

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	§	
	§	CASE NO. 08-12229-MFW
WASHINGTON MUTUAL, INC., <i>et al.</i> ,	§	
	§	CHAPTER 11
DEBTORS.	§	(Jointly Administered)
	§	Hearing Date: May 19, 2010 at 11:30 a.m.
	§	Related to D.I. Nos. 2622 and 2623

CONSOLIDATED OBJECTION BY AMERICAN NATIONAL INSURANCE COMPANY, ET AL. TO: (A) MOTION OF DEBTORS FOR AN ORDER, PURSUANT TO SECTIONS 105, 502, 1125, 1126, AND 1128 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 3003, 3017, 3018 AND 3020, (I) THE PROPOSED DISCLOSURE STATEMENT AND THE FORM AND MANNER OF THE NOTICE OF THE DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING SOLICITATION AND VOTING PROCEDURES, (III) SCHEDULING A CONFIRMATION HEARING, AND (IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE DEBTORS' JOINT PLAN; AND (B) DISCLOSURE STATEMENT OF THE JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

NATIONAL WESTERN LIFE INSURANCE COMPANY and AMERICAN NATIONAL INSURANCE COMPANY and its affiliates AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, FARM FAMILY LIFE INSURANCE COMPANY, and FARM FAMILY CASUALTY INSURANCE COMPANY (collectively, "Texas Group"), parties-in-interest, hereby submit this Consolidated Objection ("Objection") to: (A) Motion of Debtors for an Order, Pursuant to Sections 105, 502, 1125, 1126, and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020, (I) the Proposed Disclosure Statement and the Form and Manner of the Notice of the Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling a Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Joint Plan; and (B) Disclosure Statement of the Joint Plan of Affiliated Debtors



Pursuant to Chapter 11 of the United States Bankruptcy Code, and, in support thereof, represent as follows:

I. INTRODUCTION

1. Washington Mutual, Inc. (“WMI”) and certain of its affiliates (collectively, “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on September 26, 2008 (“Petition Date”).

2. The Texas Group holds bonds issued by Washington Mutual Bank (“WMB”). WMB was a wholly-owned subsidiary of WMI until September 25, 2008, when the Office of Thrift Supervision closed WMB, and appointed the FDIC as receiver for WMB. Immediately after appointment as receiver, the FDIC sold substantially all of the assets of WMB to JPMorgan Chase, & Co.. and JPMorgan Chase Bank, NA in exchange for payment of \$1.88 billion in cash and the assumption of all of WMB’s deposit liabilities.

3. The Texas Group filed suit against JPMorgan Chase Bank, N.A. and JPMorgan Chase & Co. (collectively, “JPMC”) in Texas state court following the Petition Date, which was subsequently removed, then transferred and is currently pending in the United States District Court for the District of Columbia under Civil Action No. 09-1743 (RMC) (“Texas Litigation”). None of the Debtors are parties to the Texas Litigation. Copies of the Texas Group’s Complaint filed in the Texas Litigation are available for electronic transmission to any interested party.

4. On March 26, 2010, Debtors filed their Disclosure Statement of the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (“Disclosure Statement”). Attached to the Disclosure Statement is the Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (“Plan”). On April 23, 2010,

Debtors filed the Motion seeking approval of the Disclosure Statement, among other relief (“Motion”). The Motion is set for hearing on May 19, 2010 and objections are due by May 13, 2010.

II. Response to the Motion

5. The Texas Group does not object to the allegations contained in paragraphs 1-9 of the Motion.

6. The Texas Group objects to the relief requested in paragraph 13 and any remaining paragraphs to the extent such (i) include the inclusion of the Texas Litigation in the “Proposed Global Settlement Agreement” referenced in the Disclosure Statement and the Plan and (ii) purport to eliminate the Texas Litigation or obligate WMI to affirmatively interfere with the Texas Litigation resulting from the Released Claims as defined in the Plan.

7. The Texas Group objects to Debtors’ requested relief in the Motion to the extent that approval of the Disclosure Statement is sought.

III. The Objection to the Motion and the Disclosure Statement

8. The Disclosure Statement is not confirmable as a matter of law because the Plan attempts to include the Texas Litigation – nonbankruptcy litigation – in a “Proposed Global Settlement Agreement” (see pages 32-35 of the Disclosure Statement and section 2.7 of the Global Settlement Agreement attached as Exhibit I to the Plan) even though all parties to the Texas Litigation are not before this Court. The Disclosure Statement fails to disclose any authority under which Debtors have to effectuate the Plan relative to the Texas Litigation. 11 U.S.C. §§ 1125(a)(1) states “ ‘adequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor...., including a discussion a hypothetical investor typical of the holders of claims or

interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.” The Disclosure Statement fails to include information relevant to the risks being taken by creditors and interest holders or the existence, likelihood and possible success of nonbankruptcy litigation. See, In re Scioto Valley Mortgage Co., 88 B.R. 168 (Bankr. S.D. Ohio 1988); In re A.C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); In re Ferretti, 128 B.R. 16, 19 (Bankr. D.N.H. 1991); and In re U.S. Brass Corp., 194 B.R. 420, 424 (Bankr. E.D. Tex. 1996).

9. Additionally, the Texas Litigation is not properly before this Court and therefore cannot be included in the “Proposed Global Settlement Agreement” included in the Disclosure Statement and the Plan. None of the Debtors, including WMI, “own” any of the claims asserted by the Texas Group in the Texas Litigation. The Texas Litigation, in its current posture, is premised on injury to bondholders of WMB, caused by JPMC’s plan to strip away the contractual and property rights of such stakeholders.¹ Although WMI may have a claim that it was injured by JPMC’s misconduct, that does not mean that WMB bondholders cannot assert claims for their own, particularized, injury. See In re Seven Seas Petroleum, Inc., 522 F.3d 575, 585 (5th Cir. 2008) (“existence of common parties and shared facts between the bankruptcy and bondholders’ suit does not necessarily mean that the claims asserted by the bondholders are property of the estate.”). A bankruptcy debtor has no standing to assert claims that are owned by a third party. See Caplin v. Marine Midland Grace Trust Co., 406 U.S. 416, 433-34 (1972) (Trustee lacked standing to sue a third party for damages incurred by debenture holders of the corporate debtor).

¹ On February 18, 2010, the Texas Group dismissed all claims for injury based on standing as WMI bondholders or shareholders.

10. Further, the Disclosure Statement and the Plan purport to eliminate the Texas Litigation or obligate WMI to affirmatively interfere with the Texas Litigation resulting from the Released Claims as defined in the Plan (see Article XLII of the Plan and Article III of the Global Settlement Agreement attached as Exhibit I to the Plan). Non-debtor third party releases in a plan of reorganization have only been permitted where several factors have been met, including when the third party releases are essential to the reorganization plan; the non-debtor released party makes a substantial contribution to the proposed reorganization; a lawsuit against the released party on the non-debtor claims would result in a claim back against the debtor; the affected creditors overwhelmingly support the plan; the plan fairly compensates the affected creditors; non-consenting creditors may opt-out of the third party release provisions without prejudice; and the bankruptcy court record reflects that the foregoing factors are met. See, Gillman v. Continental Airlines (In re Continental Airlines), 203 F.3d 203 (3rd Cir. 2000). Debtors have failed to show such factors are met.

11. WMI has known of the Texas Litigation since before April of 2009. WMI used the Texas Litigation Petition as a basis for its Rule 2004 examination of JPMC. WMI further cited the Texas Litigation in multiple motions and discovery papers filed in this Chapter 11 proceeding, including requests for a Rule 2004 examination of the FDIC and other third parties. Yet, WMI never filed a complaint based on the any of JPMC's misconduct described in the Texas Litigation or sought to intervene in the Texas Litigation. Nevertheless, WMI now attempts to include the Texas Litigation in a "Proposed Global Settlement Agreement" and purports to eliminate the Texas Litigation or obligate WMI to affirmatively interfere with the Texas Litigation resulting from the Released Claims as defined in the Plan, neither with the consent or agreement of the Texas Group.

12. Therefore, the Disclosure Statement describes a plan of reorganization that fails to comply with 11 U.S.C. § 1125, is not confirmable as a matter of law, and therefore should not be approved.

13. To the extent that this Objection is deemed to be more properly asserted as an objection to the Plan, the Texas Group reserves the right to assert the matters raised in this Objection and any other supplemental or additional objections to the Plan at the confirmation hearing. Further, the Texas Group reserves its rights to join in the objections of other parties, regardless of whether those grounds are addressed herein.

WHEREFORE, National Western Life Insurance Company and American National Insurance Company and its Affiliates American National Property and Casualty Company, Farm Family Life Insurance Company, and Farm Family Casualty Insurance Company request that the Court deny the Motion, not approve the Disclosure Statement, grant them such other relief as the Court deems appropriate, and enter an appropriate Order to such effect.

Dated: May 13, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael P. Migliore, hereby certify that I caused a true and correct copy of the Consolidated Objection By American National Insurance Company, et al. To: (A) Motion Of Debtors For An Order, Pursuant To Sections 105, 502, 1125, 1126, And 1128 Of The Bankruptcy Code And Bankruptcy Rules 2002, 3003, 3017, 3018 And 3020, (I) The Proposed Disclosure Statement And The Form And Manner Of The Notice Of The Disclosure Statement Hearing, (II) Establishing Solicitation And Voting Procedures, (III) Scheduling A Confirmation Hearing, And (IV) Establishing Notice And Objection Procedures For Confirmation Of The Debtors' Joint Plan; And (B) Disclosure Statement Of The Joint Plan Of Affiliated Debtors Pursuant To Chapter 11 Of The United States Bankruptcy Code to be served on the parties listed below as indicated on this 13th day of May, 2010.

/s/ Michael P. Migliore
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