before the Court and doing the briefing.

10 In terms of the briefing schedule, obviously,  
11 we'll comply with the reply date. I would like to speak  
12 with Mr. Rosenthal in terms of the timing of some of those  
13 other dates. Just in terms of our meeting schedule next  
14 week on the business plan, consistent with the same goal of  
15 trying to reach consensual resolution, there may be some  
16 flex in those dates, not -- not tinkering with the reply  
17 date, but just to make -- optimize the --

18 THE COURT: Yeah.

19 MR. FLECK: -- the potential --

20 THE COURT: That's -- that's fine.

21 MR. FLECK: -- of the resolution.

22 THE COURT: I think the parties here have done an  
23 excellent job at trying to set a schedule that allows you to  
24 brief what you have to brief. It gives them a breathing  
25 room so that you can reach agreements where -- where you --

1 where that's appropriate, and you've reached a lot of them.  
2 So I will defer to your judgment as to how you want to --  
3 the schedule to be consistent with how you've done that in  
4 the past.

5 MR. FLECK: Thank you, Your Honor.

6 And the last point I would make is that we are  
7 trying to work with the debtors to -- to come up with a cash  
8 management protocol in the case. But we -- we are trying --  
9 I think the ball is currently in the debtors' court, but  
10 that's -- it was -- it was in our court just before that, so  
11 we're trying to work on a protocol so that we can have --  
12 it's a little bit more streamlined so that the budget items  
13 get dealt with in advance of the hearing and when we have  
14 omnibus hearings we can actually have the dispute aired at  
15 that point in time consistent with Your Honor's schedule.  
16 Hopefully, we'll get that done well in advance of -- so that  
17 it's still relevant and helpful to the cases.

18 THE COURT: All right.

19 MR. FLECK: And that's all from the committee,  
20 Your Honor. Thank you.

21 THE COURT: All right. Thank you.

22 All right. So I assume that the proposed order on  
23 the budget is essentially agreed upon, then, based on the  
24 representations you've made?

25 MR. ROSENTHAL: Yes, Your Honor. What I would

1 propose is to put in the dates that I suggested to the Court  
2 with the modification the Court made, and we can talk to the  
3 committee about adjusting the timing of responses if it  
4 becomes appropriate, given that we do have meetings next  
5 week. The -- our --

6 THE COURT: Yeah.

7 MR. ROSENTHAL: -- our issue is that we have a --  
8 is that we have a -- that the item that needs to be paid --  
9 budget item that needs to be paid is for diesel fuel which  
10 literally runs out around the time of that hearing, so we  
11 need -- we need to stick to the hearing on September 19th in  
12 order to have an effective order.

13 THE COURT: All right.

14 All right. With that I will approve the -- I  
15 believe it's the seventh interim budget --

16 MR. ROSENTHAL: Yes.

17 THE COURT: -- or is it the eighth?

18 MR. ROSENTHAL: Seventh.

19 THE COURT: Eighth. I -- I think it says notice  
20 of filing of the eighth interim budget.

21 MR. ROSENTHAL: Eighth.

22 THE COURT: Eight.

23 MR. ROSENTHAL: Do we have the record yet or no?

24 THE COURT: What's that?

25 MR. ROSENTHAL: Do we have the record --

1 THE COURT: No. But -- but you're --

2 MR. ROSENTHAL: We're closing in on it.

3 THE COURT: You may be a contender.

4 MR. ROSENTHAL: All right, Your Honor. The next  
5 -- the next matters that I would like to address are the  
6 interim fee applications. This is the first interim hearing  
7 for allowance of fees and expenses for the retained  
8 professionals in the case. All of the professionals have  
9 and continue to exert enormous efforts working towards a  
10 successful resolution of these Chapter 11 cases.

11 As -- as the Court knows there's a tremendous  
12 amount of work that goes on outside the courtroom in order  
13 to be able to bring to the Court very few disputes, and as  
14 you would expect, a lot has been going on behind the scenes  
15 that the Court has -- doesn't see when we come in with  
16 consensual resolutions. Frankly, that's the way it should  
17 be, I think, but it is also a justification for why expenses  
18 -- fees and expenses have been very significant in this  
19 case. It's a -- it's a significant case.

20 Your Honor, I -- I would like to take up the  
21 Gibson, Dunn application first. I will tell the Court that  
22 we have had discussions not only for Gibson, Dunn, but for  
23 all of the debtors' professionals with the Office of the  
24 United States Trustee and I'm happy to report that all of  
25 the professionals have made some adjustments to their

1 requested fees and expenses based on those discussions. My  
2 understanding is that the committee professionals have had  
3 similar discussions with Mr. Morrissey and I'll let the  
4 committee report on that.

5 Your Honor, we -- we filed a general statement  
6 with respect to these fee applications, as did the  
7 committee, and -- and wanted to make the basic point that  
8 this is a long case. We expect it to come to a conclusion  
9 some time at the end of the first quarter of next year.

10 We understand the importance of the oversight  
11 process with respect -- with respect to fees and expenses,  
12 but at the same time, awarding fees and expenses for this  
13 first interim period does not mean that the Court does not  
14 have a safeguard in case there are issues related to  
15 objections to fees that arise down the road, whether for  
16 this period or a later period. At any point in time, every  
17 one of these professionals will have a 20 percent holdback  
18 for their -- you know, for the -- for the fee period that's  
19 involved, plus they will have work in process for at least a  
20 month, maybe two months based on -- based on their billing  
21 cycles.

22 In this case for us it's roughly, you know, one-  
23 and-a-half to three-and-a-half-million-dollar receivable, if  
24 you will, for accrued unpaid fees at any -- at any point in  
25 time. And I would hope the Court would take that into

1 consideration.

2           During the first fee period, Your Honor, which ran  
3 from the beginning of the case, March 19th, through July  
4 31st, Gibson, Dunn professionals spent nearly 9,000  
5 assisting the debtors. This, at market rates, at our rates  
6 translates into a billing of approximately \$6.74 million.  
7 We reduced that, as -- as required by the guidelines and the  
8 interim order by 50 percent of non-working traveling time  
9 which reduced the statements by \$87,000.

10           We've also sought reimbursement of expenses in the  
11 amount of \$173,000 and some change. No objection was filed,  
12 or as I say, we did have discussions with the U.S. Trustee's  
13 Office and have made adjustments related to timekeepers  
14 related to time incurred in complying with U.S. Trustee  
15 guidelines. The -- we've agreed to a further fee reduction  
16 of \$35,000, and we are requesting that the Court approve a  
17 request for fees in the amount, taking into consideration  
18 both of those, and I -- I think I have the number correct,  
19 but I don't want to be locked into it. I think it's about 6  
20 million -- \$6,625,000 and some change, and expenses in the  
21 amount of \$173,000 and -- and some change. And we would ask  
22 that the Court approve that and authorize release of the 20  
23 percent hold back.

24           I -- I want to make clear that no one has waived  
25 their right to object, in further hearings or in the final

1 hearing, to the fees and expenses that are being authorized  
2 here, requested and authorized here. We all understand that  
3 everything is subject to final hearing.

4 THE COURT: You said authorize release of the hold  
5 back. I wasn't sure if -- if I under -- heard that  
6 correctly because this is the first request, right, so what  
7 -- what do you mean, that there will -- shouldn't be a hold  
8 back or -- I'm not -- I'm not sure --

9 MR. ROSENTHAL: No. The request -- the request,  
10 Your Honor, is that the 20 percent hold back from the first  
11 period be released.

12 THE COURT: Right.

13 MR. ROSENTHAL: From this point forward we'll  
14 continue the hold back because the -- next month we'll have  
15 the 20 percent hold back. That hold back will continue for  
16 the second period and at the second -- second interim fee  
17 hearing there would be a request for approval of the fees  
18 during that period plus release of that hold back. So at --  
19 so at any point in time we will have -- you know, we will  
20 have -- during the second period we will have the hold back  
21 continue to --

22 THE COURT: But I -- but I guess I'm confused in  
23 the sense that this is the first application, right, so I --  
24 all right. I think I follow it. All right.

25 Let me hear from the U.S. Trustee and then any

1 other party that wants to be heard on the Gibson, Dunn --

2 MR. MORRISSEY: Your Honor, first of all, I would  
3 like to ask the Court about the hold back issue in terms of  
4 when that should be addressed because that impacts all the  
5 professionals.

6 But as to Gibson, Dunn, in particular, as Mr.  
7 Rosenthal has stated, we did agree to a small reduction in  
8 the scheme of things to their claim and I don't know if the  
9 Court has any further questions about that.

10 THE COURT: No. My only -- my only question is  
11 about how to handle the hold back. And remind me what --  
12 what is -- I know your office has traditionally advocated a  
13 particular approach on the hold back and -- and if you would  
14 remind me what that is in the context of this case and the  
15 request to release the hold back as related to Gibson, Dunn.

16 MR. MORRISSEY: Yes. I -- I'm happy to do that,  
17 Your Honor, unless other counsel wish to speak first in  
18 agreement with Mr. Rosenthal's position. I don't know which  
19 -- in which order you --

20 THE COURT: Well, let's --

21 MR. MORRISSEY: -- want to --

22 THE COURT: -- let's get it out of the way now.

23 MR. MORRISSEY: Okay.

24 Your Honor, the hold back idea is not part of the  
25 U.S. Trustee guidelines. It's actually a creature of the



1 court itself and the court generally will impose a 20  
2 percent hold back until --

3 THE COURT: Right.

4 MR. MORRISSEY: -- the end of a case.

5 Now having said that, there are obviously  
6 variations depending on financial condition of the debtor in  
7 possession in a given case. And another wrinkle, Your  
8 Honor, is the monthly interim compensation program. I think  
9 that's what Mr. Rosenthal was referring to before when he  
10 said going forward he has no problem with keeping the 20  
11 percent hold backs in place. That's part of the monthly  
12 interim compensation order, and any departure from that  
13 would be, in essence, a modification of that order. But my  
14 understanding is Mr. Rosenthal wasn't asking for that.

15 THE COURT: No. I didn't --

16 MR. MORRISSEY: He's just looking backwards --

17 THE COURT: -- understand him to be doing that.  
18 Right.

19 MR. MORRISSEY: -- looking backwards.

20 Your Honor, all I really have to say about it is  
21 that, again, it's -- it's not our -- I mean, it's an issue  
22 we raise, but it's -- it's not our --

23 THE COURT: But my understanding -- and I've tried  
24 to be consistent about this; that -- is to have a 20 percent  
25 hold back that stays in place and then gets released as the

1 application gets teed up, which would mean that the hold  
2 back would stay -- the 20 percent hold back would stay in  
3 place here until we got to the next application, that is the  
4 second interim application. And I believe that's what I've  
5 done in the past and I think that that's a variation from  
6 what Mr. Rosenthal was requesting.

7 Am I understanding -- am I understanding the facts  
8 right?

9 MR. MORRISSEY: Yeah. I -- I think so. And  
10 there's variation among the cases, frankly, from courtroom  
11 to courtroom and from case to case. So I don't want to  
12 leave the impression with the Court or --

13 THE COURT: No. No. I -- I'm not --

14 MR. MORRISSEY: -- anyone here that --

15 THE COURT: You're not really advocating. You're  
16 just -- you're just -- I want to make sure that I'm  
17 consistent as -- as possible just because I think  
18 consistency is hard to come by and I think without it  
19 parties feel like they're being singled out and I'm not  
20 singling out anybody. This case has been incredibly well  
21 managed.

22 But it's just something that's done in recognition  
23 of the fact that nobody quite knows what the end game is and  
24 I try to do it by a particular variation not in a way that  
25 makes it difficult on counsel. That's why my practice has

1 been to release the hold backs. So, for example, release  
2 the hold back from the first interim when we get to the  
3 second interim because we have the hold back in the second  
4 interim period. So that's what I've tended to do and I just  
5 wanted to make sure I understood what was being asked here  
6 and how that compares with what I've normally done.

7 So I'm just using you --

8 MR. MORRISSEY: Right. Your Honor --

9 THE COURT: -- essentially as the consistency  
10 police.

11 MR. MORRISSEY: Your Honor, there --

12 THE COURT: I'm not asking you to advocate a  
13 particular position.

14 MR. MORRISSEY: -- there are three things I've  
15 seen, Your Honor. One is what you just outlined. Another  
16 is to keep the 20 percent throughout the case --

17 THE COURT: Through the case --

18 MR. MORRISSEY: -- from the beginning to the end,  
19 and a third is to reduce the 20 percent to some lower  
20 figure, 15 percent, 10 percent, looking backwards and keep a  
21 20 percent going forwards. But -- but some of the issues --  
22 and, again, I would invite Mr. Rosenthal or Mr. Dunne or one  
23 of the other professionals to address it -- is, for example,  
24 the financial condition of the debtor, whether --

25 THE COURT: Right.

1 MR. MORRISSEY: -- that it can afford to make the  
2 payments. Mr. Rosenthal gave a number saying that there's a  
3 lot of money in the bank right now and hopefully if they can  
4 extract the money from the banks there will be even more.  
5 And another one is whether the Court wants to prod the  
6 professionals to move the case forward towards confirmation.  
7 Again, Mr. Rosenthal set forth his plans --

8 THE COURT: Yeah. No. I --

9 MR. MORRISSEY: -- for a plan --

10 THE COURT: -- I don't think either of those --  
11 those things are a concern here. Again, I'm trying to be  
12 consistent because -- I mean, for a lot of reasons. But I  
13 think consistency has its own value and I tended to use this  
14 approach. I think it's somewhere in the middle of what  
15 judges in this courthouse do and I've adjusted it to be more  
16 restrictive in cases where I think there's a real concern  
17 that -- about administrative insolvency or some other issue,  
18 and in those cases kept 20 percent for the life of the case  
19 or some other variation, creative variation that the parties  
20 have come up with.

21 So -- but I also think there is some value of not  
22 sort of re-litigating this every time I have a large case  
23 here. I don't think it's a benefit to either the parties or  
24 -- or the lawyers or me, frankly.

25 So -- so my inclination is to stick with what I've

1 done in the past, which is to have the 20 percent hold back  
2 for each period stay in place and then get released once the  
3 next period comes up and there's that 20 percent hold back  
4 to replace it. Again, I think I'm somewhere in the middle  
5 of what -- what's done in the courthouse in that way.

6 MR. MORRISSEY: Okay.

7 THE COURT: All right.

8 MR. MORRISSEY: Mr. Dunne, perhaps, is  
9 disappointed that he hasn't gotten to make his own plea, but  
10 I think he got exactly what he's looking for --

11 THE COURT: All right.

12 MR. MORRISSEY: -- as --

13 THE COURT: No. Again, I -- I'm 99 percent  
14 positive in terms of the consistency issue. I just wanted  
15 to make sure --

16 MR. MORRISSEY: Okay.

17 THE COURT: -- in the abundance of caution. Thank  
18 you.

19 MR. MORRISSEY: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. ROSENTHAL: May I -- may I make a comment?

22 THE COURT: Certainly. And you can feel free to  
23 do it there or -- or at the podium, whatever is more  
24 comfortable to you.

25 MR. MORRISSEY: Your Honor, I would just ask you

1 to rethink that policy. The purpose of the hold back is to  
2 provide a cushion. We now have a four-month hold back and  
3 we've got work in process. So that -- that is a cushion.  
4 If you paid the hold back now, that would eliminate that  
5 portion of the cushion, but then the hold back would  
6 continue to -- would grow as you have hold backs in the  
7 second period.

8 One, perhaps, intermediate approach that you might  
9 think about is if what you want to do is keep -- as we have  
10 fee hearings every four months -- keep a four-month hold  
11 back because by the end of the second period if we don't get  
12 a fee hearing until January or February, we're going to have  
13 10 months of hold backs. That's -- that's a lot -- that's a  
14 lot of money, is to authorize payment of the hold back, but  
15 not authorize it all paid right now, so that if you  
16 authorize one month of it paid this month, that would be --  
17 that --

18 THE COURT: A roll -- essentially, a rolling  
19 basis.

20 MR. ROSENTHAL: -- that would be -- that would be  
21 replaced by the hold back from August, for example, and then  
22 if you authorized a month paid next month that would replace  
23 -- be replaced by the hold back for September, so that it --  
24 at no time would you have anything more than -- anything  
25 less than a four-month hold back plus the work in process

1 from the preceding month. That -- that's a suggestion of a  
2 way to --

3 THE COURT: Well, it -- it accomplishes, I think,  
4 what I'm trying to accomplish here, which is to essentially  
5 have a hold back that stays in place for -- for a  
6 substantial period of time just because I -- I don't know  
7 what the end game -- end of the case really is.

8 The concern I have is not really particularly with  
9 this case, but I really don't like to sort of re-litigate  
10 the issue at every case because, again, I think people might  
11 think that I'm casting dispersions on -- on counsel and I'm  
12 not. I'm just trying to be consistent. And it may mean  
13 that people say, well, we need to tee up the fee  
14 applications fairly quickly and -- and that's fine.

15 But what I'm going to do is I'm going to stick  
16 with it for now, but I think you raise a possibility that I  
17 -- I may revisit how I do it and do it in a manner  
18 consistent with -- with what you're advocating. But -- and  
19 I -- I reserve the right to revisit that before the next  
20 time we get fee applications. We can -- we can -- let me --  
21 let me mull it over --

22 MR. ROSENTHAL: Okay.

23 THE COURT: -- because, again, I'm trying to come  
24 up with a rule that's consistent in all cases that serves as  
25 the -- essentially, the standard to be adjusted accordingly.

1 So -- so let's -- let's stick with my way for right now, but  
2 I'll mull it over and -- and you may ultimately convince me.  
3 So let me -- let me think about it.

4 MR. ROSENTHAL: Please bear in mind, also, that  
5 some of the law firms have yearend deadlines, so if we don't  
6 get another fee hearing until February or March, that's --  
7 that has --

8 THE COURT: No. And, again --

9 MR. ROSENTHAL: -- that has implications.

10 THE COURT: -- I'm not -- that's -- that's one of  
11 the reasons I don't ask for a 20 percent hold back for the  
12 life of the case ordinarily because I -- I don't want it to  
13 be hard on counsel. So I'm trying to find the right -- the  
14 right measure. But let me mull it over and -- and if I'm  
15 going to change it I'll do it prior to the next time we get  
16 together.

17 MR. ROSENTHAL: Thank you, Your Honor.

18 THE COURT: All right.

19 Anybody else want to comment on that one way or  
20 another?

21 All right.

22 MR. ROSENTHAL: So I guess we skip -- the main  
23 part of the application was -- was authorizing the fee  
24 application. We got hung up on the -- on the hold back.  
25 But I would -- I would respectfully request that the Court



1 approve the first interim application.

2 THE COURT: All right. Anyone else want to  
3 comment on the first interim application of Gibson, Dunn?

4 All right. I will grant that application  
5 consistent with our discussion.

6 MR. ROSENTHAL: Thank you, Your Honor.

7 The next application, Your Honor, is that of  
8 Alvarez & Marsal which has acted as financial advisor to the  
9 debtors and done a terrific job.

10 In the -- in the first interim period A&M seeks  
11 payment of fees of approximately \$5.1 million and  
12 reimbursement of expenses in the amount of \$234,000. Mr.  
13 Hersh is -- from Alvarez & Marsal is in the courtroom today  
14 if the Court would like to ask any questions. No objection  
15 was filed and no -- no voluntary reductions were requested  
16 by the U.S. Trustee's Office, and we would ask that that  
17 application be approved.

18 THE COURT: All right. Anyone want to comment on  
19 the application?

20 MR. MORRISSEY: Yes. Briefly, Your Honor. There  
21 was a little snafu with respect to this particular fee  
22 application in that the time records weren't filed when the  
23 application itself was filed. They have been filed monthly  
24 before, but they were supposed to have been filed with the  
25 fee application.

1           There was certain questions -- and I spoke to Mr.  
2           Hersh in the hallway about this -- about the expenses,  
3           hotel, taxis, et cetera, and I asked for some backup on  
4           that. That is not the same thing as an objection. It's  
5           more of a question than anything else.

6           As to the main part of the fee application, the  
7           \$5.1 million Mr. Rosenthal just referred to, the U.S.  
8           Trustee did get a chance to review that and has no objection  
9           to that.

10           So as far as the expenses, we would just like an  
11           opportunity to get a chance to examine those expenses, and  
12           what I guess we'll do is we'll communicate to the Court a  
13           resolution on that, if there is to be a reduction. I'm not  
14           aware that there is at this point. But to the extent that  
15           there is to be a deduction, it will be communicated to the  
16           Court and there will be a proposed order.

17           THE COURT: All right. Mr. Rosenthal, any views?

18           MR. ROSENTHAL: That's fine, Your Honor. I --

19           THE COURT: All right.

20           MR. ROSENTHAL: This was a discussion that just  
21           took place in the hallway.

22           THE COURT: All right. Subject to that agreement  
23           on how to proceed on expenses, I will grant the first  
24           application of Alvarez & Marsal.

25           MR. ROSENTHAL: Thank you, Your Honor.

1           The next application, Your Honor, is the  
2 application of Linklaters. This is Linklaters' application  
3 as a retained professional which differs from their work  
4 that we were before you on last hearing with respect to  
5 their work on the IPO where they did it for a non -- for a  
6 non-debtor affiliate.

7           In this application they've sought payment of fees  
8 of \$461,000 and expenses of approximately \$1,200. As a  
9 result of discussions with Linklaters, they have agreed to  
10 reduce their fees by about \$29,000, \$29,069, and after  
11 giving effect to that, the amount sought by Linklaters would  
12 be approximately \$432,000 in fees and \$1,200 in expenses.

13           Mr. Good, a partner from Linklaters, was on the  
14 line. I think he may still be on the line. I know he had  
15 -- he had a meeting that he may have had to run -- run for.

16           THE COURT: Right. All right. Anyone --

17           MR. GOOD: I am still on the line.

18           THE COURT: You're still on the line. All right.  
19 Good to have you.

20           Anybody want to be heard in the first application  
21 of Linklaters?

22           All right. Consistent with the discussions we've  
23 had, I will grant the application of Linklaters.

24           MR. ROSENTHAL: Thank you, Your Honor.

25           The next application, Your Honor, is KPMG (UK) for

1 their work as valuation advisor. This is the work that they  
2 did with respect to the valuation reports. KPMG is  
3 represented by Robin Spigel of Willkie, Farr who is here  
4 today.

5 In its application, KPMG sought fees in the amount  
6 of \$3.7 million and reimbursement of a small amount of  
7 expenses, \$2,200. There, again, was a discussion between  
8 the U.S. Trustee and KPMG, and there was an agreed upon  
9 reduction, I believe, of \$60,000, but I will defer to Ms.  
10 Spigel if -- if there's any change in that.

11 THE COURT: All right.

12 MS. SPIGEL: Good afternoon, Your Honor. Robin  
13 Spigel of Willkie, Farr. That's correct.

14 THE COURT: All right. Thank you.

15 All right. Anyone want to be heard on the first  
16 interim fee application of KPMG?

17 All right. Again, consistent with the discussion  
18 about hold back, I will grant the first interim fee  
19 application of KPMG.

20 MR. ROSENTHAL: Thank you, Your Honor.

21 One additional KPMG application, this is for KPMG  
22 (US) which has served as tax consultants to the debtors,  
23 U.S. tax consultants. In -- in its first application, KPMG  
24 (US) sought payment of fees of approximately \$80,000 and no  
25 expense reimbursement. I understand there are some

1 discussions between KPMG and the U.S. Trustee, but I -- I  
2 don't know right now where those stand.

3 THE COURT: Mr. Morrissey could probably enlighten  
4 us.

5 MR. MORRISSEY: Your Honor, I -- I should  
6 apologize for this one. I was actually called yesterday and  
7 -- and couldn't return the call. I was out of the office.

8 But we -- we had a discussion -- well, I'm sorry.  
9 I raised an issue concerning the review of time records to  
10 make sure they were in compliance with the U.S. Trustee  
11 guidelines and we take the position that those are not  
12 compensable.

13 What I expect to happen with that, Your Honor, is  
14 that I have to first figure out from them exactly how much  
15 of their fee applications are attributable to that  
16 particular task and then I -- I think what we're going to  
17 do, like with we did with other applicants here, is arrive  
18 at a resolution.

19 THE COURT: All right. Subject to that one issue,  
20 I will approve the first fee application of KPMG (US).

21 MR. ROSENTHAL: Thank you, Your Honor.

22 Then the next application I want to take up is  
23 Garden City Group as administrative agent for the debtors.  
24 Mr. Johnson, Craig Johnson, is in -- from Garden City is in  
25 the courtroom today.

1 In their application, Your Honor, they sought a  
2 payment of fees in the amount of about \$3,500, \$3,600, and  
3 there was -- there were no objections to this application.

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

5 All right. I will grant the first interim fee  
6 application of Garden City Group.

7 MR. ROSENTHAL: Next, Your Honor, is the  
8 application of King & Spalding as special counsel to the  
9 debtors. King & Spalding sought payment in the amount of  
10 \$620,000, roughly that amount, and reimbursement of expenses  
11 of about \$14,000.

12 As a result of discussions with the United States  
13 Trustee's Office, King & Spalding agreed to a \$50,000  
14 reduction in their fees for this period. I believe there is  
15 a representative of King & Spalding on the -- on the  
16 telephone.

17 THE COURT: All right. Anyone want to be heard in  
18 connection with the first interim application of King &  
19 Spalding?

20 All right. I will grant that application.

21 MR. ROSENTHAL: Thank you, Your Honor.

22 The next application is the application of our  
23 Bahraini special counsel, Trowers & Hamlins. In their  
24 application, Your Honor, they sought payment of fees of  
25 \$157,000 and a small amount of expenses, \$330. There is a

1 representative of Trowers on the line.

2 The U.S. Trustee had some comments to the Trowers'  
3 application and requested that Trowers reduce its fees to  
4 eliminate transitory -- transitory attorneys -- transitory  
5 meaning attorneys who -- who touched the case for relatively  
6 minor amounts of time.

7 THE COURT: Right.

8 MR. ROSENTHAL: I think there's been a resolution.  
9 I don't know the exact amount. I got an email while I was  
10 in the hall as to the exact amount.

11 MR. WEISSER: It's 3,900.

12 MR. ROSENTHAL: Thirty-nine --

13 MR. WEISSER: Approximately \$3,900.

14 MR. ROSENTHAL: Yes. All right.

15 So \$3,900 reduction for those transitory --

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

17 All right. Subject to that agreement of \$3,900, I  
18 will grant the first application of Trowers, Hamlin.

19 MR. ROSENTHAL: Thank you, Your Honor.

20 And the final one before I turn it over to the  
21 committee is the application of Mourant Ozannes which is  
22 special Caymans counsel to the debtors.

23 They sought reimbursement of 200 -- roughly  
24 \$200,000 in fees and about \$14,000 in expenses. I believe  
25 that Simon Dickson (ph), a partner for Mourant is on -- is

1 on the telephone. There was an objection by the U.S.  
2 Trustee to transitory -- transitory timekeepers and some  
3 other -- some other small issues, and there was an agreement  
4 as to a reduction of about \$1,500 of fees and 2,000 -- a  
5 little over \$2,000 in expenses.

6 So Mourant now seeks payment of \$198,616 as fees  
7 and about 12,000 in expenses. Bear in mind that all of this  
8 will be -- all of these numbers will be in the order that we  
9 submit --

10 THE COURT: Right.

11 MR. ROSENTHAL: -- and the form required by the --  
12 by the District.

13 THE COURT: All right. Anyone want to be heard on  
14 this application?

15 All right. Consistent with what was said, I will  
16 grant that application.

17 MR. ROSENTHAL: Thank you, Your Honor. May I turn  
18 it over to Mr. Dunne?

19 THE COURT: Certainly.

20 MR. DUNNE: For the record, Dennis Dunne, for  
21 Milbank, Tweed, Hadley & McCloy on behalf of the official  
22 creditors' committee.

23 We have five interim fee applications, Your Honor,  
24 and in the interest of efficiency I would like to do them  
25 all at once and I'll give you the details and then I'll tell



1 you the concessions that were -- the economic concessions  
2 that were made --

3 THE COURT: All right.

4 MR. DUNNE: -- as a result of negotiations with  
5 the U.S. Trustee's Office.

6 We have the first interim fee application of  
7 Milbank, Tweed seeking payment of fees of approximately \$4.2  
8 million and the reimbursement of expenses of approximately  
9 \$100,000.

10 We also have the interim fee application of FTI.  
11 Sam Starr (ph) of FTI is in the courtroom. They are seeking  
12 payment of approximately \$700,000 of fees and the  
13 reimbursement of \$850 in expenses.

14 Next, we have the interim fee application of  
15 Houlihan Lokey. David Hiltey (ph) of Houlihan is in the  
16 courtroom today. They are seeking payment of approximately  
17 \$726,000 in fees and the reimbursement of expenses of  
18 \$14,000.

19 We also have the interim fee application of our  
20 Bahraini co-counsel, Hassan Radhi & Associates. There  
21 should be a partner from Hassan Radhi on the line. They are  
22 seeking payment of approximately \$4,000 of fees and zero in  
23 expenses.

24 And lastly we have our Cayman co-counsel, Walkers,  
25 and their first interim fee application where they seek

1 payment of approximately \$50,000 in fees and \$.77 in  
2 expenses, Your Honor.

3 THE COURT: Who would have thought?

4 MR. DUNNE: And we have received no objections,  
5 but certain of the requested amounts have been modified  
6 after discussions with the U.S. Trustee's Office and I'll  
7 note the two of them.

8 Milbank agreed to reduce by \$25,000 the fees  
9 sought in its fee application to resolve potential objection  
10 from Mr. Morrissey. And FTI has agreed to reduce their  
11 requested fees by approximately \$8,000. They've reduced the  
12 fees sought in connection with the preparation of their fee  
13 statements in compliance with the U.S. Trustee's guidelines.

14 And with that, Your Honor, we would seek entry of  
15 orders for each of them, unless Your Honor has any questions  
16 that I can address?

17 THE COURT: No. Let me ask if anyone wants to be  
18 heard on any of these interim applications that have just  
19 been identified by the committee?

20 MR. MORRISSEY: Your Honor, very briefly, what Mr.  
21 Dunne said is absolutely correct as far as the numbers are  
22 concerned. But I would like to make a general comment that  
23 you -- you've heard repeated that in response to the U.S.  
24 Trustee's concerns or objections there have been reductions.

25 I would like to say that counsel on both the

1 committee's side and the debtors' side have been extremely  
2 cooperative on this. We like to avoid contentious hearings  
3 on -- on fee applications if at all possible and I know the  
4 people here and some people on the phone made that possible.  
5 This is a difficult case and it's obviously going to be  
6 difficult going forward.

7 But hopefully some of what Mr. Rosenthal has said  
8 won't come to pass and there may be second interim fee  
9 applications, but hopefully we won't be going much beyond  
10 that in terms of sets of interim fee applications.  
11 Hopefully, two will be it and then -- and then maybe there  
12 will be a final after that.

13 But, again, I would like -- I think I should point  
14 out to the Court, sometimes we point out what people do  
15 wrong, but occasionally we should point out what people do  
16 right and I think that the cooperation here on both sides  
17 has been very good and very helpful, and in the end probably  
18 saved the estate some money.

19 Thank you.

20 THE COURT: Well, I -- I am not surprised to hear  
21 that the case has been exceedingly well managed. So this is  
22 par for the course I'm happy to note.

23 So with that I will grant the interim fee  
24 applications that have been presented by the committee for  
25 Milbank, FTI, Houlihan Lokey, Hassan Radhi, and Walkers.

1 MR. DUNNE: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. DUNNE: I think I have the next agenda item as  
4 well, which is the committee's supplemental retention  
5 application for Houlihan Lokey, so let me address that.

6 Briefly, the Houlihan Lokey supplemental  
7 application basically had two purposes. We had previously,  
8 on an interim basis only, at the end of June -- at the June  
9 29th approved their monthly fees and certain of the other  
10 non-economic provisions in their engagement letter. So we  
11 are seeking final approval today of that.

12 We're also seeking final approval of a fee that  
13 was not previously considered, which is their deferred fee  
14 that had, frankly, not yet been negotiated yet at the time  
15 of the June 29th hearing between Houlihan and the committee.  
16 That deferred fee is comprised of two elements: A  
17 transaction fee of \$3 million, which is conditioned on  
18 committee support of the plan, and the second element is a  
19 component that's tied to the economic recoveries of the  
20 unsecured creditors.

21 So we worked out a formula whereby the second  
22 element of the deferred fee would basically be a computation  
23 of 40 basis points of the value ultimately distributable  
24 under a plan to the debtors' unsecured creditors, cap that  
25 to be in no event greater than 4.5 million on that second

1 prong. So between the 3 million and the 4.5 cannot exceed  
2 7.5.

3 Houlihan has also agreed to credit 50 percent of  
4 their monthly fee, which is \$200,000, against the deferred  
5 fee commencing after six months from their retention back in  
6 April. So after six months 50 percent of the monthly fees  
7 would be credited to the deferred fee.

8 No objections have been received to the Houlihan  
9 supplemental application, but there were some changes made  
10 to the language and it was basically -- it went to the  
11 definition of distributable value in Section (ii) of the  
12 engagement letter, primarily to address how distributable  
13 value would be calculated. And to confirm the right the  
14 debtors would retain their ability to object to that  
15 calculation and to the reasonableness of the deferred fee at  
16 the time of the final fee application hearing. And those  
17 changes are reflected in -- in the final order.

18 We can hand up a -- you know, a blackline if Your  
19 Honor would like to see that.

20 THE COURT: That would be helpful.

21 MR. DUNNE: Okay.

22 THE COURT: All right. Anyone want to be heard on  
23 the supplemental application of the committee for retention  
24 of Houlihan Lokey?

25 MR. WEISSER: Yes, Your Honor.

1 MR. DUNNE: May I approach, Your Honor?

2 THE COURT: Certainly.

3 MR. WEISSER: Good afternoon, Your Honor. Josh  
4 Weisser, Gibson, Dunn and Crutcher.

5 Mr. Dunne ably described the distributable value  
6 component of all of the changes. I thought it would be  
7 helpful with -- for Your Honor if we would go through one or  
8 two other changes which were pretty much the reason why the  
9 debtors decided not to object.

10 THE COURT: All right.

11 MR. WEISSER: First and foremost, the deferred fee  
12 -- previously it was payable -- if there was a termination  
13 of Houlihan it would be payable for another 18 months if  
14 there was a transaction. The committee has agreed to reduce  
15 that tail, as it's commonly thought of or termed, to 12  
16 months which we think is in line with both Rothschild and  
17 the market.

18 Second, the committee has agreed to expand certain  
19 indemnification and contribution language to make sure or to  
20 confirm that no contribution or reimbursement is payable or  
21 there's a claim to assert for it if there's gross  
22 negligence, willful misconduct and the like.

23 Leaving that aside, we support this application.

24 Thank you, Your Honor.

25 THE COURT: All right. Thank you.

1           Anyone else want to be heard?

2           All right. Just give me one minute to just flip  
3 through the blackline language.

4           (Pause)

5           THE COURT: All right. I'm happy to approve the  
6 supplemental application as to Houlihan Lokey.

7           MR. DUNNE: Thank you, Your Honor.

8           THE COURT: Thank you.

9           MR. ROSENTHAL: You're done?

10          MR. DUNNE: Yes.

11          MR. ROSENTHAL: Your Honor, I -- I believe we're  
12 done for the day. Thank you --

13          MR. HENES: Actually, I -- if I could have two  
14 minutes --

15          THE COURT: Famous last words.

16          MR. HENES: Your Honor, I apologize.

17          THE COURT: Not at all.

18          MR. HENES: I -- I will try not to delay this. I  
19 just wanted to introduce the ad hoc committee. I know we've  
20 been here before. Kirkland was retained at the end of  
21 August and since that time we've -- we've engaged in, I  
22 would say, very constructive communications with the debtors  
23 and the joint provisional liquidators. We've signed up  
24 confidentiality agreements and we're beginning to get  
25 information and we're hopeful -- and I think we will be -- a

1 very constructive force here to help get this thing moving  
2 along. And we look forward to being involved in the case,  
3 in the negotiations.

4 I think everybody here -- it was good to sit here  
5 and listen -- seems to all be focused on the same things I  
6 know that our clients are, which is to move this case  
7 quickly. We -- you know, obviously, there's a big cash burn  
8 in this case based on the nature of the business and moving  
9 this along quickly and getting to a resolution is in  
10 everybody's interest. So we look forward to working with  
11 the committee and the debtors on negotiating a plan, seeing  
12 the plan term sheets. We understand the toggle plan  
13 component of it. And I just wanted to say hello to the  
14 Court.

15 THE COURT: All right. Thank you.

16 MR. HENES: Thank you, Your Honor.

17 THE COURT: All right. With that, I believe we  
18 are adjourned and I will wait for proposed orders which I  
19 imagine will be a day or two just in light of the need for  
20 just a couple of tweaks on some of the others.

21 MR. ROSENTHAL: Yes. Thank you, Your Honor.

22 THE COURT: Thank you.

23 MR. MORRISSEY: Thank you, Your Honor.

24 MR. ROSENTHAL: Will you be back in your courtroom  
25 or is this your new courtroom or --



1 THE COURT: We -- we are putting in apparently  
2 some audio visual --

3 MR. ROSENTHAL: Oh.

4 THE COURT: So I -- I think that's going to take  
5 --

6 MR. ROSENTHAL: Okay.

7 THE COURT: I will be -- whether anyone will be  
8 able to use it I imagine needing assistance, but --

9 MR. ROSENTHAL: Okay.

10 (Whereupon these proceedings were concluded at 1:33  
11 p.m.)

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
First Application for Interim Professional Compensation - First Application of Gibson, Dunn & Crutcher, LLP as Attorneys for the Debtors and Debtors in Possession for Allowance of Interim Compensation for Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from March 19, 2012 through July 31, 2012	42	4
First Application for Interim Professional Compensation - First Application of Alvarez & Marsal North America, LLC, as Financial Advisor to Arcapita Bank, B.S.C.(c), et al. for Interim Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred During Period from March 24, 2012 through and including July 31, 2012	43	22

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RULINGS

DESCRIPTION	PAGE	LINE
First Application for Interim Professional Compensation - First Application of Linklaters, LLP, as Special Counsel for the Debtors and Debtors in Possession for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from March 19, 2012 through June 30, 2012	44	22
First Application for Interim Professional Compensation - First Interim Fee Application of KPMG, LLP as Valuation Advisor to the Debtors for Allowance and Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from March 19, 2012 through June 30, 2012	45	17

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DESCRIPTION	PAGE	LINE
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First Application for Interim Professional Compensation - First Fee Application of KPMG, LLP (US), as Tax Consultants to the Debtors and Debtors in Possession for Interim Allowance and Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from March 19, 2012 through July 31, 2012	46	19

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Application for Interim Professional Compensation for King & Spalding, LLP and King & Spalding International, LLP, Special Counsel, period 3/19/2012 to 7/31/2012	47	20
First Application for Interim Professional Compensation - First Application of Trowers & Hamlins as Attorneys for the Debtors and Debtors in Possession for Allowance of Interim Compensation for Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from March 19, 2012 through July 31, 2012 for Trowers & Hamlins, Debtors' Attorney, period 3/19/2012 to 7/31/2012, fee \$157,238.00, expenses \$339.94	48	17

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DESCRIPTION	PAGE	LINE
First Application for Interim Professional Compensation - First Application of Mourant Ozannes as Special Cayman Islands Counsel for the Debtors for Allowance of Interim Compensation for Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred from March 19, 2012 through July 31, 2012 for Mourant Ozannes, Debtor's Attorney, period 3/19/2012 to 7/31/2012, fee \$200,108.00, expenses \$13,917.21	49	15
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DESCRIPTION	PAGE	LINE
First Application for Interim Professional Compensation of Houlihan Lokey Capital, Inc., Financial Advisor and Investment Banker to the Official Committee of Unsecured Creditors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from April 12, 2012 through July 31, 2012	52	23
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DESCRIPTION	PAGE	LINE
First Application for Interim Professional Compensation of Milbank, Tweed, Hadley & McCloy, LLP for Approval and Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for Milbank, Tweed, Hadley & McCloy, LLP	52	23
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DESCRIPTION	PAGE	LINE
Motion to (A) Authorizing Debtors to (I) Continue Existing Cash Management System, Bank Accounts, and Business Forms and (II) Continue Ordinary Course Intercompany Transactions and (B) Granting an Extension of Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code	28	14

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

I, Sherri L. Breach, CERT\*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

**Sherri L  
Breach**

Digitally signed by Sherri L Breach  
DN: cn=Sherri L Breach, o, ou,  
email=digital1@veritext.com,  
c=US  
Date: 2012.09.11 11:18:55 -04'00'

**SHERRI L. BREACH**

**AAERT Certified Electronic Reporter & Transcriber**

**CERT\*D -397**

**Veritext**

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**Date: September 6, 2012**