

June 8, 2010

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE
FILED

In re:

WASHINGTON MUTUAL, INC, et. AL,

Chapter 11

Case No. 08-12229 (MFW)

Debtors

**From: Dr. Sankarshan Acharya
17636 West Neuberry Ridge Drive
Lockport, IL 60441**

**To: The Honorable Mary Walrath, Chief Judge
United States Bankruptcy Court
District of Delaware
824 Market Street, 5th Floor
Wilmington, DE 19801**

Claim: I own 20500 common shares of WAMUQ

**Sub: Response to the objections filed by the FDIC and Department of Treasury to the
Equity Committee's motion on investigation and examination.**

Justification of valuation of Washington Mutual assets conveyed to JPMC.

**This is an addendum to my previous objection, dated May 11, 2010, to the
Debtors' Plan of Reorganization and Disclosure Statement.**

Dear Honorable Judge Walrath,

The responses filed by the FDIC and the Department of Treasury to the Equity Committee's motions on investigation and examination reinforce my strong objection to the latest Plan of Reorganization and Disclosure Statement (POR & DS) of the Affiliated Debtors of WMI.

Issues Facing the Court

The issues facing the court are (a) potential collusion among government regulatory agencies (FDIC, Department of Treasury and Federal Reserve), public rating agencies (Moody's, S&P and Fitch) and a few top bankers (JP Morgan & Chase, Goldman Sachs and other keepers of capital markets) in seizure of WMI assets by FDIC and transfer of the assets to JPMC, and (b) fair compensation to various claimants of WMI assets seized by FDIC and transferred to JPMC.

Acharya: Examination of government agencies and valuation of WMI assets



A scenario of potential collusion

1. A few market making financial institutions (MMs) like JP Morgan & Chase and Goldman Sachs want to usurp the valuable assets of WMI by paying little to those who own the assets purchased by their hard earned capital.
2. The MMs are on the board of the New York Federal Reserve Bank and on the advisory board of the Board of Governors of the Federal Reserve System. The MMs even have one of their friends directly control the Treasury Department.
3. The Security and Exchange Commission licenses the MMs for unlimited short selling of securities like the common stock, preferred stock and debt issued by WMI. The MMs control the federally insured deposits of *We the People* and have access to the Federal Reserve's discount window lending to short sell the WMI securities to decimate their market prices at will, at least temporarily.
4. The MMs can cajole the rating agencies like Moody's and S&P to downgrade the WMI securities. The market prices of WMI securities fall precipitously in response to the downgrades, thanks to the sway of the MMs over the market prices. The MM short selling action increases the supply of WMI securities, beyond the quantities outstanding under the Company Act, to facilitate a steep fall in their prices.
5. The broader credit market then restricts lending to WMI and to its subsidiary banks after precipitous fall in WMI security prices.
6. The MMs are privy to a confidential agreement signed by the WMI preferred stockholders based on which new preferred equity capital will be raised for down streaming to WMI's subsidiary banks as soon as needed to meet the minimum regulatory capital requirement. The WMI preferred stockholders cannot unilaterally publicize this agreement, lest they will be sued for breaching it, to counter the publicly announced downgrades of WMI securities.
7. The FDIC initiates a scrutiny of WMI to seize its valuable assets to transfer the same to a top MM (JPMC), notwithstanding unfettered regulatory access to the capital infusion agreement signed by WMI preferred stockholders. The FDIC gives an alibi that bank runs at WMI banks leads them to seize and transfer WMI assets to JPMC, despite capital crunch at most top banks with no automatic capital infusion agreements of the type WMI has.
8. The Congress readies a new act to infuse TARP funds to save many failing banks including those of WMI. The WMI banks have, in addition, agreements in place to receive new capital as soon as needed.
9. The FDIC Receiver seizes WMI assets to transfer the same to JPMC. The FDIC and JPMC do not disclose the list of WMI assets thus seized.

Within the above scenario, JPMC indeed colludes with the government regulatory agencies and the

public rating agencies to usurp valuable WMI assets from those who have invested their hard earned capital to own the assets.

Examiner with Full Authority

Whether or not the above collusive scenario factually unfolded in 2008 to make WMI fail to facilitate usurpation of its valuable assets by JPMC can be ascertained only by an independent examiner with full authority to issue subpoena and take depositions under oath.

Collusion or lack thereof has not been ascertained so far in any investigation by the Congress or Court.

The Equity Committee's request for an examiner with complete authority is thus legitimate.

An examination with complete authority is paramount for the Court too in order to determine whether the assets of WMI, which rightfully belonged to the WMI security holders, have been seized and transferred to JPMC via collusion among MMs, government regulatory agencies and public rating agencies. Establishing whether or not collusion has occurred should be paramount to the Court for two reasons:

- (i) It will prove or disprove if a fraudulent conveyance of WMI assets to JPMC has occurred. If a fraudulent conveyance has occurred, the court's ruling will be dramatically different from the standard allocation of assets, based on fair valuation, to various claimholders of WMI.
- (ii) Which constitutional rights of *We the People* have been transgressed due to JPMC's acquisition of WMI for pittance will depend on whether collusion occurred. For example, if the WMI assets were really transferred to JPMC through collusion, it would be a case of violation of the constitutional right to property of WMI security holders whose assets were usurped collusively. Otherwise, it would be a simpler case of the constitutional right to fair compensation for WMI security holders whose assets were seized by the FDIC Receiver and transferred to JPMC.

Valuation of WMI assets transferred to JPMC

My objection sent to you on May 11, 2010 to the POR & DS uses a cost of capital of 5% for valuation of annual cash flows from WMI assets acquired by JPMC. It also uses annual cash flow estimates attributable to the debt and equity of WMI derived from the incremental earnings statements issued by JPMC as referenced in my original objection letter.

The value of WMI assets transferred to JPMC will be higher (or lower) than derived in the objection letter if (i) the cost of capital is lower (or higher) than 5% or (ii) the cash flows are higher (or lower).

In this section, I argue that the cost of capital of 5% used in my analysis is sufficiently high to derive a conservatively lower value of WMI assets. One cannot, however, be absolutely certain about the cash flows attributable to WMI debt and equity without having access to internal JPMC data.

The cost of capital can be determined by two consistent approaches. The approach articulated in my objection letter is the cost of debt funds (Federal Reserve discount rate and interests on bank deposits) that were primarily used to fund WMI assets. On this cost of funding approach, the cost of capital of 5% is significantly higher than that prevailing in the environment of low cost and abundant supply of fiat money. This means that the value of WMI assets transferred to JPMC, as presented in my May 11, 2010 objection, is lower than it should be if a properly lower cost of capital than 5% were used.

The cost of capital can be determined, alternatively, as the credit market expected rate of return consistent with the risk of WMI assets transferred to JPMC. The WMI assets transferred to JPMC are primarily mortgage loans. Losses on most of the delinquent loans have been already provisioned by discounting (reducing the value of) these assets on the book. The banks currently ask about 4.9%, on average, to fund the types of mortgage loans included in WMI assets and acquired by JPMC. The banks' creditors expect to receive less (by the spread earned by banks for their service to creditors) than the 4.9% rate collected from mortgage borrowers. The spread is about 2.5%. This implies that the credit market expected return consistent with the risk of mortgage loans is about 2.4% which is equal to the mortgage interest of 4.9% minus bank spread of 2.5%. Even in September 2008, when WMI's assets were transferred to JPMC, the mortgage interest rate was also about 5% and the credit market expected rate of return was about 2.5%. This means the true value of WMI assets transferred to JPMC is significantly higher than that presented in my objection letter of May 11, 2010. Again, the exact composition of WMI assets transferred to JPMC, not yet disclosed by the FDIC, is necessary to ascertain the cost of capital for valuation of the cash flows generated from these assets.

Either approach indicates a lower cost of capital than the 5% used in my valuation of WMI assets transferred to JPMC. This means a truly higher value of acquired WMI assets than the conservatively lower figure presented in my valuation analysis dated May 11, 2010.

Intuitively, when money is being created virtually by the Federal Reserve and supplied to banks at negligible cost, the price of everything real skyrockets in terms of the fiat money. The WMI assets transferred to JPMC are primarily either mortgage loans in good standing that earn income as reported by JPMC or real estate properties possessed from the defaulting mortgage holders. The possessed real estate properties may have no current cash flow and may have been written off from the book, but they are worth a lot in terms of fiat money. These assets have not entered into my valuation of WMI assets transferred to JPMC. These assets will further raise the value of transferred WMI assets beyond that presented in my objection of May 11, 2010. One needs to have the complete portfolio of properties and loans in WMI assets transferred to JPMC to obtain a more accurate value of these assets.

Credibility of my analysis

My limited claim to WMI assets, as an equity holder, is truly incidental to me as a selfless researcher.

If I were not a claimholder, the court would not have entertained my objection to the POR & DS of Affiliated Debtors of WMI. Being a claimholder thus allows me to send valid communication to the court on the issue of moral hazard and economic theory of constitutional governance on which I have

researched and published since 1989.¹

Is a claimholder's analysis necessarily biased? Could my analysis be deemed to be prejudiced simply because of my legitimate claim on WMI assets, notwithstanding my consistent record of selfless research and absolute integrity since childhood?

Well, if I did not purchase any WMI security, despite my own determination of a great value of investment in this company, anyone (including I) would credibly impugn my conviction about my analysis. If I did not invest my hard earned capital in WMI, my analysis would be rightfully deemed to lack conviction and credibility. My ownership of WMI security, based on its significant valuation as compared to the market price, should rightfully enhance credibility of my analysis.

My ownership of WMI equity is not a case of first buying a security through speculation and then rationalizing the investment though some analysis. It is rather a case of credible investment based on a thorough ex ante analysis.

My analysis includes a deep conviction that the government (Judiciary, Legislative and Executive) of *We the People* will be ultimately impelled (a) to preserve the integrity of *our* system to let people prosper based on own perseverance and (b) to penalize indolent usurpation of the fruits of labor (stored as capital in banks and capital markets) of those who persevere to prop and secure the nation and government.

My analysis, thus, does not posit the government institutions, created and funded by *We the People* through acts of *our* Congress, as *our* adversaries. If policies and procedures of these institutions are not constitutional, *We the People* can pursue for reforming the same through the normal democratic process.² *We the People* can and should actively seek to run our government institutions to serve, not some selfish agenda of individuals who run them, but to fulfill the *common longing* of people, namely, absolute integrity and fairness in governance.

Investigating Government Regulatory Agencies

The Equity Committee has sought to examine and investigate the role of the FDIC, Department of Treasury and Federal Reserve Board in the failure of WMI. The widely known events that unfolded during the Great Recession (as described in the Scenario above) raise serious concerns that the individuals in charge of these institutions during the time did not fulfill the common longing of *We the People*. Their actions rather accomplished selfish agenda of indolent usurpation of capital earned through perseverance of *We the People*.

The cause for investigation/examination of the acts of the individuals running the government agencies is not only good, but also seriously important for these institutions and for American nationhood. The argument of the FDIC and Department of Treasury, contained in their objections filed with the court, that the cost of examination/investigation will outweigh any benefits is specious.

¹ See "An Economic Theory of Constitutional Governance" and the references cited in it, available on the internet here: <http://pro-prosperty.com/Research/MoralHazardLiberty.pdf>.

² See "Constitutional System of Money and Finance" available on the internet at <http://pro-prosperty.com/Research/Constitutional-Monetary-Finance-System.pdf>

- o The benefits of examination/investigation are unfathomably enormous because the seizure of WMI has potentially (a) trampled on the constitutional rights to property of *We the People*, (b) demised the ethos of free market economy on which a great nation has been founded, and (c) destroyed the trust between institutions and people that is very necessary for social stability amid prosperity based on perseverance.

Trust is the basis of credit which is the capital earned by persevering individuals. The institutions like banks, government regulatory agencies, public rating agencies and other keepers of capital markets must preserve trust with utmost integrity for stable constitutional functioning of a nation. Trust is the crux of banking. The Congress has established bankruptcy courts and laws to preserve trust for stable functioning of financial and non financial corporations.

Erosion of trust leads to (i) destruction of hard earned capital and (ii) debilitation of a constitutionally mandated capitalist economy. Trust was decimated due to the seizure by the FDIC of a very large solvent institution (WMI) for potentially avarice-driven transfer of private assets to JP Morgan & Chase. WMI was a repertoire of hard earned capital of many persevering households.

Collusive transfer of WMI assets to JPMC appears obvious to me after reading the filing in the Bankruptcy Court of a confidential agreement between the preferred stockholders of WMI and a subsidiary of WMI to downstream sufficient amount of new capital by raising the same freshly from involved investors of WMI contingent on the capital levels of the seized WMI banks receding below the regulatory requirements. Under this agreement, WMI banks could never be undercapitalized, unlike most major banks that did not have such agreements in 2008. The individuals running the FDIC ought to be aware of such confidential agreements. Yet, they seized the solvent WMI banks which faced no threat due to their capitals dropping below the regulatory minimums.

Again, the truth can be established through an independent examiner with unfettered access to all the communication among government agencies, public rating agencies and bankers and with the power to subpoena and to depose involved individuals under oath.

With best regards,



SANKARSHAN ACHARYA

PS: Certification of service: I have sent by first class USPS today a copy of this letter to the attorneys of the concerned parties in this case.

