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UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. 12-11076-shl

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In Re:

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

Debtors.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
Courtroom 701 (SHL)  
New York, NY 10004-1408

March 29, 2012  
11:12 AM

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

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Doc #12 (FINAL) 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

Doc. #23 Motion to Authorize Debtors Motion for Interim and Final Orders (A) Authorizing Debtors to Pay Certain Prepetition Claims of Critical and Foreign Vendors; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers

Doc. #24 Motion to Authorize Debtors Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Pay Certain Prepetition Wages, Salaries, and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Similar Benefits, and (C) Continue Employee Compensation and Employee Benefit Programs

Doc. #25 Motion to Authorize Debtors Motion for Interim and Final Orders (A) Authorizing the Debtors to Continue Insurance Coverage Entered into Prepetition and to Pay Obligations Relating Thereto; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers

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Declaration -- Declaration of Henry A. Thompson in Support of  
(I) Debtors Motion for Entry of Interim and Final Orders  
Authorizing the Debtors to (A) Pay Certain Prepetition Wages,  
Salaries, and Reimbursable Employee Expenses, (B) Pay and Honor  
Employee Medical and Similar Benefits, and (C) Continue  
Employee Compensation and Employee Benefit Programs; (II)  
Debtors Motion for Interim and Final Orders (A) Authorizing  
Debtors to Pay Certain Prepetition Claims of Critical and  
Foreign Vendors, and (B) Authorizing Financial Institutions To  
Honor and Process Related Checks and Transfers; and (III)  
Debtors Motion For Interim and Final Orders (A) Authorizing the  
Debtors to Continue Insurance Coverage Entered into Prepetition  
and to Pay Obligations Relating Thereto, and (B) Authorizing  
Financial Institutions to Honor and Process Related Checks and  
Transfers (related document(s) 25, 24, 23)

Transcribed by: Anna Maria Leon

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P R O C E E D I N G S

THE COURT: Good morning. Please be seated.

MR. ROSENTHAL: Good morning.

THE COURT: We're here this morning for essentially a second set of first days for the Arcapita Bank B.S.C. (C) case, so let me get appearances.

MR. ROSENTHAL: Good morning, Your Honor. Michael Rosenthal with Craig Millet and Matt Kelsey from Gibson, Dunn & Crutcher for the Arcapita debtors.

MR. FRIEDMAN: Your Honor, good morning. David Friedman with my colleague David Mark, Kasowitz, Benson, Torres & Friedman for Euroville, S.A.R.L.

MR. MORRISSEY: Good morning, Your Honor. Richard Morrissey for the U.S. Trustee.

THE COURT: All right. Good morning to you all.

MR. ROSENTHAL: Your Honor, I know we have an agenda. I'd like to -- since this is our second first day, I'd like to spend a little time describing to the Court what has happened since our first first day.

THE COURT: That would be helpful.

MR. ROSENTHAL: And perhaps provide the Court with some additional information about the Arcapita debtors.

Your Honor, we've made great strides since last Wednesday. Let me list a couple of the things that have

1 happened.

2 First, we have engaged Alvarez & Marsal as -- to  
3 provide turnaround services to the debtors. The A&M team will  
4 be led by Bryan Marsal and Lawrence Hirsh who is here today  
5 along with Daniel Ehrmann. As the Court may recall, that is  
6 sort of the core of the team that acted in the Lehman case.

7 We also, Your Honor, have engaged with A&M in  
8 extensive meetings over the last two days with the provisional  
9 liquidator. As the Court will recall in the Caymans, Zolfo  
10 Cooper was appointed as provisional liquidators, and we met the  
11 day before yesterday and yesterday with the two provisional  
12 liquidators, Simon Appell and Mark Skelton and their counsel, a  
13 lawyer, Patrick Corr from Sidley Austin. In those meetings,  
14 Your Honor, we discussed not only the structure of the Arcapita  
15 debtors, some of which I'll go over for you today, but we  
16 discussed the interim budget that we filed yesterday and the  
17 line items that comprise that budget including the investment  
18 decisions related to some of the investments in the AIHL  
19 portfolio companies. And we discussed briefly the terms of the  
20 protocol that we were going to enter into as required by the  
21 Cayman Court. We have jointly asked and received from the  
22 Cayman Court permission to extend for yet another 14 days the  
23 filing of that protocol because we want to get it right. I've  
24 received a number of e-mails from Zolfo and from Mr. Corr from  
25 Sidley and seen exchanges between A&M and Zolfo, and everyone

1 at least on the debtor's side and the Zolfo side and the A&M  
2 side believes that those meetings were very frank and very  
3 productive and very helpful. And we have, I think, created at  
4 least initially a very good working core.

5 We also met, Your Honor, with members of the debtor's  
6 management. Met with the U.S. Trustee. I'll let Mr. Morrissey  
7 speak for himself, he's here, but my understanding is that  
8 meeting went very well, that we are -- and I know we are  
9 cooperating with the U.S. Trustee to make sure that his  
10 principal concerns are satisfied. And he has seen a copy of  
11 the budget; we've talked to him about the motions that are up  
12 for hearing today, about the interim relief that's requested.  
13 We've talked to him about the various 345 issues, and the  
14 either complying with 345 or to the extent necessary obtaining  
15 appropriate waivers and safeguards with respect to that. That  
16 process is underway.

17 In conjunction with A&M and the company, and also  
18 frankly Zolfo, there's been an intensive review of our cash  
19 receipts and disbursements, particularly since the filing.  
20 We'll discuss this more in a bit, but as the Court recalls the  
21 last time we were before you, we asked for a \$10 million budget  
22 allowance to use between the last hearing and this hearing. It  
23 was not a specific budget for particular items. The thought  
24 was that we might have some expenses which would need to be  
25 paid. Your Honor, in what I believe is actually -- despite



1 what others may say here today, what I believe is a clear  
2 demonstration of the debtor's good faith and attempts to comply  
3 fully with the Bankruptcy Code and the Bankruptcy Court, none  
4 of that budgeted amount has been spent. There have been no  
5 disbursements that have been made after the filing of these  
6 Chapter 11 cases. In fact, Your Honor, the debtor's cash  
7 position has actually increased by \$3 million. I will show you  
8 a chart, but --

9 THE COURT: When you say "increased by \$3 million,"  
10 can you explain exactly what that means? Because I know we  
11 were talking about different cash and bringing money into the  
12 U.S. -- I'm not sure exactly what is meant by "increase."

13 MR. ROSENTHAL: Yes, I will.

14 I'll -- some of the -- I don't regard it as an  
15 increase. When the money comes in from these placement  
16 agreements from Bahrain into JPMorgan, I don't count that as an  
17 increase.

18 THE COURT: All right.

19 MR. ROSENTHAL: The debtor's cash position just on a  
20 broad strokes, when the case started was approximately \$147  
21 million, and now it's \$150 million.

22 THE COURT: All right.

23 MR. ROSENTHAL: All right? So when the case  
24 started, the cash in JPMorgan was approximately \$9 million, and  
25 as these placement agreements where they in effect repo-type

1 transactions placed funds with other banks as they have rolled  
2 off, that cash position is now \$50 million at JPMorgan, and in  
3 the coming months there's the remainder of those placements  
4 which I think -- 40, 50, 60 -- are about \$80 million are  
5 intended to roll off with the money to come back into JPMorgan.  
6 There will be some money, Your Honor, left in local accounts,  
7 meaning in the accounts where the management companies are  
8 located, for example, in Singapore, Hong Kong, or London so  
9 that they can make disbursements in local currency. We have  
10 talked with the U.S. Trustee about how much might be needed in  
11 protections for those accounts, but we haven't yet filed as  
12 anything.

13 So the reason for the increase, Your Honor, I think  
14 it's important because this was actually the subject of an  
15 exchange of letters between Mr. Friedman and I. The debtors  
16 have a portfolio company that is called Chicago Condominium  
17 Development or something of the sort. It goes by the name of  
18 Elysian. It's a condominium project that the debtors developed  
19 in Chicago and it was developed and exists for the sole purpose  
20 of selling condominiums. Between the first hearing and this  
21 hearing, the debtors in fact sold two condominiums to third  
22 party arms-length buyers; \$3 million of the proceeds, the  
23 proceeds from one of the sales, came into the JPMorgan account  
24 as of -- my balance sheet, actually my cash statement is as of  
25 the 26 -- came into the JPMorgan account as of the 26, and

1 Alvarez & Marsal understands that the second -- the proceeds  
2 from the second sale of somewhere in the \$2.6 to \$2.9 million  
3 range has also come into the JPMorgan account. That just must  
4 have come after the April 26 closing.

5 But I think, Your Honor, what this indicates is that  
6 we are doing exactly what we told the Court we were going to  
7 do. To the extent that funds are distributed out of these  
8 entities, they're going into our JPMorgan account. They will  
9 be fully accounted for, you know, and funds will be spent by  
10 the debtors pursuant to the budget.

11 THE COURT: All right.

12 MR. ROSENTHAL: The -- I've gone over, you know, our  
13 opening balance. Your Honor, we met at length as I told you  
14 with Zolfo Cooper on preparation of a budget that covers the  
15 minimum amount that would be needed for continued operation  
16 until the next hearing. It's important to understand we  
17 simplified -- we filed the budget and sent it around to  
18 parties, it's important to understand that the budget seeks  
19 authority to make payments, but doesn't mean that the debtors  
20 will actually spend these monies. It's not a line-item budget,  
21 but it's intended to convey the magnitude of the potential  
22 expenses that would be made. Obviously, the debtors are not  
23 going to be making payments that don't need to be made.  
24 Evidence of that, Your Honor, is the fact that we've had a \$10  
25 million budgetary authority in the first week and we didn't

1 make any payments.

2           Again, we've received some sort of potshots, I'd call  
3 them, about our budget, but I think they're unjustified. Mr.  
4 Friedman, for example, said in his objections, says "You're  
5 spending \$250,000 for a crime policy" or something, seeming to  
6 suggest that our officers are criminals, and that we somehow  
7 know of criminal activity. We don't, Your Honor. We like  
8 every major corporation in America and the world buy fraud  
9 insurance to cover fraud by our potential employees. It is a  
10 responsible thing for any company to do, and what we are  
11 seeking authority to do is pay a \$250 deductible, if it -- if  
12 there is an event which occurs which would give rise to a claim  
13 under this policy so that we can take advantage of the  
14 insurance --

15           THE COURT:    -- coverage.

16           MR. ROSENTHAL:   --- that's available under the  
17 policy. The insurance proceeds would come to the estate and  
18 they would guard against exactly what I think the creditors  
19 would be concerned about, that someone would defraud these  
20 estates and walk off with assets of the estates.

21           Your Honor, we have been continuing business as usual  
22 of the portfolio companies which are not debtors in possession.  
23 The values of these businesses actually drives the recoveries  
24 to creditors. That's what this case is about. It's about  
25 preserving and maximizing the value of those non-debtor

1 portfolio companies so the creditors of these various debtors  
2 can be paid. To the extent that there's anything out of the  
3 ordinary -- the debtors are also continuing their business in  
4 the ordinary course. To the extent that there is anything that  
5 is out of the ordinary course that would under Section 363  
6 require Bankruptcy Court approval, will of course come to the  
7 Bankruptcy Court. These are debtors in possession. This is  
8 not a liquidating case. There is no trustee appointed in this  
9 case. We are acting as it is in good faith pursuant to the  
10 budget that we've discussed with everyone.

11 What have we been doing? Apart from making certain  
12 that A&M and Zolfo and the U.S. Trustee are kept up to speed,  
13 brought up to speed on what's happening so that they can make  
14 decisions more quickly, we've been doing what you would expect  
15 in every major case, Chapter 11 case, filed in this district  
16 and any other district. We've been trying to keep the  
17 creditors calm. We've been trying to plug holes in the dike,  
18 if you will. There are 39 or so operating companies, each of  
19 which that have separate businesses, each of which that has a  
20 separate credit facility that have other investors, in some  
21 cases joint venture partners. As you would expect, some of  
22 those lenders are trying to take advantage of the filing by the  
23 parent company to call events of default. Some of the joint  
24 venture partners are trying to take advantage of the filing to  
25 claim that they are entitled to buy out our interests at what

1 we think are below market, you know, prices under various call  
2 options that they think have been triggered. We are doing what  
3 a responsible entity would do to try to protect the value of  
4 its interest in its non-debtor subsidiaries.

5 At the prior hearing I gave the Court an indication  
6 of the organizational structure of the company, and attached to  
7 Mr. Thompson's declaration was a very simplified structure. If  
8 I may, Your Honor, I think I'd like to just, for demonstrative  
9 purposes, hand up an exhibit that shows a more comprehensive  
10 view of the organizational structure.

11 THE COURT: Yes, please. Yes. Thank you.

12 MR. ROSENTHAL: And I want to go through this  
13 because I think it's important that the Court understand the  
14 complexity and the magnitude of the operations of these  
15 debtors.

16 So what you are looking at, Your Honor, is a -- is  
17 itself an overview of the structure. Arcapita Bank as you can  
18 see is at the top. All of the boxes that are not in color are  
19 simply speaking the people. This is the people side of this  
20 business. The employees are Arcapita Bank and if you look down  
21 in the white box below -- Arcapita Hong Kong, Arcapita  
22 Singapore, Arcapita U.S. -- those entities contain the people  
23 who help --between the bank employees and the employees at that  
24 level, those are the employees who help manage the investments  
25 that are held by, owned by the portfolio companies. They

1 manage and provide back-office functions for all of the  
2 operating companies and for the investments that we have in the  
3 operating companies.

4 As you look to the right side, you see Arcapita  
5 Investment Holdings Limited. That's what we've called AIHL.  
6 Now, AIHL, all of the assets side, the property side, goes  
7 through AIHL. So let's talk about what that is. If you look  
8 to the right, the two columns in orange are the portfolio  
9 companies. So each one of those boxes represents a company  
10 that is a fully operational blowing and going company,  
11 generally totally ring-fenced from the debtor companies that  
12 operates their own businesses, which all differ. So if you  
13 look down on the -- one, two, three, four -- fifth box from the  
14 right in the far column, you see Chicago Condominium Holdings  
15 Limited. That is the -- and underneath that, Elysian. That is  
16 the entity which held, holds the condominium project with  
17 respect to which the condos were sold that I just mentioned to  
18 the Court. If you look to the three columns that are in green,  
19 those are essentially working -- those represent working  
20 capital facilities that are available, one for each of these  
21 portfolio companies to provide mezzanine financing to the  
22 extent necessary to operate the portfolio companies. Now, in  
23 some instances there is mezzanine financing provided. In some  
24 instances the facility -- we call these the working capital  
25 facilities, the WCFs -- in some cases those are facilities that

1 are available but there's nothing outstanding under them. The  
2 important thing to see, Your Honor, though is that the property  
3 side, the portfolio companies, are owned indirectly by AIHL  
4 through another one of the debtors -- the yellow boxes are the  
5 debtors by the way -- Arcapita LT Holdings -- that's the one I  
6 refer to as AIHL sub -- the whatever claims there are under  
7 this mezz financing go through AIHL, and then there's a blue  
8 box to the left which reflects unsold interest. So let me talk  
9 a little bit about that.

10 Let's suppose the debtor had invested in -- I'll just  
11 pick an example because I know they -- one of the portfolio  
12 companies is PODS, and this is not specific to PODS. I'm just  
13 using it as an example. If the debtors bought a hundred  
14 percent of the interest in PODS, their business model was that  
15 they would sell down approximately 80 percent of that to third  
16 party investors. To the extent that they sold it down, then it  
17 would be reflected in the structure, in the portfolio structure  
18 on the right-hand side. Let's say they sold 70 percent of the  
19 interest. The remaining -- the portion that had not been  
20 syndicated, that they wanted to syndicate which had not yet  
21 been syndicated, is represented by this blue box. This is the  
22 unsyndicated portion that still is available for syndication  
23 but it hasn't been syndicated. The economic beneficial  
24 ownership still resides in AIHL.

25 Now, let me complicate it just a little bit. May I



1 approach again?

2 THE COURT: Yes.

3 MR. ROSENTHAL: This is basically what is happening  
4 in each of the portfolio boxes on the right. So for each of  
5 the portfolio companies represented by these boxes in the  
6 orange -- for each of those boxes this latest chart is what's  
7 going on within the box. If you follow this box down -- this  
8 chart down, you see Arcapita Bank and you see Arcapita  
9 Investment Holdings Limited, and you see Arcapita LT Holdings  
10 Limited. Right? So the rest of the chart down is, again, a  
11 simplified version of what is going on within these boxes. So  
12 you'll see that there are a number of Holdcos in each portfolio  
13 company culminating at the bottom in -- it's called Holdco JB,  
14 but it's really OpCo. This is really the operating entity.  
15 This is the operating entity, for example, for if you go back  
16 to that Elysian entity, this is the structure that's within  
17 that Elysian portfolio box, and the operating entity would be  
18 this box at the very bottom, this yellow-orangish called  
19 Holdco. All right?

20 As you go up, you see some of what we discussed  
21 before. The WCF, any working capital facility, mezz financing  
22 which would be made available would come in either at the  
23 intermediate Holdco level or at the transaction Holdco level,  
24 and then the ownership, the actual ownership of that portfolio  
25 entity is represented by the three blue boxes: syndication

1 companies, those are the third party investors; the AIHL sub,  
2 or AIHL sub-sub, which is the portion of this portfolio  
3 investment that is actually allocated to the debtors; and then  
4 there is a program that Arcapita has in place -- we haven't  
5 sought to continue it in any motion so far -- but that where  
6 the employees have an opportunity to purchase, I think it's  
7 somewhere in the neighborhood of 2 percent, for each of the  
8 investments.

9 That's what's going on within each of the portfolio  
10 companies. When you go down to the final box at the bottom,  
11 that operating company is a true operating company. It has  
12 employees, it has debt, it has assets, it engages in business,  
13 and we are trying as best we can to make sure that that  
14 business is continued in as normal a fashion as possible  
15 because it's, as I said, it's only by preserving that business  
16 that the value actually winds its way up to the entity. It's  
17 important to the debtors. It's important to understand that  
18 the -- in most of these entities, not all but most, the  
19 investors, the left side, the green box, they get their  
20 interest through syndication companies, that they own,  
21 effectively they own 80 percent of the economic interest. And  
22 while they are some arrangements in place, revocable proxies in  
23 place for tax and other reasons, in effect those are revocable,  
24 and the investors, to the extent they have a majority control,  
25 they have the right to control what happens in these entities.

1           That's essentially the -- that's the corporate  
2 structure we're dealing with. Those are the entities we're  
3 trying to protect, preserve the value of, and maximize the  
4 value of in order to fund and create a feasible reorganization  
5 plan that pays creditors as much as possible.

6           THE COURT: How does the ownership interest in the  
7 incentive plan work, vis a vis the other ownership interests  
8 that you talked about, syndication and that sub-sub, the  
9 debtors' ownership stake?

10           MR. ROSENTHAL: I'm not sure right now, Your Honor.  
11 I'm not sure. That is -- we talked about putting in our -- one  
12 of our motions. This incentive plan or discontinuing it, I  
13 think, because there were loans made, for example, loans made  
14 to employees so they could buy their interest, and it's a very  
15 complicated program that will be the subject of a motion,  
16 either to terminate the program or to continue it on some  
17 basis. What -- you know, what's important here, and what was  
18 important before the filing, is that just like in any private  
19 equity-type context, you're trying to motivate the managers,  
20 the people that you rely on, align their interests with the  
21 investments. So this is not an atypical structure. I mean, I  
22 think there may be some U.S. entities that -- more traditional  
23 hedge fund entities where 2 percent understates what the  
24 employees might get.

25           THE COURT: All right.

1 MR. ROSENTHAL: So, Your Honor, with that, we can  
2 turn to the motions that are up for today. The Court's  
3 decisions on some of that will drive the budget, but we have in  
4 the budget contemplated that the Court would grant the relief -  
5 - generally grant the relief we're asking for on an interim  
6 basis. And that's already in the budget.

7 I'm going to turn it over to Mr. Kelsey.

8 MR. KELSEY: Good morning, Your Honor. Matt Kelsey,  
9 Gibson, Dunn & Crutcher appearing on behalf of the debtors.

10 Your Honor, we have before you five separate -- well,  
11 three motions and two applications. The three motions I would  
12 characterize as fairly typical first day relief. I'd say the  
13 large majority of the motions before you today are unopposed  
14 except for employee wage, and so I thought maybe we could go  
15 through the motions and the applications in order of the  
16 agenda, except that we would save the contested employee wage  
17 motion for last, if that works for you, Your Honor.

18 THE COURT: All right.

19 MR. KELSEY: Okay. And as a, you know, housekeeping  
20 matter, we've submitted in connection with the motions but not  
21 the Garden City proof applications a declaration from Henry  
22 Thompson. He's in the courtroom, but we'd like to admit it  
23 into evidence.

24 THE COURT: All right. Anyone have any objection?

25 All right.

1 MR. FRIEDMAN: Your Honor, there are more contested  
2 motions in the wage motion. I think that's clear from what we  
3 filed.

4 THE COURT: Well, I guess my question went to  
5 whether anyone contests the admission of that declaration that  
6 was in support of these second set of interim first-day  
7 motions.

8 MR. FRIEDMAN: No. No, Your Honor.

9 THE COURT: All right. I'll accept it as evidence  
10 in support of the motions.

11 (Debtor's document, Declaration of Henry A. Thompson, was  
12 entered into evidence.)

13 MR. KELSEY: Okay. Thank you, Your Honor.

14 THE COURT: No, I understand your objection goes to  
15 three of the five, but it's fairly tailored to certain issues,  
16 but we'll get to it.

17 MR. KELSEY: Okay, Your Honor. Thank you.

18 So the first item on the agenda would be the motion  
19 for to pay critical and foreign vendors. And I don't believe  
20 there's any objection on that motion of -- we're seeking today  
21 interim relief to pay up to \$2 million in connection with  
22 prepetition claims of certain foreign and critical vendors.  
23 There's substantial overlap between the two. We've identified,  
24 really, what I call one pure critical vendor who's not a  
25 foreign vendor, which is American Express. They're the only

1 credit card provider in the kingdom that provides corporate  
2 credit cards in dollar denominations. Not having access to  
3 corporate AmEx cards for this business -- as Mr. Rosenthal  
4 described, our operations internationally, and part of the  
5 business is being able to travel and to manage the assets. Not  
6 having access to a corporate card in a dollar denomination  
7 would be really destabilizing and there -- frankly, on the  
8 island there's just no other alternative to American Express  
9 for this service.

10 With respect to the other creditors, they are mostly  
11 foreign local. As you know the headquarters of the debtor are  
12 in Bahrain, and there's a variety of different kinds of  
13 creditors. Some are governmental entities, some provide  
14 utility services, the absence of which could be destabilizing  
15 to the business. We've given the U.S. Trustee a list of our  
16 critical and foreign vendors, and as Mr. Morrissey likes to  
17 tell me, sometimes it's not so much who's on the list but who's  
18 not on the list, and we worked hard with the company to scrub  
19 the list down so that not every creditor, trade creditor, is on  
20 the list. I would say about two-thirds are, though, however.  
21 But we think the amount is modest given the potential harm if  
22 they weren't paid, and we've asked this relief to be granted.

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

25 MR. MORRISSEY: Once again, Your Honor, for the

1 record, Richard Morrissey for the U.S. Trustee.

2 U.S. Trustee of course has no independent knowledge  
3 of who these creditors are, either the ones on the list to be  
4 paid or not to be paid. Now, in the general scheme of things  
5 in terms of the entire universe of unsecured creditors, the \$2  
6 million that Mr. Kelsey referred to is pretty small. But in  
7 relation to all the trade creditors, people eligible to be  
8 critical vendors, it's about two-thirds of them, which is a  
9 high percentage. And I am in no position, Your Honor, to mark  
10 some off and leave some in. At this point, all we have really  
11 is the debtor's representation that these are in fact critical  
12 vendors, and add to that, Your Honor, the fact that most of  
13 them are foreign vendors, who as was said at the first day  
14 hearing, people who might not understand the bankruptcy system.  
15 There was the comfort order entered after the first hearing for  
16 362 and 365 basically telling -- giving the debtor an  
17 opportunity to show people in order of the Bankruptcy Court  
18 here that there is something called the automatic stay that  
19 prevents them from --

20 THE COURT: -- insofar as that gets them something.

21 MR. MORRISSEY: -- from acting. Yes.

22 But this -- notwithstanding that order, Your Honor,  
23 the debtors are looking for additional protection here. The  
24 concern of the U.S. Trustee is not just that two-thirds of the  
25 trade vendors are to be paid right away, but also that a

1 committee which has not yet been formed will not have a chance  
2 to look at these, to do its own scrubbing, to use Mr. Kelsey's  
3 verb. And so to the extent that these payments have to be made  
4 immediately and the necessity of that is totally in the eyes of  
5 the debtor-beholder at this point, the U.S. Trustee is not  
6 going to stand in the way, but to the extent that some of these  
7 payments can be delayed just so that the committee gets a  
8 chance to get it -- a handle on these things, I think that  
9 would be a preferable result.

10 THE COURT: All right. Speaking of the committee,  
11 what's the schedule for such a committee?

12 MR. MORRISSEY: Your Honor, response forms are due  
13 April 2, which is Monday, and I would imagine that given time  
14 to perhaps ask questions of people who want to be on the  
15 committee and perhaps even the debtors about the people who  
16 want to be on the committee, a couple of days lag time after  
17 that. So I would say the middle of next week is a good guess  
18 as to when the committee will be formed.

19 THE COURT: All right. Else -- anyone else want to  
20 be heard in connection with this motion?

21 All right. So I don't understand there'd be an  
22 objection per se but essentially a position about what's  
23 preferable. Am I correct in understanding that the debtors  
24 want authority to pay but not necessarily be directed to pay  
25 the foreign, critical vendors?



1 MR. KELSEY: That's exactly right, Your Honor --

2 THE COURT: All right.

3 MR. KELSEY: -- and, you know, as Mr. Rosenthal  
4 indicated, it's certainly not our intention to view this  
5 authority as a license to write a free check. Clearly, we  
6 would like to use the benefits of the order to the extent a  
7 creditor will listen and understand, not to pay. Our goal is  
8 not to pay; however, we want the authority to pay if necessary.  
9 But we understand that it's not -- this isn't a \$2 million  
10 slush fund to pay whoever we want.

11 THE COURT: No, I understand that, and the fact that  
12 they're foreign creditors changes things significantly, and I  
13 would imagine most of them are not subject to jurisdiction in  
14 this Court. And it's understood in this courthouse that  
15 foreign vendors are in a very markedly different circumstance  
16 for that reason. One thing I would note about the list; I know  
17 that there are, in speaking to some judges in this Court --  
18 some judges, in fact, are not a big fan of lists, period.  
19 They're a fan of categories, because there's always concern  
20 about people getting quote, "on the list." So -- but with the  
21 understanding that you'll use the same discretion in -- and  
22 good judgment in paying out these monies as you have in terms  
23 of the authorization to use the \$10 million in the first day,  
24 not that you're not going to use any of it, but that you're  
25 going to use it as necessary, I will approve the request here,

1 particularly because it only deals with one non-foreign vendor  
2 and the rest are in fact foreign vendors.

3 MR. KELSEY: All right. Thank you, Your Honor.  
4 Appreciate it.

5 THE COURT: All right.

6 MR. KELSEY: Okay. On my agenda letter, the next  
7 item would be -- we're going to skip employee wage for now, and  
8 the next item would be the motion to authorizing the debtors to  
9 continue their insurance programs. Your Honor, I read Mr.  
10 Friedman's objection, not as really an objection, but a request  
11 for clarification. I thought Mr. Rosenthal gave that. I'm  
12 happy to do it again, which is like every business that I'm  
13 aware of, this company does not buy insurance for their  
14 employees to cover employee's liabilities in case they commit a  
15 crime or fraud, rather the purpose of the prime policy is to  
16 protect the company from liability that may obtain resulting  
17 from bad conduct from employees. So this is very much to  
18 protect the debtor and not to protect employees to commit  
19 crimes so that there's no consequences to the employee to  
20 commit crimes.

21 THE COURT: All right. Mr. Friedman, does that  
22 resolve your concern raised in your objection?

23 MR. FRIEDMAN: In large part, Your Honor, we -- it  
24 was lumped together with a D&L policy, and we didn't  
25 understand. We thought maybe in other parts of the world, you

1 can get insurance against criminal activity although it struck  
2 us as strange, but I think either way, it -- before they pay a  
3 deductible, they should -- I don't understand the notion of  
4 pre-clearing the payment of a deductible. If there is in fact  
5 a claim that arises, then one can consider it at that point,  
6 but seems premature to be authorizing payment of the  
7 deductibles. As to paying the premiums, we have no issue at  
8 all.

9 THE COURT: All right. What is contemplated to be  
10 paid? I assume the premiums -- I take Mr. Friedman's comment  
11 that there's no objection to that, and I don't see frankly how  
12 there really could be. Is there anything else that you're  
13 seeking authority to pay at this time?

14 MR. KELSEY: Well, in connection with any claims  
15 that came in, we are looking for authority to pay any  
16 deductibles.

17 THE COURT: Well, I suspect that given that those  
18 claims would not be something you expect to see a whole lot of  
19 in the ordinary course of business. We could kick that can  
20 down the road until we get to a final hearing on this, because  
21 we're talking then about paying on an actual claim. But again,  
22 I'm not saying you can't pay the deductible, because I think if  
23 it comes to that, the idea of paying the deductible is to be  
24 able to take full advantage of the insurance and the protection  
25 it gives to the estate. But I think we can probably cross that

1 bridge as we come to it.

2 MR. KELSEY: Okay, Your Honor. So as I understand  
3 this, when we submit our form of order, we'll put on for the  
4 final hearing authorization to pay the deductibles, but as of  
5 today at the interim hearing --

6 THE COURT: Correct.

7 MR. KELSEY: -- we're just -- we have authority to  
8 pay the premiums as they become due. I'll note that there's no  
9 prepetition amounts due --

10 THE COURT: All right.

11 MR. KELSEY: -- and that total amount here we're  
12 talking about is about \$50,000 -- \$500,000 annually.

13 THE COURT: All right. Thank you.

14 MR. KELSEY: Okay, Your Honor. The next item on the  
15 agenda -- it really connected the two motions to retain Garden  
16 City Group nunc pro tunc to the petition date. Today we're  
17 looking just for interim authority with final authority to  
18 retain at the -- at April -- at the hearing on April 17. I  
19 guess the U.S. Trustee has developed a sort of guideline so  
20 that some of the functions that, you know, your claims  
21 processor provides, they consider to be more professional in  
22 nature and less administrative. So there's two separate  
23 applications; one is to retain Garden City Group as a claims  
24 and noticing agent, which is really to alleviate the burdens on  
25 the Clerk of the Court for a case this size, and the second is

1 an application to retain the Garden City Group as an  
2 administrative agent to assist the debtors in preparing  
3 schedules, producing claims reports, producing schedules when  
4 we get there in connection with claims objections, solicitation  
5 of votes for a plan, tabulation of votes, and the like. So  
6 that's more of their administrative/professional function which  
7 is captured in the second application and the first application  
8 is just a straight claims and noticing. We ask the Court  
9 approve both these applications on an interim basis.

10 THE COURT: All right. Anyone want to be heard in  
11 connection with these two applications?

12 MR. MORRISSEY: Your Honor, the U.S. Trustee has no  
13 objection here. This is really more of an interplay between  
14 debtor's representatives and the Court -- the Clerk's office.  
15 I understand that there have been a lot of communications back  
16 and forth on that, and the division of labor -- the way we put  
17 it is court versus non-court functions. The first retention is  
18 for the court functions, and the second is for the non-court  
19 functions, and because it was divided along those lines, the  
20 U.S. Trustee has no objection.

21 THE COURT: All right. I will approve both  
22 applications on an interim basis.

23 MR. KELSEY: Great. Thank you, Your Honor. Also  
24 I'd note just a housekeeping matter. We did submit both  
25 applications to the Clerk of the Court and they've signed off

1 on the form of the application.

2 THE COURT: Thank you for that.

3 MR. KELSEY: Okay. And so at least from my  
4 perspective, the last motion I have is the wage motion.

5 THE COURT: All right. So we go back to tab 2;  
6 correct?

7 MR. KELSEY: Go back to tab 2. I'm going to just --  
8 if you don't mind, Mr. Friedman, I'll wait for Mr. Rosenthal to  
9 talk about cash management in the budget.

10 And so as for what's on my plate today, Your Honor,  
11 I'm going to go back to number 2 in your binder which is the  
12 employee wage motion. I view the employee wage motion to be  
13 pretty typical in a case of this size. There are some  
14 highlights here that are worth noting; first is that the  
15 debtors don't believe that they owe any prepetition salary to  
16 any of their employees, and the debtors believe going forward  
17 paying their employees a matter of ordinary course. Employees  
18 provide services to the debtor in the ordinary course, and the  
19 debtors pay them. We don't necessarily think that we need  
20 specific authority but for, you know, to avoid any doubts about  
21 this. It would be completely destabilizing to employees to --  
22 if they didn't know that on a go-forward basis for the services  
23 you provide, definitely you'll be getting your salary.

24 THE COURT: All right. What I think I'd like to do  
25 perhaps is just go through this, the various categories, and

1 see what -- where there's any objections. So anyone have any  
2 objection to that request? Although again, I'm not sure that  
3 it requires Bankruptcy Court approval, but I understand why  
4 you'd ask and in an abundance of caution essentially for the  
5 payment of wages going forward in your ordinary course of  
6 business.

7 All right. I will approve that request and I  
8 understand there are essentially no wages that are -- need to  
9 be paid that date before the petition.

10 MR. KELSEY: That's correct, Your Honor.

11 MR. FRIEDMAN: Your Honor, I'm sorry. I have missed  
12 something. When you asked whether there was any objection, I  
13 thought it was to a process that we were going through.

14 THE COURT: No. I'm asking you whether you have any  
15 objection to the debtors paying going forward after the  
16 petition date the wages of their employees --

17 MR. FRIEDMAN: Your Honor, I --

18 THE COURT: -- in the ordinary course of business.

19 MR. FRIEDMAN: -- yeah. Your Honor, this is -- in a  
20 case like this it's a much more controversial issue than it  
21 might be in another type of case. And Your Honor has read our  
22 papers, and I'm sure understands why.

23 This should be a motion that conforms with Bankruptcy  
24 Rule 6003. We should be dealing with issues today that relate  
25 to reparable harm of the company. It's very short notice.

1 There's a huge issue here about what these employees do, why  
2 they're there, how they're being funded, the value that they're  
3 creating or not creating or taking from other assets. If there  
4 are people working right now, they should be paid for what  
5 they're doing. We have no problem with that. We're not  
6 suggesting anybody --

7 THE COURT: Well, I think that's what the request  
8 is; people being paid for what they're doing as employees in  
9 the ordinary course of business. I'm not -- what I'm trying to  
10 do based on your objection and other things I heard on the  
11 first day is sort of unpack the different issues here. So the  
12 first thing I'm talking about -- and I don't want to segue to  
13 other things -- is just wages. It's represented that the  
14 average monthly gross payroll is approximately \$1.178 million;  
15 broken down \$221,000 for Chief Executive Officer, and debtor's  
16 Executive Directors, \$737,000 for management staff, and  
17 \$220,000 for non-management employees.

18 I understand there's a request to approve in the  
19 ordinary course of business the payment of these monthly gross  
20 payroll expenses going forward, and that's -- so that's the  
21 only issue we're talking about at this second --

22 MR. FRIEDMAN: Okay.

23 THE COURT: -- so is there any objection to that?

24 MR. FRIEDMAN: So on an interim basis, the answer is  
25 no, there's no objection --



1 THE COURT: All right.

2 MR. FRIEDMAN: -- but if -- but there should be no  
3 commitments that create administrative claims going forward for  
4 these employees beyond the interim.

5 THE COURT: Well, again, we're going to take each as  
6 we go, so I understand the answer to the question whether  
7 there's any objection to this on an interim basis, the answer  
8 is no, there's no objection to that.

9 MR. FRIEDMAN: Yes.

10 THE COURT: All right. So, we'll get there. We  
11 have other things. So this is -- we're just going to check  
12 wages off in the ordinary course of business going forward. So  
13 now we get to what is termed "allowance."

14 MR. KELSEY: That's right, Your Honor. The  
15 allowance is not a today issue, it's really a final hearing  
16 issue since there's no outstanding allowance commitments today  
17 --

18 THE COURT: All right.

19 MR. KELSEY: -- and there won't be until June.  
20 However, what the allowance is, it's a part of the employee  
21 comp. Bahrain is a very small country, geographically it's  
22 about six times the size of Manhattan, population-wise, it's  
23 about 1.2 million people. As Mr. Rosenthal described, the  
24 debtors run a very sophisticated operation and they need to  
25 draw very talented employees outside of Bahrain, and part of

1 the inducement to draw and to keep them is to provide something  
2 like an allowance here which gives them flexibility to travel  
3 and to visit family, because they are essentially ex-pats.

4 THE COURT: Right. Well, I think it's helpful that  
5 you've identified what it's for and why it's important, but I  
6 think we can deal with it in the final hearing.

7 MR. KELSEY: I agree with you, Your Honor.

8 THE COURT: All right. So we'll put a pin in that  
9 one. So now we move on to what's identified paragraph 10.  
10 There is a one lonely independent contractor that is at issue  
11 here, so let's talk about that.

12 MR. FRIEDMAN: We have no objection.

13 THE COURT: All right. All right.

14 MR. KELSEY: Okay. So reimbursable expenses, so  
15 employees will go out of pocket and incur costs in connection  
16 with discharging duties for the debtors and then they'll submit  
17 a form for reimbursement. After discussion with the United  
18 States Trustee's office -- actually with Mr. Morrissey in  
19 another case, he recommended on an interim basis capping any  
20 reimbursement obligations to a thousand dollar per employee.  
21 That's reflected in the form of order. We don't have an issue  
22 with that cap, so on an interim basis for reimbursement  
23 expenses, we would ask authority but up to a thousand dollar  
24 cap per employee.

25 THE COURT: All right. Any objection to that?

1 MR. FRIEDMAN: No.

2 THE COURT: All right. Moving right along --

3 MR. MORRISSEY: Your Honor, the --

4 THE COURT: -- that's --

5 MR. MORRISSEY: -- just one small point on that.

6 I'm technically speaking, I don't think that those expenses are  
7 priority claims. These are prepetition expenses, expenses  
8 occurred prepetition, that is. But because of the de minimis  
9 amount, the U.S. Trustee is fine with that.

10 THE COURT: All right.

11 MR. MORRISSEY: Thank you, Your Honor. Although I'd  
12 note there's several statutory predicates for which you could  
13 grant relief on this, not just five-oh --

14 THE COURT: I think we can not argue about something  
15 where we have an agreement, so we'll let that one go.

16 MR. MORRISSEY: All right. Thanks, Your Honor.

17 THE COURT: And I'm sure it would no doubt cost more  
18 attorney time than would be justified under the circumstances.

19 UNKNOWN SPEAKER: Certainly has already.

20 THE COURT: Yes. So, all right. So we're next on  
21 to identified in paragraph 14, director of compensation.

22 MR. KELSEY: That's right, Your Honor. At this  
23 time, we're just simply seeking authority to pay, you know. I  
24 guess if there's a meeting between now and the final hearing,  
25 the meeting fees which are 400 to 800 per meeting per director,

1 and their reimbursement of expenses, we think this is a de  
2 minimis amount and well in line with the compensation of  
3 directors for this.

4 THE COURT: Any objection to that request?

5 MR. FRIEDMAN: Not on an interim basis, Your Honor.

6 THE COURT: All right. So we'll approve that on an  
7 interim basis.

8 So moving right along, I think the next category is  
9 vacation and sick days in paragraph 15.

10 MR. KELSEY: Right. You know, like every employer  
11 that I'm aware of, they offer their employees time off so that  
12 they can recharge and be, you know -- it's good for their  
13 mental health and they'll be much more productive employees and  
14 get some time off and it's paid time off. And then if they get  
15 sick, they get an opportunity not to be penalized by not  
16 showing up to work. So they could take a day off if they're  
17 sick, we'd like to continue that program.

18 THE COURT: Any objection?

19 MR. FRIEDMAN: No.

20 THE COURT: All right. That's approved on an  
21 interim basis as well.

22 All right. Then I guess we get into the general  
23 category of deductions, starting with paragraph 18.

24 MR. KELSEY: That's right, Your Honor. The  
25 deductions are -- they're a little different because we're

1 talking about Bahrain law and not U.S. law, but this -- it's  
2 analog in U.S. law are, you know, Social Security and other  
3 withholding taxes that the company collects on behalf of the  
4 Federal government from employee paychecks. Those funds are  
5 held in trusts and are property of the estate.

6 THE COURT: Right.

7 MR. KELSEY: They are turned over to the government.  
8 That's what deductions refer to here.

9 THE COURT: And I don't imagine they're considered  
10 optional by the government of Bahrain.

11 MR. KELSEY: That is correct, Your Honor.

12 THE COURT: All right. Any objection?

13 MR. FRIEDMAN: No, Your Honor.

14 THE COURT: All right. I will approve that as well.  
15 So on to employee benefit programs, paragraph 20.

16 MR. KELSEY: That's right, Your Honor. So the first  
17 employee benefit is medical insurance. All right. There are -  
18 - we think that there are some prepetition amounts outstanding.  
19 There's about a hundred thousand dollars.

20 THE COURT: All right. Well, let me do this,  
21 because we may not need to have a lengthy discussion, but  
22 there's medical insurance, life insurance, and disability  
23 pension plans and obligations, and indemnity, relocation  
24 expenses, and other employee programs that are identified here.  
25 Is there any objection to any of those employee benefit

1 programs being permitted to go forward on an ordinary course  
2 basis on an interim basis between now and the final hearing?

3 MR. FRIEDMAN: Your Honor, not on an interim basis,  
4 provided that -- and I'll -- just by way of example, if they  
5 have a commitment, if they're paying someone's children's  
6 tuition in school which is one of the items here, if that's  
7 between now and the interim hearing, that's fine, but that  
8 should not be deemed a commitment by the debtors or by the  
9 estate beyond the interim -- until the final hearing. In other  
10 words, don't want to find at the final hearing that these  
11 schools have now been -- have received tuition for the entire  
12 year and it's not -- so it really -- if it's purely an interim  
13 basis, then I think we can dispense with further discussions.

14 THE COURT: All right. Well, I know. I think what  
15 interim means for something like this is what's being paid is  
16 what has to be paid immediately and it's not essentially, well,  
17 we're going to ask for everything now because it's allowed. So  
18 -- but I didn't read it that way, so -- but let me just ask  
19 debtors to straighten me out.

20 MR. KELSEY: I confirm your understanding is the  
21 same as mine.

22 THE COURT: All right. So I will approve all of  
23 these then on an interim basis, but Mr. Morrissey --

24 MR. MORRISSEY: Your Honor, I'm not standing in the  
25 way of that, but by the final we're going to have to get more

1 concrete amounts as to what's going to be paid, because right  
2 now, I don't think we're sure about how much of these actually  
3 have to get paid. But on an interim basis, I don't think  
4 that's a problem, but down the road, it could be.

5 THE COURT: No, I understand that and that's one of  
6 the things that committee will play a vital role in, which is  
7 getting information and -- so they can see what the lay on the  
8 land is and what's necessary and what, if anything, needs to be  
9 debated.

10 All right. So I believe we are then up to I think  
11 the last remaining item was a payroll processor.

12 MR. FRIEDMAN: No objection.

13 THE COURT: All right. So I'll approve that as well  
14 on an interim basis.

15 Is there anything else in connection with the wage  
16 motion that we haven't addressed that we need to address?

17 MR. KELSEY: Not from my perspective, Your Honor.

18 THE COURT: All right. So the items that are  
19 approved on an interim basis are as we discussed what's needed  
20 for the business to continue between now and the final hearing  
21 and at that point we can have a discussion with the presence of  
22 a committee and take it from there. All right. So that motion  
23 is approved as we've discussed.

24 MR. KELSEY: Thank you, Your Honor. I'm going to  
25 yield the podium to Mr. Rosenthal to talk about cash

1 management.

2 MR. ROSENTHAL: So, Your Honor, as I mentioned, we  
3 have been working Alvarez & Marsal, the company, and Zolfo  
4 Cooper frankly, on preparing the budget that was submitted to  
5 you. The debtor does have a preliminary longer term budget,  
6 but that's not what we wanted to present to the Court. We  
7 wanted to present to the Court a very short budget for the  
8 period until the next hearing.

9 THE COURT: All right.

10 MR. ROSENTHAL: And that's what's represented by  
11 this. This budget has been vetted in the meetings in past  
12 several days with Alvarez & Marsal and Zolfo Cooper and the  
13 company. But let me just point out a couple things in the  
14 budget. The column, the first column -- do you have the  
15 budget, Your Honor?

16 THE COURT: Yes, I do.

17 MR. ROSENTHAL: The first column just represents  
18 what happened until this hearing, so that's the \$3 million that  
19 came in from the condominium sale of the Elysian project.  
20 There was apparently another hundred thousand dollars. I don't  
21 know where it came from, but it's \$3.1 million. So the net  
22 inflow through the first week was roughly \$3.1 million.

23 As I said there were no expenses during that period,  
24 and we are not asking for the \$10 million authorization from  
25 the first week to carry over. This is essentially a



1 replacement. As you can see forecast, we're forecasting to  
2 receive the \$2.9 million from the second condominium sale, and  
3 then the other receipt reflected here, the other large receipt  
4 are the management fees. So if you go to the larger structure  
5 chart that I gave you and remember the white boxes that were  
6 the people side --

7 THE COURT: All right.

8 MR. ROSENTHAL: So, these are the management fees  
9 that are paid by the portfolio companies pursuant to agreements  
10 to the people side for managing these investments. So we  
11 anticipate during this projection period approximately \$5.6  
12 million in management fees being paid.

13 When you sum up all the inflows during the period,  
14 you come to approximately \$12 million in inflows. There aren't  
15 any major transactions expected from deal companies. And then  
16 when you go to the outflow side, we have indicated -- we've  
17 broken it into two categories. Now the first are G&A and staff  
18 -- first are the operating expenses, including the payments  
19 that the Court just approved and to the extent that the Court  
20 did not approve a payment, we will not make it. Obviously  
21 we're not going to violate a Court order.

22 The one point to note is that if you look in the  
23 second column, it's denoted number 7, funding of AIHL  
24 provisional liquidation. One of the understandings,  
25 apparently, that occurred at the time that Zolfo Cooper was

1 appointed a liquidator was that there would be a fund  
2 established, an account established at AIHL. The accounts are  
3 now all in the name of Arcapita Bank. There would be an  
4 account -- a fund established at AI -- in the name of AIHL for  
5 a million dollars. So you see that million dollar  
6 disbursement, but it's just going into an AIHL account.

7 I would also point the Court to the next section  
8 which relates to proposed deal funding which may have to be  
9 made in this intervening period. Now that's -- it's currently  
10 listed at \$5.4 million. I'm told, though, that if you look at  
11 line 11 where it says European Industrial Portfolio, that the -  
12 - I think it's the \$700,000 there, the debtors believe will not  
13 need to be paid during the period. So that -- after further  
14 discussion, that will be out of this budget, and it's not  
15 clear, Your Honor, that any or all of these investments will  
16 need to be made on an interim basis, but we wanted authority to  
17 make them as part of the making sure that we have all the holes  
18 in the dike plugged in case we need to. We don't want to lose  
19 valuable rights by virtue of not being able to make necessary  
20 deal funding that may be required. I will tell you that we  
21 have discussed each of these, or Alvarez & Marsal particularly  
22 has discussed each of these with Zolfo Cooper. There will be  
23 further discussions, I think, before any of these will be made,  
24 but we are very cognizant that we don't want to throw, you  
25 know, good money after bad, and that any investment we make be

1 able to be justified by the benefit. It's noteworthy, I think,  
2 Your Honor, that all of these investments are made in portfolio  
3 companies that are in which AIHL holds the debtors equity  
4 interest. So in one sense, we're transferring money from one  
5 debtor for the benefit of another debtor, and what we agreed  
6 with Zolfo Cooper is that we would keep track of that.

7 I mean, this is all about reconciliation and  
8 accounting. We understand that there may be issues about  
9 whether the hundred and fifty million dollars that the debtors  
10 currently have should be AIHL's money or Arcapita Bank's money.  
11 That will at some point be an issue that may or may not be  
12 presented to this Court. Frankly, we're not trying to  
13 prejudice anybody's right through this budget. We're providing  
14 a budget and a reconciliation of what we're doing with  
15 everything and an accounting for how the funds are going to be  
16 used. What Zolfo Cooper actually suggested is that with  
17 respect to keeping track of payments on behalf of AIHL  
18 entities, that we in fact assume that the proceeds that came in  
19 from the exits -- in this case you'll see 5.9, the two condo  
20 sales, three plus 2.9, 5.9 -- be offset against the potential  
21 amounts that would be paid on behalf of AIHL, potentially the  
22 whatever, 5.4, or whatever that amount turns out to be, and the  
23 \$1 million, and that whatever that net be, that there be in  
24 effect a claim at the AIHL level for any amount by which the  
25 expenses incurred on behalf of AIHL or paid on behalf of AIHL

1 exceeded the proceeds from AIHL. From what I've just told you  
2 about the \$700,000 it doesn't look like that will happen, but  
3 we're just trying to keep the accounting straight. We're not  
4 trying to prejudice anybody's rights to argue about that.

5 In effect, what you see from this budget,  
6 particularly if you take the -- what you see from the budget  
7 before you take the \$700,000 out, is that the inflows of \$12  
8 million are slightly smaller than the outflows of \$13.4. When  
9 you remove the \$700,000, that differential between inflows and  
10 outflows only becomes \$500,000 over the budget period.

11 THE COURT: Well, let me ask about -- can you just  
12 explain, for purposes of the record, the need for making the  
13 expenditures on deal funding between -- that need to be done  
14 before we get to the final hearing?

15 MR. ROSENTHAL: Yes. There were many more things on  
16 this list when it started, and part of the process yesterday  
17 was going through each of the items that were on the list and  
18 trying to determine which ones of -- which of those items could  
19 be deferred until the final hearing, and which items might not  
20 able to be deferred. To the extent that there was a  
21 possibility that we would lose a valuable right if it was not  
22 paid in the interim period, it went on this list. But as I  
23 mentioned at the outset it doesn't mean that it's going to get  
24 paid. To the extent that it can be deferred, the intent would  
25 be to defer it, but we wanted the authority to be able to make

1 a payment to prevent irreparable harm --

2 THE COURT: Right.

3 MR. ROSENTHAL: -- to the investment. And that is -  
4 - that was the standard here. I mean, as you can see, this is  
5 a -- by anyone's account, this is a, you know, multibillion  
6 dollar enterprise. We're asking for the ability to pay up to -  
7 - take the 700 out of the \$5.4 -- \$4.7 million dollars, which  
8 incidentally goes for the benefit of preservation of AIHL's  
9 interest. It's not going outside of the system, it's actually  
10 propping up potentially the portfolio companies that already  
11 within the universe.

12 THE COURT: Well, the reason I ask, and perhaps  
13 counsel for Euroville can clarify this if I'm mistaken, is that  
14 the concern the last time we met, was not about what's deemed  
15 outflows here, which are the operating expenses, but rather  
16 transactional items listed in the deal funding. But let me  
17 hear from Euroville as to --

18 MR. ROSENTHAL: But just one more point, Your Honor.  
19 The -- please don't forget that the provisional liquidator has  
20 been appointed to watch over, to monitor and watch over the  
21 interests of AIHL. So, one of the -- some of the reasons that  
22 some of these expenses were deferred was because, you know,  
23 they -- we had a discussion, and the question was whether this  
24 made sense to be made on an interim basis or on a final basis,  
25 or whenever. And so, there is -- it's not -- we don't have a

1 committee in this case yet, but we already have an AIHL  
2 watchdog, if you will, in the form of Zolfo.

3 THE COURT: Well, maybe -- before I hear from  
4 Euroville, you can just explain to me -- you made reference to  
5 the irreparable harm and that which you test in separating the  
6 wheat from the chaff in terms of deal funding that made this  
7 list, and deal funding that didn't make this list. Can you  
8 just explain to me -- just make a representation as to what, in  
9 as much detail as you can, what irreparable harm you're talking  
10 about that got these items, 8 through 14 on this list?

11 MR. ROSENTHAL: I think it was, Your Honor, that we  
12 would lose valuable rights if we didn't make the payment, --

13 THE COURT: All right.

14 MR. ROSENTHAL: -- including, for example, that we -  
15 - that defaults would incur -- would occur with respect to  
16 certain debt obligations, that we would give the lenders at the  
17 particular projects the ability to raise interest rates or the  
18 like. It's those kinds of things. I'll tell you that the \$700  
19 thousand, for example, that we are deferring relates to a very  
20 valuable portfolio as to which there are discussions that I  
21 really don't to put on the public record, but as -- which there  
22 are discussions, and while we think it's important to make, you  
23 know, to make -- at some point to make some of these expenses -  
24 - we're not asking for permission now, because we think we can  
25 defer that.

1 THE COURT: All right. Well, let me also ask where  
2 the numbers come from vis a vis -- well, how I understand the  
3 numbers in terms of what the debtors stake is as compared to  
4 other entities. Equity is -- who's paying what and how is that  
5 determined?

6 MR. ROSENTHAL: This is all being put in through  
7 that WCF facility. If you look at the WCF, the reason for the  
8 WCF -- if you go back to the big chart -- I'm sorry. Where's  
9 my --?

10 THE COURT: When you say big chart, the one with  
11 more boxes or less boxes?

12 MR. ROSENTHAL: They're all big. If you go the one  
13 with the relatively fewer boxes. So, if you see the WCF  
14 companies -- this would, as I understand it, all be coming as  
15 mezzanine financing, so that in effect it's coming in ahead of  
16 the equity interest, --

17 THE COURT: All right.

18 MR. ROSENTHAL: -- and it will therefore have  
19 priority in repayment, ahead of the equity interest, so.

20 THE COURT: All right. That's helpful.

21 All right, let me hear from anyone who has an  
22 interest in the cash management motion.

23 MR. FRIEDMAN: Your Honor, thank you. David  
24 Friedman for Euroville.

25 So, Your Honor, the way that we got to today was the

1 debtors made a motion -- and it was not just a cash management  
2 motion, as Your Honor recalls -- it dealt with authority to  
3 make inter-company transfers. And all kinds of issues with  
4 inter-company transfers, and we resolved it by two things --  
5 three things, actually. The -- we capped the amount to \$10  
6 million, which by the way I don't -- I think that probably  
7 still works for them. But importantly, we got representations  
8 that the money was only going in one direction. It was going  
9 from the parent company and it was going downstream. Upstream  
10 issues would have been very important to us and they agreed  
11 that they'd only be downstream. So now, we look at this chart,  
12 and -- the colorful chart -- actually, they're both colorful --  
13 the one with the smaller boxes, and as Mr. Rosenthal was  
14 speaking to you about this chart, the first thing he -- he used  
15 the word that I think, perhaps, he doesn't know what it means.  
16 But he said that these entities are all ring fenced. Ring  
17 fenced means that nothing comes in, nothing goes out. After he  
18 told you that they were ring fenced, he pointed you to one of  
19 the -- I don't even know what color this is -- on the right,  
20 the ones on the right. And he pointed to the one that was  
21 fifth, you know, five or so boxes down, Chicago Condominium  
22 Holdings, and he told you that post petition the debtors' sold  
23 \$3 million worth of condos and that money is now sitting at  
24 Arcapita Bank, so obviously that's not consistent with the  
25 representation that these companies are ring fences.



1 More importantly, Your Honor, if you are a creditor  
2 of the debtor, AIHL, which you see is in yellow. And, as you  
3 see, anything from any of these green or orange companies --  
4 they all go to AIHL -- the value all goes to AIHL before it  
5 ever gets to Arcapita Bank. That money is not at AIHL. That  
6 money is at Arcapita Bank. So, if you are a creditor with  
7 AIHL, post petition -- we got lots of things to say about the  
8 pre-petition period, but post petition, a creditor of AIHL has  
9 already lost \$3 million, 'cause that money left AIHL, went to  
10 Arcapita Bank, and is now being spent on expenses of Arcapita  
11 Bank, which no one has shown -- and frankly, I doubt anyone  
12 ever will be able to show, that the expenses of Arcapita Bank  
13 in any way benefit these entities. These entities are all  
14 minority investments, and they are already managed by somebody  
15 else. Arcapita Bank is not managing these entities. So that  
16 money just went out the door.

17 And I think what's really important, Your Honor, is  
18 that Mr. Rosenthal would like you to take comfort in the fact  
19 that the liquidator of AIHL, in the Cayman Islands, is somehow  
20 on top of this. Here is what counsel for AIHL said to the  
21 Cayman Court last week. We just got this last night -- the  
22 transcript of the hearing. This is what the counsel for the  
23 liquidators said to the Cayman Court -- and I'm quoting:  
24 "Cash, as a matter of practice, was passed up from AIHL. They  
25 wanted that to stop." The -- they actually was our clients'

1 Cayman counsel. "They wanted that to stop. It is correct that  
2 historically Arcapita companies have transferred cash to the  
3 bank. That won't happen in the course of the Chapter 11  
4 proceedings as each company will be treated separately.

5 So Mr. Rosenthal tells you that you should take  
6 comfort in the fact that someone's watching this in the Cayman  
7 Islands. The judge in the Cayman Islands was told that this  
8 wasn't going to happen. So, you know, that's, you know, that's  
9 just sort of for starters. Now the hundred and, you know, the  
10 \$200 million that was sold pre petition -- we were now told  
11 today, for the first time, nothing in the budget -- that the  
12 balance is now \$147 million. And they're going to continue to  
13 spend that money, and I think Mr. Rosenthal suggested we're  
14 going to keep track of it. Well, the only tracking that we're  
15 going to keep is we're going to keep is we're going to watch  
16 that money dwindle, and dwindle, and dwindle. And that is  
17 another one of those companies in the colored boxes that left  
18 AIHL and went up to Arcapita Bank.

19 When we talk about the investments in the deal  
20 companies, you know -- look, no one knows what those companies  
21 do, whether this is a good investment or a bad investment.  
22 There is zero transparency right now or visibility into this.  
23 And, Your Honor, again Bankruptcy Rule 6003 requires a showing  
24 of irreparable harm. It's their burden. You will not see  
25 anything in any of the affidavits that have been filed that I

1 think even mentions the word, irreparable harm or anything that  
2 would be defined loosely as constituting irreparable harm, and  
3 nothing that speaks to these portfolio companies. And on top  
4 of that, Your Honor, here is what they said to the Cayman Court  
5 about the portfolio companies. Again, I'm quoting:

6 "A lot of investments in subsidiaries are ongoing  
7 projects needing follow-on funding. This document," -- they're  
8 referring to a budget that they gave the Cayman Court, which  
9 was a different budget than they just gave Your Honor. "This  
10 document is a cash-flow projection over a 13-week period -- a  
11 total of \$32.3 million is required for follow-on investment in  
12 the next 13 weeks. The fear is that the value of the  
13 investments, which in aggregate is about \$651 million will be  
14 severely damaged if investments are not made. Whether the  
15 payments can or can't be made will be a decision made by the  
16 U.S. Bankruptcy Court, as it will be payments out of the  
17 subsidiaries, which are in Chapter 11."

18 So they've represented down there that they're going  
19 to go to the Court and seek specific --

20 THE COURT: Well, that's why we're here. So, that's  
21 fine. But let me ask you this question. There is -- as I  
22 understand it -- there has been a statement that the items  
23 identified in deal funding are, in fact, necessary so that the  
24 entities don't lose a valuable right, and that valuable right  
25 is the value that will flow up to the debtors here, including

1 Arcapita Bank and AIHL. And that if payments are not made that  
2 value will be lost. Do you agree or disagree with that  
3 statement?

4 MR. FRIEDMAN: Your Honor, I wish I could agree. I  
5 wish I could just accept their word for it and say, everything  
6 they say is true. The history of this case is that I cannot.  
7 I simply cannot, because this --

8 THE COURT: Well, let me ask what your position is -  
9 -

10 MR. FRIEDMAN: I --

11 THE COURT: -- and what it's based on?

12 MR. FRIEDMAN: I don't know. I just don't know.  
13 There's no -- Your Honor, there needs to be a certain basic  
14 level of transparency here and a debtor has to come at the  
15 Court with the burden of proof on an obligation to show  
16 irreparable harm and say what it is. Now, if the question is,  
17 should we take their word for it this time, between now and the  
18 time a creditors' committee is appointed, just to get over this  
19 and take a chance on a three or four million dollar amount, you  
20 can persuade me that that's a risk that maybe we should take.  
21 But this process has to stop. I mean, we cannot go on funding  
22 -- first of all, we cannot go on taking money out of  
23 subsidiaries and sending it up to Arcapita Bank to pay  
24 employees who are working on new investments that will never be  
25 made. It's a massive overhead -- they're paying a massive

1 amount of rent for nothing. And it's all coming out of these  
2 entities, so --

3 THE COURT: Let's take -- there's a couple of issues  
4 here. I want to just take them one at a time. And, so before  
5 we get to the money flowing up, I just want to talk about the  
6 money that's being requested approval for, and I want to talk  
7 about the deal funding. And that's a discrete item. So, what  
8 I have here is a chart that I essentially take to be evidence  
9 submitted by the debtors as to what they want payments made for  
10 -- or authority to make payments. I understand, they've made  
11 it very clear, that they're not saying that these things need  
12 to be paid, but they want authority to pay them if necessary,  
13 and that's why I was trying to get some specificity as to those  
14 items 8 through 14, so that I understand exactly what's needed  
15 and what's not, because this is essentially a second first-day  
16 hearing before we have a committee. And we all know that  
17 there's a benefit to what these first-day hearings are about --  
18 are trying to maintain the status quo as best as possible,  
19 without prejudicing any party's rights as to ultimately where  
20 the case ends up. So, let's stick with that for a moment.

21 So, what you're telling me is you don't have  
22 information one way or the other as to the necessity for making  
23 the funding identified not into 8 through 14?

24 MR. FRIEDMAN: That's correct.

25 THE COURT: All right. So with that, let me follow

1 up with that with debtors as to what can be said, and when  
2 necessary we'll just go item by item.

3 MR. ROSENTHAL: Your Honor, I think if you look at  
4 the bottom, if you look at the notes to lines 8 through 14,  
5 that's a description that was discussed between and developed  
6 by -- actually by A&M with the company with Zolfo on, sort of,  
7 what these amounts represent. If you see, number 8, for  
8 example, amounts for terms of a restructuring agreement non-  
9 payment, would trigger default and allow the lenders to  
10 accelerate and foreclose.

11 So, we're talking about whether we should be given  
12 authority to make a \$400 thousand payment to avoid triggering  
13 an acceleration and foreclosure on the property. The same  
14 thing under 9. There it's a \$300 thousand amount. Ten, we're  
15 talking -- ten is the same thing -- these are all -- I don't  
16 pretend to understand all of the ins and outs of each of these  
17 -- although I do note that the footnotes as to the rationale  
18 for why these amounts need to be paid. And as I mentioned to  
19 the Court, there are -- there continue to be ongoing  
20 discussions with the liquidator for AIHL about whether, in  
21 fact, it's valuable to reinvest these funds.

22 THE COURT: All right.

23 MR. ROSENTHAL: I just --

24 THE COURT: All right. You actually just segued to  
25 my next question, which is -- is there representation that the

1 rights that you're giving up are valuable as compared with  
2 these payments -- in other words, that it's a good business  
3 decision to make these payments? What I'm hearing you saying -  
4 -

5 MR. ROSENTHAL: Absolutely.

6 THE COURT: -- is that you either made that  
7 decision, but you're continuing to revisit it as you go  
8 forward.

9 MR. ROSENTHAL: Absolutely, Your Honor. Each of  
10 these payments -- we want authority to make them, and each of  
11 these payments will be made only if it is a business decision  
12 that makes sense. And Alvarez & Marsal has continued to look  
13 at it, the debtors are continuing to look at it, and there will  
14 continue to be discussions with Zolfo Cooper about that.

15 THE COURT: All right. I see somebody rising to --

16 MR. ROSENTHAL: I --

17 THE COURT: -- but let me do one thing, here,  
18 because I think as an evidentiary matter, things are a little  
19 messy. I'm taking this budget, which was filed on the 27th,  
20 and I'm taking this as proffer, a representation to the Court,  
21 because I think it's important that we all know what is  
22 specifically being told the Court as to what's happening,  
23 what's not happening with the basis for decisions we're making.  
24 And I'm taking this as a proffer of the debtors, after  
25 consultation with Alvarez & Marsal and the provisional

1 liquidators in the Caymans, as to the items identified here,  
2 including the footnotes, which you've just explained are  
3 essentially the rationale for the payments. Because I just --  
4 I think we want to get past that first, but --

5 MR. ROSENTHAL: Yes. That's correct, Your Honor.

6 THE COURT: All right.

7 MR. ROSENTHAL: Now.

8 THE COURT: I see someone rising, and I don't know  
9 if -- how it makes sense to handle the order here, but if it's  
10 as to this particular point let me hear it from you now.

11 MR. KAROTKIN: Your Honor, Stephen Karotkin for  
12 Midtown Acquisitions LP, which is the holder of a little bit in  
13 excess of \$50 million of debt.

14 And I would like to address briefly those items, as  
15 well as one other item. And I think what Mr. Rosenthal is  
16 saying is that these items have been reviewed by Alvarez &  
17 Marsal and the provisional liquidators in the Caymans, and they  
18 are comfortable that these things may have to be made during  
19 the interim period, or else, I think in his words, a valuable  
20 asset will be lost. And I think from -- I think he also said  
21 that the provisional liquidators in the Caymans are being the  
22 watchdog. I think it was his words, they're being a watchdog  
23 on behalf of AHIL. And if he's saying that they actually have  
24 approved these items, and think that they need the right to pay  
25 these particular items 8 through 14 in order to avoid the loss



1 of a valuable asset, then I think he ought to say that, and I  
2 think that would give us some comfort, from my clients'  
3 standpoint. And A&M, I guess, is in Court today. And if  
4 they're prepared, we take a lot of comfort in A&M being here.  
5 And if A&M is in Court today and is prepared to get up and say  
6 that they believe that it's important to the debtor to have  
7 this authority, I think that would be helpful from our  
8 standpoint.

9 I will point out one other item -- this is number 6.  
10 I know that's not in 8 through 14, but number 6 is an adequate  
11 protection payment. And I have absolutely no idea why that  
12 would be on any list for payment during the interim period.  
13 There's certainly no Court order authoring that adequate  
14 protection payment. I also understand that the collateral is  
15 stock and it's difficult for me to conceive how stock is  
16 deteriorating in value as a consequence of this stay that would  
17 require any adequate protection payment.

18 Again, we share some of the concerns that Mr.  
19 Friedman has raised about transparency and we understand that  
20 they have to keep going during the interim period, but I think  
21 it's incumbent upon the Court that there be some controls  
22 during this period. until a committee is appointed and has a  
23 chance to look at these things, and make some decisions -- and  
24 get some information, you know, from the debtor as to, you  
25 know, what exactly is going on, you know. We will point out

1 that we, too, are very, very concerned about the fact that  
2 there was this sale lease back for \$200 million within ten  
3 days, I think, of the filing and \$40 million -- or more than  
4 \$40 million dollars of that 200 -- all of which went up to the  
5 bank, is gone -- it's been spent. That's a lot of money, even,  
6 you know -- even in the Cayman Islands or in Bahrain that was  
7 spent in four or five days before these proceedings. And we  
8 frankly do not understand why money has to go up to the bank at  
9 this point, and why it cannot stay at the AHI --

10 THE COURT: All right.

11 MR. KAROTKIN: -- L level.

12 THE COURT: We're getting to that.

13 MR. KAROTKIN: Okay. But in terms of --

14 THE COURT: We're going to take them one at a time.

15 MR. KAROTKIN: Okay, thank you sir. But in terms of  
16 those items, you know, if someone can stand up here and say,  
17 yes this is absolutely necessary to do in the next three weeks  
18 to avoid irreparable harm, that would be helpful.

19 THE COURT: All right.

20 Well, let me ask debtors about that. And that's, I  
21 think, where I was going with going through these footnotes and  
22 essentially construing them as a proffer. What can you do to  
23 help us get over this particular hump?

24 MR. ROSENTHAL: Well, Your Honor. We -- a couple of  
25 points. First, we don't see the Zolfo Cooper as having a

1 consent right, per se. But on the other hand, what they do  
2 have is they have an obligation to report to the Cayman Court.  
3 If they believe that we are doing something that is  
4 disadvantaging the AIHL estate and creditors, they can --

5 THE COURT: Well, I don't want to get bogged down in  
6 technicalities. I understand you have to clarify that for the  
7 record, but my point is whether -- what has to be done to  
8 preserve value? That's what this courthouse is all about, and  
9 then what has to be done to protect a party's rights, because  
10 they're different at each debtor entity.

11 So right now we're on part A, so what can you tell me  
12 on that front, or is there somebody who can either put on a  
13 proffer from Alvarez & Marsal to give parties the necessary  
14 comfort?

15 MR. ROSENTHAL: Your Honor, Mr. Hirsh is here --  
16 Lawrence Hirsh from Alvarez & Marsal. And I could proffer his  
17 testimony.

18 THE COURT: That would be helpful, I think.

19 MR. ROSENTHAL: Mr. Hirsh, I think would testify --  
20 Mr. Hirsh would testify that they have engaged in a process to  
21 understand the investments that are included in deal funding  
22 that they've talked to the debtors about them. That they've  
23 discussed the necessity to make those, and they've discussed  
24 that with Zolfo Cooper, as well. And they've been trying, as  
25 quickly as they can, to make an assessment about what, in fact,

1 would be necessary to avoid irreparable harm in the next four  
2 weeks. I think Mr. Hirsh would tell you that neither Alvarez  
3 nor the debtors have made an absolute decision that all of  
4 these would have to be made in order to avoid irreparable harm,  
5 and that discussion goes on --

6 THE COURT: And by all of these you are referring to  
7 from 8 through 14?

8 MR. ROSENTHAL: Yes. Yes, I am.

9 THE COURT: All right.

10 MR. ROSENTHAL: But that, in Mr. Hirsh's view, it is  
11 important to be given authority to make those payments, so that  
12 if there's a determination that the payments need to be made to  
13 avoid irreparable harm that we have the authority to do so.

14 And finally, Your Honor, Mr. Hirsh would testify that  
15 the dollar amount of these investments is small relative to the  
16 value of the debtors' equity interest in each of these items  
17 that as to which there would be potential investment.

18 THE COURT: All right.

19 All right, I think that that is helpful in addressing  
20 the concern about the need to make the payments so as to  
21 preserve value. Does anyone have any further comments that  
22 they want to make in connection with that particular issue?

23 MR. FRIEDMAN: Your Honor, we're going to -- just to  
24 get past this -- because I think if this were, you know, a lot  
25 more money and we were -- if there was a lot more money, I

1 don't think the evidence would support this. I think that the  
2 witness -- I -- no one testified, no one has proffered that  
3 they've actually reviewed any of the contracts. Every one of  
4 these obligations is based upon a so called contractual  
5 commitment.

6 THE COURT: Well, I mean, if we're going to get  
7 persnickety -- I was a trial lawyer in my former life -- we'll  
8 just start putting on --

9 MR. FRIEDMAN: I --

10 THE COURT: -- and that's fine. And that's --

11 MR. FRIEDMAN: I --

12 THE COURT: -- if we need to go there -- I'm trying  
13 to shorten this by using a proffer method, which is essentially  
14 the same as testimony. But you tell me what you want to do.

15 MR. FRIEDMAN: I don't want to get persnickety. I  
16 don't want to go there. I just don't think the money involved  
17 is enough. But all I'm saying is that one day the money will  
18 be enough, and I think when we come up and ask for a more  
19 fulsome record, Your Honor will understand that's because of --  
20 there's more money involved.

21 THE COURT: That's fine. Again, what these first-  
22 day hearings are about is surviving today, before that final  
23 hearing. So, if I take it that you are -- I won't use the  
24 word, content -- maybe I'll use the word, begrudgingly content  
25 to agree that the proffer is satisfactory for the amounts

1 requested here. For today's purposes, I think we can check  
2 that box as to the need for these payments to potentially be  
3 made based on a continuing review of the debtors, in  
4 consultation with Alvarez & Marsal and the joint provisional  
5 liquidators.

6 Mr. Morrissey?

7 MR. MORRISSEY: Your Honor, the U.S. Trustee has no  
8 objection in light of the proffer. But just for purposes of  
9 clarification, this is rather an unusual matter. At the prior  
10 hearing -- the first-day hearing -- Your Honor noted that  
11 usually the budget would appear as an attachment or as exhibit  
12 to a cash collateral motion. We don't have a cash collateral  
13 motion, so this budget is kind of standing by itself, and it's  
14 linked, in a way, to the cash management motion, but I think  
15 what Your Honor's being called upon to do today is basically  
16 approve this budget as essentially a standalone matter. The  
17 cash management motion itself was heard on an interim basis on  
18 the first day. It's going to be heard again on a final basis  
19 in mid-April, but as a standalone matter, Your Honor, the U.S.  
20 Trustee has no objection to --

21 THE COURT: All right.

22 MR. MORRISSEY: -- the -- this budget.

23 THE COURT: I realize it's a little procedurally  
24 unusual, but I think it's a reflection of what various people  
25 can characterize these payments however they want to

1 characterize them. But I think that that's what the parties  
2 understood from the last hearing, that we were going to be  
3 talking about a budget for today.

4 MR. ROSENTHAL: That's correct, Your Honor. And  
5 it's actually linked to some -- it's linked to the cash  
6 management motion. But I want to address two further points  
7 that Mr. Karotkin raised. The -- we actually -- it's not  
8 really a cash collateral motion, because there are no -- the  
9 only secured party here is Standard Charter Bank, which has a  
10 pledge of shares. The rest of the debt is unsecured, so  
11 technically it's not cash collateral. Mr. Karotkin is right  
12 that the budget reflects a potential payment -- adequate  
13 protection payment -- that would be a payment to Standard  
14 Charter Bank, assuming that we get appropriate Court authority  
15 to make such a payment.

16 THE COURT: All right.

17 MR. ROSENTHAL: But we're obviously not going to --

18 THE COURT: So essentially, and what you're -- and  
19 what I assume that you're telling me is, number 6 is not  
20 authorized just by virtue of this chart. You're essentially  
21 going to seek a separate -- you're going to make a separate  
22 request for authority to make that payment, if necessary.

23 MR. ROSENTHAL: We had -- have had discussions with  
24 Standard Charter Bank about -- which is the only secure  
25 creditor -- about what they believe is appropriate in terms of

1 adequate protection. And so, it's in anticipation of how those  
2 discussions might work out that we've -- in an abundance of  
3 caution -- put --

4 THE COURT: Right.

5 MR. ROSENTHAL: -- it in this budget. We certainly  
6 do not intend to make adequate protection payments that are not  
7 authorized by this Court.

8 THE COURT: No, it's sort of damned if you do, damned  
9 if you don't. You list it here so that folks know it's being  
10 contemplated, but at the same time I guess folks look at it and  
11 say, we're concerned about that payment. So, I don't begrudge  
12 anyone for raising the issue. So, but certainly item number 6  
13 is not approved until such time as an application is made and  
14 approved as to adequate protection.

15 MR. ROSENTHAL: Now may I address the -- your second  
16 sort of major point?

17 THE COURT: All right. Yeah, let me just ask if  
18 anyone has any other questions about the necessity of making  
19 certain payments. We're really just talking here about  
20 outflows and deal funding. And then we can go back to the  
21 other issue, which is the money flowing upwards.

22 All right, so I think we've solved on problem. Let's  
23 turn to the next.

24 MR. ROSENTHAL: Your Honor, the only reason that  
25 this money is going into the Arcapita Bank account is because



1 the money that's flowing up through that chain -- is because  
2 that's the only account that the debtors presently have. They  
3 are trying to open an account at JPMorgan for AIHL. We have  
4 thought that since the filing of the case, and as a cash  
5 management motion, since it's not infrequent to concentrate  
6 money and account for it separately, in fact, as Mr. Karotkin  
7 knows, and his firm's Lehman case -- that's how they handled  
8 cash management. But after the filing of the case, we could --  
9 we're certainly prepared to account for it, to the extent that  
10 we are trying to open an account. JPMorgan has some KYC --  
11 know your customer mechanics -- that they are going through.  
12 And it was my understanding, as of yesterday or the day before,  
13 that an account was still in the process of being opened, but  
14 had not been opened.

15 I don't think we have any problem, Your Honor, if  
16 instead of combining it and accounting for it as an accounting  
17 matter -- remember, we can only use it pursuant to, you know,  
18 pursuant to the budget with putting that money in a -- when it  
19 comes up through the AIHL side -- putting in an AIHL --

20 THE COURT: AIHL.

21 MR. ROSENTHAL: -- account at JPMorgan.

22 THE COURT: So am I correct in understanding that  
23 this accounting mechanism is an interim step to setting up  
24 separate account at which point the monies will be segregated  
25 and then dealt with separately going forward?

1 MR. ROSENTHAL: Yes, and you're going to see, when  
2 Alvarez & Marsal gets -- as they become more and more familiar  
3 with what has happening, we will have much more comprehensive  
4 reporting. They have been on the job since Monday. But we  
5 will have much more comprehensive reporting of what is coming  
6 from each entity, how things are being treated. I mean, I  
7 think we're clear there have been no disbursements. We're  
8 clear there have been limited receipts.

9 It's important to note that there are two sources of  
10 revenue here, though. One source is the revenue from asset  
11 sales that comes AIHL. The other source is actually revenue  
12 paid by portfolio companies for management services, which  
13 actually comes to the people side of the bank. I mean, I  
14 strongly disagree with -- and it's not up today -- but I want  
15 the record to reflect that I strongly disagree with Mr.  
16 Friedman's assertion that the Arcapita Bank employees and the  
17 management company employees are not doing anything. They are  
18 doing what they have done for years to manage these investments  
19 and try to maintain the value for the benefit of all creditors.

20 THE COURT: All right.

21 MR. ROSENTHAL: And it is for that that they are  
22 receiving the revenue from these management agreements. Those  
23 revenues, you know, will continue not to be in the AIHL  
24 accounts, they're amounts paid by those companies.

25 THE COURT: Well, let me ask you what your time

1 estimate is for establishment of this separate account for  
2 AIHL?

3 MR. ROSENTHAL: I think, it's been in process for  
4 some time. May confer --

5 THE COURT: Absolutely.

6 MR. ROSENTHAL: -- with my client for one second?  
7 Unfortunately, Your Honor, it's in JPMorgan's hands. I mean,  
8 the documents have all been submitted. We are as anxious as  
9 you are for these accounts to be opened, but.

10 THE COURT: All right. Well, what I would ask if  
11 that the debtors, after this hearing, consult with JPMorgan and  
12 -- to say you've expressed it -- previously expressed it again  
13 to the extent they haven't it in precisely this way -- explain  
14 to them the great desire for this to happen as soon as possible  
15 in light of the bankruptcy and how important it is for the case  
16 and for the debtors. Because I think it would solve a great  
17 many problems for a variety of constituents and it's certainly  
18 something the debtors are willing to do and have no problems  
19 doing, it sounds like. So, what I would ask is that that issue  
20 be followed up on bright and early, and the interested parties  
21 be kept in the loop as to where things stand.

22 MR. ROSENTHAL: We will, Your Honor, and this  
23 transcript may provide some additional impetus for JPMorgan.

24 THE COURT: Always happy to provide impetus.

25 So, in light of that explanation, let me hear from

1 Mr. Friedman and Mr. Karotkin.

2 MR. FRIEDMAN: Your Honor, that was an important  
3 commitment that we heard. And I assume, and I -- that that  
4 commitment would extend to the \$5.9 million of condo sales as  
5 well. I mean, they have \$150 million in the bank. There's no  
6 reason why that money -- they acknowledge that was one of the  
7 things that I assume would have gone into the AIHL account, had  
8 it been established. So, I mean, if that money goes in there  
9 and every dividend or asset-sale proceeds -- we're not speaking  
10 about the management fees -- that will be for another day. But  
11 if that goes up into a segregated account, that takes us a long  
12 way, and I think that, you know, we appreciate the Court's  
13 attention to that. It's very helpful. You know, we'll deal in  
14 the future with what does 363 mean in terms of how they run  
15 their subsidiaries. That's not for today, and what about the  
16 \$200 million is not for the today. But at least if we know  
17 that post petition, everything that should have flowed up into  
18 AIHL will stay there in a segregated account as the  
19 representative liquidator, I think we've made a lot of  
20 progress.

21 THE COURT: All right. Mr. Karotkin.

22 MR. KAROTKIN: That's fine with us.

23 THE COURT: All right.

24 MR. KAROTKIN: Well, I don't want to go too far.

25 THE COURT: I suspected this -- that a speech was

1 coming.

2 MR. KAROTKIN: The money will go to the AIHL  
3 account, but to the extent that it's going to be used, for  
4 example, for deal funding related to AIHL deals, it would be on  
5 the -- pursuant to this budget, then it would be that money  
6 that would be used for the AIHL deals.

7 THE COURT: Well, I think the whole point is to  
8 segregate --

9 MR. KAROTKIN: Exactly.

10 THE COURT: -- the assets and the obligations of the  
11 individual debtors, right? I don't think anyone really debates  
12 that, but at least it gives us a -- if somebody then wants to  
13 debate whether it's necessary for that individual debtor to  
14 make a payment, then we can fight about that.

15 MR. KAROTKIN: Your Honor, as long as they come back  
16 to the Court to spend it, we have no problem. We'll deal with  
17 it then.

18 THE COURT: All right

19 MR. ROSENTHAL: No, it's a today issue, because --

20 THE COURT: Well, I think --

21 MR. ROSENTHAL: -- 5.5 of it --

22 THE COURT: -- you are coming to the Court to spend  
23 it, when we're talking about items 8 through 14, that what I  
24 understand that deal funding is -- if you're telling me, right,  
25 an obligation of AIHL, right?

1 MR. ROSENTHAL: that's correct. That's what I was  
2 thinking.

3 THE COURT: Right.

4 MR. ROSENTHAL: As is --

5 THE COURT: I think that's understood.

6 MR. ROSENTHAL: -- as is the funding of the  
7 provisional liquidator, but I don't think we have sufficient  
8 proceeds generated from the exists, so they'll have to be a --

9 THE COURT: All right.

10 MR. ROSENTHAL: -- you know, in effect --

11 THE COURT: Well, there's some, certainly some  
12 accounting to do --

13 MR. ROSENTHAL: Sure.

14 THE COURT: -- in the near and not so near future.  
15 So, what I am prepared to do is approve cash management on a  
16 second interim basis, according to the discussions we've had  
17 here today. And let me recap. What that means is that the  
18 inflows are as represented here with the important  
19 representation that the debtors are seeking to -- actively  
20 seeking -- to establish an account in the United States at  
21 JPMorgan for AIHL, and will -- when that account is established  
22 -- will segregate the funds that belong to AIHL, post petition,  
23 into that account as well as pay obligations of AIHL from that  
24 account. And we're talking here about the obligations  
25 identified in the budget items 8 through 14, in particular.

1           Then as to the outflows, they are approved consistent  
2 with my prior rulings on specific motions, which put towards  
3 another day certain items that did not have to be addressed at  
4 an interim basis, because there was no need for an immediate  
5 payment.

6           And then, as to deal funding, I'm satisfied with the  
7 proffer of Alvarez & Marsal that's been presented by the  
8 debtors' counsel as to the need for -- potential need for the  
9 payments identified in items 8 through 14 to prevent  
10 irreparable harm -- and I think we're talking again to  
11 segregate the debtors, because they are different debtors.  
12 There's no substantive consolidation. We're talking about  
13 irreparable harm directly to the AIHL subbed, AIHL, and then,  
14 by virtue of ownership to Arcapita Bank. For all of these  
15 outflows and deal funding, I understand the important caveat to  
16 be that they're seeking approval as necessary to make the  
17 payments. All of these payments are the subject of ongoing  
18 analysis and discussion by the debtors that Alvarez & Marsal,  
19 in consultation with the joint provisional liquidators, and in  
20 fact, already some items have managed to get off the list, such  
21 as item number 11 for \$700 thousand.

22           So I will approve the request on that basis, and this  
23 will carry us over until the final hearing, when we have a  
24 committee. When we have, hopefully, some useful developments  
25 as to the bank accounts and we also have more information based

1 on the work of Alvarez & Marsal and other folks affiliated with  
2 the debtors to get -- they get a handle on the situation.

3 All right. Anyone else want to comment on anything  
4 else that we need to do this morning, or now this afternoon  
5 before we adjourn to our final hearing?

6 All right. Thank you very much. And I'll wait for  
7 revised forms of order to be submitted.

8 MR. FRIEDMAN: Thank you, Your Honor.

9 MR. ROSENTHAL: Thank you, Your Honor.

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11 (Whereupon these proceedings were concluded at 12:53 PM)

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I N D E X

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

I, Anna Maria Leon, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Anna Maria  
Leon**

 Digitally signed by Anna Maria Leon  
DN: cn=Anna Maria Leon, o=Veritext,  
ou, email=digital1@veritext.com, c=US  
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**Date: March 26, 2012**