

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

2009 MAY 29 AM 10:44

FILED

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<i>In Re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et. al.</u>	:	Case No. 08-12229 (MFW)
	:	
	:	(Jointly Administered)
	:	
Debtors.	:	Hearing Date: 6/24/09 - 11:00 a.m.(EDT)
	:	Objection Deadline: 6/2/09 - 4:00 pm (EDT)
	:	
	:	
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**OBJECTION OF CLAIMANT WILLIAM E. BROZA  
TO MOTION OF DEBTORS FOR AN ORDER PURSUANT TO  
SECTIONS 105(A) and 363 OF THE BANKRUPTCY CODE AUTHORIZING  
BUT NOT DIRECTING (I) WASHINGTON MUTUAL, INC. TO EXERCISE ITS  
OWNERSHIP RIGHTS OVER CERTAIN TRUST ASSETS,  
(II) DISTRIBUTION OF TRUST ASSETS, AND (III) TERMINATION OF THE TRUSTS**

Claimant, William E. Broza ("Broza") respectfully objects to the Motion of Debtors for an Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code Authorizing but Not Directing (I) Washington Mutual, Inc. to Exercise its Ownership Rights over Certain Trust Assets, (II) Distribution of Trust Assets, and (III) Termination of the Trusts on the following basis ("Motion"):

**Background**

Claimant Broza was a loan consultant with H.F. Ahmanson & Co. ("HFA"). As per the allegations of the Motion, Washington Mutual Inc. purchased HFA in 1998 and obtained the assets maintained in the several trusts described in the Motion. Claimant Broza is and was a participant in the H.F. Ahmanson & Company Loan Consultant Capital Accumulation Plan



("CAP Plan") and the H.F. Ahmanson & Elective Deferred Compensation Plan ("EDC Plan").

On or about December 23, 2008, out of an abundance of caution, Broza filed claims with the FDIC regarding his vested interest in the CAP Plan (\$449,998.45) and the EDC Plan (\$178,854.50). In addition, Broza has timely filed claims in this Bankruptcy concerning these plans<sup>1</sup>.

### Objection

#### I. The Plan Assets Appear to Have Been Assumed by JPMorgan Chase.

On May 28, 2009, Broza received a Notice of Denial of Claim from the FDIC. A true and correct copy of said Notice is attached hereto as Exhibit A. The FDIC cited as a reason for denial of the claim the following:

"By the terms of the Purchase and Assumption Agreement, all Washington Mutual Bank assets passed to Program Chase Bank, **which would include all of Washington Mutual Bank's interest, if any, in the assets in trust related to H.F. Ahmanson employee plans.**" (Bold added.)

Claimant Broza is not a party to and has not had the luxury of reviewing the "Purchase and Assumption Agreement" between the Debtor and JPMorgan Chase but apparently the FDIC has. Based upon that review, the FDIC has apparently determined that JPMorgan Chase has acquired title to the "assets in trust related to H.F. Ahmanson employee plans", and based upon such determination, has denied claims presented to the FDIC related to such plans.

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<sup>1</sup> Claimant Broza's Claims assigned numbers are 1919 and 1920 filed March 24, 2009.

The Debtor claim's (Motion, fn 3) that JPMorgan Chase "does not assert an ownership interest in the Rabbi Trusts previously sponsored by H.F. Ahmanson and Co."

If the FDIC is accurate and JPMorgan Chase *assumed* these trust assets by virtue of the Purchase and Assumption Agreement with the Debtor, JPMorgan Chase should not be allowed to simply "walk away" from its obligation to former H.F. Ahmanson employees with vested interests in these plans. By doing so, JPMorgan Chase has essentially gifted these assets to the Debtor for the benefit of the Debtor's professionals and (potential) general creditors to the extreme detriment of the vested participants (and potential violation of the trust).

Broza, and numerous other claimants who *compensation* was deposited into these "Rabbi Trusts" are pawns in this attempt to divert their claims to hard earned assets. If JPMorgan Chase *assumed* the plans' assets, they cannot simply be re-claimed by the Debtor with the apparent collusion of the acquiring party.

II. **The Trust Documents Provided to the Plans Participants Did Not Disclose That the Plans Would Terminate in the Event the Debtor Became Insolvent.**

The Debtor asserts that the plans terminate according to their terms when and if the settlor (i.e., the Debtor) of the trusts is insolvent. The Debtor does not append these documents in support of its assertion to this effect. In the Summaries supplied to the participants, no such provision is disclosed. At a minimum, the plan provisions should be subject to scrutiny before their applicability is ordained. Moreover, if JPMorgan Chase *assumed* the plan assets pursuant to its Purchase and Assumption Agreement, the assignee-settlor is not insolvent at this time.

At a minimum, more scrutiny is required before this Court orders the acquisition of \$68 million in trust assets.

**Conclusion**

The Court should (1) not authorize the Debtor to exercise ownership rights to the HFA Trust Assets, (2) not authorize the Debtor to distribute the trusts' assets other than in a manner directed by the trust instruments, and (3) not authorize termination of the trusts without distribution to the trust's vested claimants.

Dated: May 29, 2009  
Beverly Hills, CA

**STEVEN H. GARDNER P.C.**

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*Attorney for Claimant William E. Broza*



Federal Deposit Insurance Corporation  
1601 Bryan Street, Dallas, TX 75201

Division of Resolutions and Receiverships

**CERTIFIED MAIL RETURN RECEIPT REQUESTED 7008 1830 0000 8036 2204**  
May 19, 2009

William E. Broza  
C/O Seven H. Gardner P.C.  
9100 Wilshire Bl #517E  
Los Angeles, CA 90212

**SUBJECT: 10015-Washington Mutual Bank  
Henderson, NV – In Receivership  
NOTICE OF DISALLOWANCE OF CLAIM**

Dear Claimant:

The Receiver of Washington Mutual Bank has reviewed your claim against the receivership. After a thorough review of your filed claim along with your supporting documentation, the Receiver has determined to disallow your claim for the following reason(s) :

On September 25, 2008, JPMorgan Chase Bank acquired the banking operations of Washington Mutual Bank in a Purchase and Assumption transaction facilitated by the Federal Deposit Insurance Corporation (FDIC). By the terms of the Purchase and Assumption Agreement all Washington Mutual Bank assets passed to JPMorgan Chase Bank, which would include all of Washington Mutual Bank's interest, if any, in the assets in trust related to H.F. Ahmanson employee plans.

The former parent company of Washington Mutual Bank, Washington Mutual, Inc., which is now in Chapter 11 bankruptcy, has claimed ownership of the Plan's trust assets. The Plan's assets are among the assets that are currently the subject of disposition in the U.S. Bankruptcy Court in Delaware. The FDIC as Receiver for Washington Mutual Bank is not a settlor of the H.F. Ahmanson Trust(s) and does not own its assets.

Pursuant to 12 U.S.C. Section 1821 (d) (6), if you do not agree with this disallowance, you have the right to file a lawsuit on your claim (or continue any lawsuit commenced before the appointment of the Receiver), in the United States District (or Territorial) Court for the District within which the failed institution's principal place of business was located or the United States District Court for the District of Columbia within 60 days from the date of this notice.

**IF YOU DO NOT FILE A LAWSUIT (or continue any lawsuit commenced before the appointment of the Receiver) BEFORE THE END OF THE 60-DAY PERIOD, THE DISALLOWANCE WILL BE FINAL, YOUR CLAIM WILL BE FOREVER BARRED AND YOU WILL HAVE NO FURTHER RIGHTS OR REMEDIES WITH RESPECT TO YOUR CLAIM. 12 U.S.C. Section 1821(d)(6)(B).**

However, if a portion of your claim is for an insured deposit, your claim is not against the Receiver but rather is against the FDIC in its "corporate" capacity as deposit insurer. An insured depositor's rights are prescribed in 12 U.S.C. Section 1821(f) and differ from the rights described in the preceding paragraphs.

If you have any questions about this letter, please contact the undersigned at (972) 761-2112.

Sincerely,

Claims Agent  
Claims Department

RLS7218

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9100 Wilshire Blvd #517E, Beverly Hills, California 90212.

On May 29, 2009, I served the foregoing document described as Objection of Claimant William E. Broza To Motion of Debtors for an Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code Authorizing but Not Directing (I) Washington Mutual, Inc. to Exercise its Ownership Rights over Certain Trust Assets, (II) Distribution of Trust Assets, and (III) Termination of the Trusts on the parties in this action:

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:  
 by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as set forth on the attached mailing list.

BY MAIL

I deposited such envelope in the mail at Beverly Hills, California

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on May 29, 2009, at Beverly Hills, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this federal Court in this District at whose direction the service was made.

Steven H. Gardner

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08-12229 (MFW)

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