

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

WASHINGTON MUTUAL, INC., et al.,  
  
Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

**Hearing Date: October 18, 2010 at 10:00 a.m. (EST)**

**SUPPLEMENTAL OBJECTION TO THE DISCLOSURE STATEMENT  
FOR THE SIXTH AMENDED PLAN OF AFFILIATED DEBTORS**

TO: THE HONORABLE MARY F. WALRATH,  
UNITED STATES BANKRUPTCY JUDGE

Broadbill Investment Corp. ("Broadbill"), Nantahala Capital Partners, LP ("Nantahala") and Blackwell Partners, L.P. ("Blackwell") and, together with Broadbill and Nantahala, the "Claimants") for their Supplemental Objection (the "Objection") to the 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) Approving the Proposed Disclosure Statement and the Form and Manner of the Notice of the Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (II) Scheduling A Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Joint Plan [Docket No. 3568] (the "Motion"), respectfully represent:

1. On October 6, 2010, the Debtors filed their Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 5548] (the "Proposed Plan") and their proposed Disclosure Statement with respect to the Proposed Plan [Docket No. 5549] (the "Sixth Amended Disclosure Statement").

2. The Final Report (the "Final Report") of Joshua Hochberg (the "Examiner") is due to be filed by November 1, 2010. In view of the proximity of the submission of this critical



document, the hearing with respect to the Proposed Disclosure Statement (the “Disclosure Statement Hearing”) should not be held, and no disclosure statement should be approved, until the Final Report is filed and the contents thereof are described in a revised disclosure statement. The Claimants have filed several objections to the disclosure statements proposed by the Debtors objecting to, among other things, the lack of clarity with respect to the Anchor Litigation<sup>1</sup> and the Global Settlement Agreement. Presumably, the Final Report will finally provide such information, and it can be included in the revised disclosure statement.

3. It appears that the disclosure statement is the “moving” document for the approval of the Global Settlement Agreement. As such, material information describing the terms and structure of the Global Settlement Agreement must be included therein. The Global Settlement Agreement information relating to the Anchor Litigation, which the Claimants have continually asked for, is as follows:

- a. What provision of section 363 of the Bankruptcy Code allows the Debtors to sell their interest in the Anchor Litigation free and clear of claims?
- b. In the contemplated Section 363 "free and clear" sale, will the claims of LTW holders attach to the proceeds of sale?
- c. How did it come about that the Debtors own the Anchor Litigation and can sell this asset to JPMC?
- d. Why did the Debtors determine to retain the Goodwill Litigation relating to the American Savings Bank and decide to transfer the Anchor Litigation to JPMC?
- e. Why must the transfer of the Anchor Litigation to JPMC be backdated to September 2008?

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Proposed Plan.  
NYC:219471.1

- f. Why does the Proposed Disclosure Statement state that JPMC is assuming the Debtors' liabilities relating to assets it is buying, yet when it is buying the Anchor Litigation JPMC is not assuming the LTW obligations under the Warrant Agreement?
  - g. Are the LTW obligations relating to the Anchor Litigation the sole liability relating to an asset being acquired by JPMC which JPMC is not assuming?
4. As set forth in prior objections filed by the Claimants, if the Debtors intend to reject their executory obligations under the 2003 Amended and Restated Warrant Agreement, dated as of March 11, 2003, between WMI and Mellon Investor Services LLC, relating to the LTWs (as would seem to be the case), they should do so now and not wait until the Plan Supplement is filed. Indeed, it has been six months since the Debtors filed their first version of the disclosure statement. It is not clear why they need to piecemeal their disclosure requirement, instead of including all material information in one document.
5. Page 60 of the Proposed Disclosure Statement states that the Liquidating Trustee will reserve up to \$194.1 million in cash on account of the potential LTW claims. The Claimants have asked the Debtors how this number was computed and the Debtors have, to date, declined to respond. The method by which the Debtors calculated the "maximum claim amount" payable on account of the LTW claims must be included in the Disclosure Statement as such information is the basis for the amount of the reserve. Further, the Claimants should be able to argue at confirmation that this number is inadequate or otherwise incorrect and that a higher claim amount should be reserved for the LTW claims. At a prior hearing before this Court, the Debtors committed to fully reserve for the LTW claims. The Debtors should provide in the Disclosure Statement that which they previously committed to do. Accordingly, the description of the Broadbill Declaratory Judgment Action contained in the Sixth Amended Disclosure Statement

should be amended such that the following language replaces the final sentence in Section IV.D.13.(b)

If Broadbill and Nantahala prevail in the adversary proceeding on behalf of the class of LTW holders, the claims of LTW holders against the Debtors will be treated as General Unsecured Claims pursuant to the Plan. Thus, because the LTW holders' claims are disputed claims, the Liquidating Trustee will reserve an amount, as determined by the Bankruptcy Court, payable on account of such claims as set forth in Section V.C.3.a hereof. The Debtors believe such amount is \$194.1 million.

6. The Debtors have agreed to litigate all issues relating to the LTWs as part of the amended class action complaint filed by Claimants. That means, among other things, the withdrawal of the Debtors' Forty-Third and Forty-Fourth Omnibus Objections to Claims (the "Omnibus Objections"), which dealt with certain LTW issues. The Proposed Disclosure Statement states that the claims objection is adjourned *sin die*. The Proposed Disclosure Statement should be revised to reflect that the Omnibus Objections have been withdrawn.

WHEREFORE, for all the reasons cited above, and for the reasons stated in the prior objections filed by the Claimants, which are incorporated herein by reference, the Claimants respectfully request that: (i) the Proposed Disclosure Statement not be approved unless and until the changes requested by the Claimants are made, and (ii) this Court grant such other and further relief as this Court deems just and proper.

Dated: October 14, 2010

/s/ Mark E. Felger

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**CERTIFICATE OF SERVICE**

I, Mark E. Felger, Esquire, hereby certify that on the 14<sup>th</sup> day of October 2010, I caused a copy of the foregoing *Supplemental Objection to the Disclosure Statement for the Sixth Amended Plan of Affiliated Debtors* to be served upon the parties listed below in the manner indicated:

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Dated: October 14, 2010

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