UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Chapter 11:

Washington Mutual Inc.
Debtors

Case Number: 08-12229 (MFW)
Hearing Date: 12/01/10 at 10:30a.m.
Objection Deadline: 11/19/10 at 4:00p.m.

re: Docket: 5548, 5659, 5714

PHILIPP SCHNABEL'S OBJECTION TO CONFIRMATION OF DEBTORS CHAPTER 11 MODIFIED 6th PLAN OF REORGANIZATION DATED OCTOBER 29, 2010

I am not a native English speaker. However I am a shareholder, an Interested Party in this case, and one of hundreds of German shareholders, among others, closely following this case and the filings. Writing the Court as Pro Se, I request the latitude extended to a Pro Se filing party.

In support of his Objection to Confirmation of the Debtors Chapter 11 Modified 6th Plan of Reorganization dated October 29, 2010 (the "Plan"), Philipp Schnabel, a Shareholder of Washington Mutual Inc., avers as follows:

1. This Court has jurisdiction to hear this Objection.

2. Objection to confirmation of a proposed plan of reorganization is allowed under 11 U.S.C. §1128(b) and Fed. R. Bankr. P. 3020(b)(1).

Background

1. Debtors filed the proposed 6th Plan of Reorganization on October 6, 2010 [Docket No. 5548].

2. On October 21, 2010, the Court entered an order approving the disclosure statement and setting the deadline for filing objections to confirmation of the proposed Plan [Docket No. 5659]

3. Debtors filed the proposed modified 6th Plan of Reorganization on October 29, 2010 [Docket No. 5714].

Basis for Relief

Relevant Procedural Law

1. "After notice, the Court shall hold a hearing on confirmation of a plan." 11 U.S.C.§ 1128(a)

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2. "A party in interest may object to confirmation of a plan." 11 U.S.C. § 1128(b).

3. An objection to confirmation is governed by Rule 9014 and "shall be filed and served on the Debtor, the trustee, the proponent of the plan, any committee appointed under the Code and any other entity designated by the Court, within a time fixed by the court." FED.R.BANKR.P. 3020(b)(1).

4. "The Court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is filed, the Court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." FED.R.BANKR.P. 3020(b)(2). However, the Court has an independent duty to determine whether a plan complies with the appropriate sections of the Bankruptcy Code even if no objection is filed. *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 599 (Bankr. D. Del. 2001).

Relevant Substantive Law

The Court may confirm a plan under Chapter 11 **only if** each of the thirteen enumerated requirements of 11 U.S.C. § 1129(a) are met. A limited exception is made if the requirements of 11 U.S.C. §1129(a)(8) (requiring acceptance by all impaired classes of claims or interests) are not met, permitting confirmation under 11 U.S.C. § 1129(b)(the "cram-down" provision) if the provisions of that subsection are met.

Objections

The Debtors' Releases

1. The Debtors should be required to meet their burden of demonstrating the propriety of such releases. See *In re Zenith Electronics Corp.*, 241 B.R. 92, 110 (Bankr. D. Del. 1999); see also Genesis, 266 B.R. at 606-609 (Bankr. D. Del. 2001) (discussing Zenith).

2. In Zenith, supra, the Court addressed the issue of Debtor releases of third parties. The Zenith Court adopted the five part test enunciated in *Master Mortgage Inc. Fund, Inc.*, 168 B.R. 930 (W.D. Mo. 1994) to determine the propriety of allowing a release of a third party as a part of a plan of reorganization. These factors are:

3. an identity of interest between the Debtor and the third party, such that a suit against the non-Debtor is, in essence, a suit against the Debtor or will deplete assets of the estate;

   a. substantial contribution by the non-Debtor of assets to the reorganization;

   b. the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success;

c. an agreement by a substantial majority of creditors to support the injunction, specifically if the impacted class or classes "overwhelmingly" votes to accept the plan; and

d. provision in the plan for payment of all or substantially all of the claims of the class or classes affected by the injunction." 168 B.R. At 937 241 B.R. at 110.

4. The enumerated factors must be separately applied to each of the entities that the Debtors seek to release. Absent such a showing, and appropriate finding by the Court, the release set forth renders the Plan unconfirmable. Some proposed releases may qualify for the protection afforded by the provision and some may not.

5. In *Genesis*, the Court examined and tested its applicability as to each party to be affected by the provision. For example, the Court rejected an attempt to release the Debtor's post-petition management from claims arising from pre-petition conduct, stating as to the Debtor's management personnel here, there is no showing that the individual releases have made a substantial contribution of assets to the reorganization. Accordingly, as in *Genesis*, the Debtor has to show that the releases have made a substantial contribution of assets to the reorganization.

6. Although the Disclosure Statement describes certain compromises made, which might or might not serve as consideration for a release of the Debtors' claims against them, it does not describe the consideration given by the other Released Parties. Absent adequate consideration from these entities on account of the releases, the Plan is unconfirmable.

Involuntary Third Party Releases

The Plan and the accompanying Disclosure Statement do not themselves demonstrate the existence of the requisite hallmarks of permissible non-consensual third-party releases, nor do they indicate what facts the Debtors intend to prove at the confirmation hearing to demonstrate the existence of those hallmarks. The Debtors must be put to their proofs at the confirmation hearing, and the Court must make the requisite findings of fact, before the involuntary third-party releases may be imposed. Otherwise, the third party releases should be stricken with respect to any party in interest that did not vote to accept the plan.

Valuation

Value of Class B Visa shares

WMI is claiming 5.4 million Class B Visa shares. The original SOFA clearly shows 5.4 million Class B Visa shares. JPM ("JP Morgan") contends that only 3.147 million shares were issued to WMI. (JPM vs WMI)

With respect to the Visa shares, JP Morgan shall purchase Visa shares from the Debtor's for 50 million dollars. The debtor's will retain any dividends that they have already received with respect to those Visa shares up to the date of effectiveness of a plan.

These Shares are worth more than $200 million.

Visa CEO Discusses F4Q2010 Results - Earnings Call Transcript on 10/27/2010

"On a separate front, we completed the repurchase of $800 million worth of Class B stock earlier this month or approximately 11 million shares on an as converted basis."
http://seekingalpha.com/article/232847-visa-ceo-discusses-f4q2010-results-earnings-call-transcript

This would value the Class B Visa shares at $72.72 per share.

However, the Disclosure Statement, paragraph 4(a), states, "JPM will pay WMI $25 million for WMI's 3.147 million Class B shares of Visa Inc."

This Disclosure Statement would value the Class B Visa shares at $7.94 per share. This is less than 11 percent of the value publicly stated for those shares by Visa, Inc. on 10/27/2010.

It would be even more if the 5.4 million class B Visa shares are actually found on the books of WMI.

1.4 million Visa shares have "disappeared". Why the discrepancy in the amount of shares? On what legal basis did this occur?

Value of the Wind Farm

WMI apparently owns a portion of JPMC Wind Investment Portfolio LLC ("the Wind Farm").

The Wind Farm as per the Plan of Reorganization is transferred to JPM for **nothing**.

The Value of the Wind Farm is around $200 million, which means with a holding of 50%, WMI holds $100 million in this asset.

The Debtors have the burden of proving that it is for the best interest of the estate to give away this value.

Tax Refunds

1. **JPM has no rights to any tax refunds.**

   a. Those taxpayers who participated in the Troubled Asset Relief Program ("TARP"), and certain affiliates of such taxpayers, are not eligible for the Act's NOL carry-back relief.

   b. The law specifically excluded companies from applying for the refund if they took TARP. So how does JP Morgan qualify?

c. There is no such thing as a "first" or "second" NOL portion under any tax regulation related to the Act. There is a 5-year NOL elected under the Act. The election was irrevocable and it required taking the 2008 losses back to 2003. This Concept of first and second portions exists only under this POR Global Settlement.

d. JPMC cannot get such treatment outside of the GSA (Global Settlement Agreement) or outside of bankruptcy. It was an asset purchase, from the FDIC, of most assets while assuming deposits but taking few liabilities. JPMC did not merge with WMB. Tax attributes, primarily NOLs, do not follow in asset purchases.

e. JPM cannot get anything as a matter of compliance with the law and the related tax code of regulations which implements the law. It is a fatal defect of the POR.

f. In summary, the POR cannot uphold the GSA allocation to JPM of WMB's tax refunds under any 2- or 5-year NOL provision based on any legal basis or regulatory citation. It has no standing to do so. It was gifted such under the GSA scheme. The substance has not been challenged over the form. Although the debtor argued such before it became compromised.

2. FDIC has no rights to any tax refunds

a. The FDIC-R rights to NOLs of entities seized and place into receivership, in situations where the entity seized is a subsidiary of a parent holding company, is being challenged around the country. Although each case is unique, and tax sharing agreements are different, the FDIC-R has not done well at all. What is noteworthy is that this is the case even when the bank seizure cost the FDIC fund billions of dollars and/or had questionable legal transactions. I mention these because WMB isn't like them. The FDIC-R didn't lose anything on the seizure of WMB.

b. In summary, regarding the FDIC-R rights to the NOLs - In other cases the FDIC-R has been ruled against. In this case, the arguments by the FDIC-R seem even weaker regarding WMI tax group.

c. *In re The Colonial BancGroup Inc.*, U.S. Bankruptcy Court for the Middle District of Alabama, Case No. 09-32303

d. The Colonial-FDIC case was being closely watched by lawyers representing other bank holding companies that wound up in bankruptcy after regulators seized their lending operations.

e. The FDIC has made most of the same legal arguments. These arguments are wrong.

f. 09-05084 Team Financial Inc et al v. FDIC et al, Case 09-05084 Doc# 53 Filed 04/27/10

g. In this case FDIC-R was seeking summary judgment against Team Financial in the context of an adversary proceeding it filed in bankruptcy court. FDIC-R was arguing that, as a matter of law and as a matter of fact, it "owned" the tax refunds attributable to the NOLs of the bank subsidiary it had seized, and therefore the parent holding company had to give it all the refund, since it now owned the subsidiary. In other words, the FDIC-R wanted the tax refund declared NOT to be property included in the Debtor's estate (and therefore not useable to pay off all creditors), but instead to be property merely held in trust by the Debtor for the subsidiary, to be passed to the subsidiary outside of bankruptcy.

h. The trial court denied the motion for summary judgment, explaining why all of the FDIC's legal arguments were wrong and why it did not have enough undisputed facts to decide the issue without a trial.

i. The FDIC has made most of the same legal arguments and as the decision in Team Financial vs. FDIC shows, these arguments are wrong.

3. Examiner conclusion

a. Page 291

i. JPMC asked specifically whether WMB tax refunds were included as assets being sold in the deal, and the FDIC said yes. 1177 There was no further discussion regarding the tax refunds, whether the FDIC understood tax refunds to include the refunds associated with a NOL carry-back based on losses recognized by the acquiring party, or whether the FDIC understood JPMC to be referring to tax refunds currently on the books of WMB. 1178 JPMC had modeled tax refunds associated with NOL carry-backs. However, in its due diligence review, the Examiner concludes that JPMC was likely referring to NOLs. 1179

ii. Tax attributes cannot be sold in an asset purchase acquisition. In fact, prior to the sale to JPMC of the assets purchased, the FDIC-R cannot seize tax attributes that do not exist at that time. As custodian or trustee it will need to maximize and protect them, but they are not there to be seized.

iii. In fact, there was no agreement of the minds, and if there was, it could only be for taxes currently receivable from closed tax years, not future tax attributes from the losses about to be created by the seizure, unrelated to the subsequent sale of assets to the assumption bank.

iv. Hochberg, the Examiner in this case, fatally errs that JPMC was originally modeling a "stock for stock merger" in which tax attributes are preserved by the merged entity. But that is **not** the case here.

b. Page 297

Mr. Lopata understood that a P&A Agreement with FDIC usually contained a specific carve-out for tax attributes to prevent their transfer to the purchaser. Mr. Peyster told Mr. Lopata that this transaction, however, was the only one he could recall in which there was not a specific provision stating that tax attributes are not conveyed to the purchaser. 1221

Hochberg makes not one single reference to such language or present one single example.

Hochberg does not note that such language is not even required. Tax attributes of an entity are not assets in an asset purchase, only in a stock-for-stock merger.

First the Purchase and Assumption agreement, does not state that the tax attributes are part of the 'asset' transfer to JPM. This is of no surprise, because these attributes cannot be transferred as a matter of tax law.

Secondly, The Examiner does not give one single example for a case where tax attributes have ever gone over from an asset of the holding company to an acquiring company, within a receivership. Because of this unique supposition, it was necessary for the Examiner to explain the law behind this, assumed, incorrect assumption. This reasonably prudent person would believes it that it could not.

It's all very well and good that the Examiner has shared his seemingly off-the-cuff "opinions" with the Court and the rest of us, but there is virtually no objective legal analysis to support his opinions.

4. Time

Decades ago, in reversing the approval of a settlement that was part of a reorganization plan in a case that had been pending for ten years, the Supreme Court made clear that a Court, faced with a request to confirm a plan that embodies a contested settlement, must make an independent determination of whether the settlement is **fair and equitable** in relation to the underlying merits of the dispute. In doing so, **the Supreme Court made clear that the desire to avoid delay and expense could not excuse a non-merits based settlement.**

5. No fundamental fairness

Difference in treatment

In re Quigley Co., Inc., 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007), the Plan distinguished between "big" holders of WAHUQ owed to a certain group that were defined as holder of 70% and the "little" holders owed to all other WAHUQ, with a significant difference in the proposed recoveries, because they are excluded from the purchase of reorganization common stock.

As such, the Court should determine that it could not find the settlement to be "fair and equitable."

Arguments

1. Section 1129 of the Bankruptcy Code contains 16 confirmation requirements that the Debtors, as plan proponents, bear the burden of establishing. *In re Exide Techs., 303 B.R. 48, 58* (Bankr. D. Del. 2003), the Debtors` failure to establish any requirement renders that plan unconfirmable.
2. The Debtors bear the burden to prove that the Plan complies with section 1129 of the Bankruptcy Code. *In re Adelphia Communications Corp., 368 B.R. 140, n. 247* (Bankr. S:D:N:Y: 2007); *In re Bally Total fitness of Greater N.Y, Inc., No. 07-12395* (BRL). In order to prove compliance with section 1129 in the current context, the Debtors have the **burden of proving by a preponderance of the evidence** that the Projections and the Blackstone Plan Valuation do not allow for a distribution to the Creditors of a value greater than their secured claims. See generally *In re Gramercy Twins Assoc., 187 B.R. 112,122* (Bankr. S.D.N.Y. 1995) (burden of proof). The Debtor cannot meet that burden with respect to the Plan, the Projections, or the valuation, and thus the Plan cannot be confirmed.

3. It is abundantly clear that the Debtors' valuation modeling process was severely flawed and this demonstrates the Debtors' utter inability to forecast performance and use of the tax beneficiary. The Blackstone valuation team faced substantial challenges putting together the valuation because of the poor quality data provided by the Debtor. Despite this, Blackstone never ventured to audit or confirm the numbers fed by the Debtors into the Blackstone valuation and thus Blackstone had no qualitative input into the WMI numbers.

4. The tax beneficiary will generate substantial savings for the Company and should be factored into the valuation. "In determining the Debtor's value, for plan confirmation purposes, bankruptcy court should objectively assess Debtor's creditworthiness and attractiveness as investment as of prospective effective date of plan by taking a market-accepted risk-free interest rate or rate of return and adding to that a risk premium determined by court based on specific risks shown by evidence, a process under which court may look to the market at most as an item of evidence, and not as dis-positive gauge of interest rates Debtor ought to pay or investment return that Debtor ought to provide." *In re Mirant 334 B.R. 800, 824* (Bankr. N.D. Tex. 2005)

5. In *In re Exide*, the court denied plan confirmation due to undervaluation of the Debtor. The court determined that the plan "undervalue[d] the Debtor" and, therefore, failed to satisfy the "fair and equitable test" under section 1129(b). 303 B.R. At 78. In reaching its conclusion the Court took note of the argument advanced by the creditor committee's expert witness that "plan providing management and/or senior creditors with the majority of stock or options in the reorganized company (as in the Debtor's Plan) is a strong indicator that the company is being undervalued, resulting in a windfall for management and the senior creditors."

6. This Debtor cannot abandon its fiduciary duties to current shareholders in the plan formation process. A Debtor's fiduciary duties run to shareholders **and** bondholders. See *CFTC vs Weintraub, 471 us 343,355* (1985) (holding that "willingness" of courts to have Debtors in possession is premised upon an assurance that the officers and managers can be depended upon to carry out the fiduciary responsibilities of a trustee') (citation omitted). A Debtor acts in good faith **only if it meets its obligation to maximize the value of its estate to obtain the highest recovery for all constituencies.** *TENN-FLA Partners vs First union National bank of Fla., 229 B.R. 720* (W.D. Tenn 1999) (revoking confirmation order where Debtors failed to disclose to creditors and later consummated, a premium transaction), *F & M Marquetts National Bank vs Emmer Bros. Co. (In re Emmer Bros. Co.) 52 B.R. 385, 394* (D. Minn 1985) (finding that a Debtor in possession "who fraudulently conceals an asset during the course of the bankruptcy proceedings surely violates the "fiduciary responsibility to the bankruptcy court and its creditors").

7. As the actions in this case show, the Debtor has not complied with its duty to the current shareholders.

8. Although the bankruptcy Code does not define "good faith" in the context of section 1129(a)(3), the Third Circuit has stated that "for purposes of determining good faith under section 1129(a)(3)...the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Combustion Eng'g, Inc., 391 F.3d 190, 247* (3d Cir. 2004) (citing *In re Abbotts dalries of Pa., Inc., 788 F.2d 143, 150 n.5* (3d Cir. 1986)). "Good faith is evaluated in light of the totality of the circumstances surrounding confirmation." *In re Oneida, 351 B.R. At 85* (citations omitted),"While other provisions of 11 U.S.C. § 11298a) speak to the content of a plan, subdivision (a)(3) imposes a strict mandate for proper process and methodology." *In re Bush Indus., 315 B.R. 292, 305* (Bankr. W.D.N.Y. 2004)

9. The Debtors bear the burden of proof that the Plan is "reasonable within the market." They cannot do so. That renders this Plan unconfirmable.

10. The Debtors' estates must be valued as a going concern using recognized valuation methods. *In re Bush Indus. 315 B.R. 292, 299* (W.D.N.Y.) ("For purposes of the cram down provisions of 11 U.S.C § 1129(b), the Debtor must demonstrate its present value as reorganized entity.") To determine the Debtor's total enterprise value (TEV) courts must determine what a hypothetical willing buyer would pay for the Debtor's assets, absent compulsion or distress. *In re United States vs Cartwright 411 U.S. 546,551* (1973) (The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." (from Treas. Reg. § 20-2013-1 (b)). Additionally, the valuation of the Debtors for purposes of confirmation must include "all assets, even those a buyer may not value." *In re Coram Healthcare Corp., 315 B.R. 321, 341* (Bankr. D. Del 2004) ("finding that inclusion of net operating losses

[NOLs] was proper since their value was preserved for the reorganized Debtor under the plan.")

11. When Blackstone reviewed the Company's business, operating assets, liabilities and business plan, they assumed that the financial projections prepared by the company's management were reasonably prepared in good faith and on a basis reflecting the company's most accurate currently available estimates and judgments as to the future operating and financial performance of the Company. In addition, Blackstone did not independently verify the financial projections in connection with preparing estimates of enterprise value, and no independent valuations or appraisals of the Debtors were sought or obtained in connection herewith.

Jurisdictional limits arising under Section 554

On December 30,2008, WMI filed with the Federal Deposit Insurance Corporation ("FDIC"), in its capacity as receiver for Washington Mutual Bank (the "FDIC Receiver") a claim against Washington Mutual Bank's ("WMB") receivership asserting claims on behalf of WMI's bankruptcy estate for the seized assets, WMB and its wholly-owned subsidiary, Washington Mutual Bank fsb. That claim was rejected on January 23, 2009, and pursuant to 12 U.S.C. § 1819(b)(2)(A) and 12 U.S.C. § 1821(d)(6)(A), WMI commenced litigation against the FDIC-Receiver, *Washington Mutual, Inc. and WMI Investment Corp. v. FDIC, Case No. 09-00533*, in the United States District Court for the District of Columbia (the "D.C. Court") alleging, among other things, several claims for relief ("WMI Claims").[1]

Section 541(a) of 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") defines property of the bankruptcy estate to include "all legal or equitable interests of the Debtor in property as of the

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[1] **The WMI Claims are as follows:**

1. Count I: Determination of Plaintiffs' Proof of Claim;
2. Count II: Dissipation of WMB's Assets;
3. Count III: Taking of Plaintiffs Property Without Just Compensation;
4. Count IV:Conversion of Plaintiffs Property; and
5. Count V: Declaration that the FDIC-Receiver's Dis-allowance is Void.

Additionally, WMI's complaint makes the following prayer for relief:

1. An order declaring Plaintiffs' Claims to be valid and proven against the Receivership;
2. An order directing FDIC-Receiver to pay the Claims from the assets of the Receivership in accordance with 12 U.S.C. § 1821(d)(l1);
3. An order directing FDIC-Receiver to provide Plaintiffs with an accounting of the disposition of the assets of the Receivership If any Claim is not satisfied in full;
4. An order directing FDIC-Receiver to provide Plaintiffs with an accounting of all property transferred from Plaintiffs in connection with the Receivership;
5. Enter a judgment against FDIC-Corporate and FDIC-Receiver for damages, in an amount to be determined, equal to the amount of money Plaintiffs would have received in a straight liquidation of WMB's assets and liabilities less any amounts actually received from the Receivership;
6. Enter a judgment against FDIC-Corporate and FDIC-Receiver for damages, in an amount to be determined, equal to the value of Plaintiffs' property converted by the FDIC;
7. An order declaring that the FDIC's January 23, 2009 dis-allowance to be void, and that the parties should proceed as if such dis-allowance never occurred;
8. Award Plaintiffs costs and attorneys' fees as may be permitted by law; and
9. Award Plaintiffs such other relief as may be just.

commencement of the case." The scope of section 541 is broad, and includes causes of action. *United States v. Whiting Pools. Inc., 462 U.S. 198,205 n. 9* (1983); *Integrated Solutions. Inc. v. Service Support Specialties. 124 F.3d 487, 490-91* (3d Cir.1997). Accordingly, the WMI claims are property of WMI's estate.

WMI has filed a proposed global settlement agreement ("GSA") which is intended to form a key element of WMI's proposed plan of reorganization (the "Plan"). Pursuant to the GSA and Plan, WMI will abandon the WMI Claims.

Section 554 of the Bankruptcy Code provides that "the trustee may abandon any property of the estate ... that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). It is the finding of the Third Circuit and elsewhere that a trustee or Debtor in possession has broad discretion in deciding whether to abandon litigation claims that are property of a Debtor's bankruptcy estate. See *Hanover Insurance Co. v. Tyco Industries. Inc., 500 F. 2d 654* (3rd Cir. 1974) (in carrying out the trustee's duty to maximize the bankruptcy estate, a trustee may abandon a cause of action that is deemed less valuable than the cost of asserting the claim); *In re Northview Motors, Inc., 202 B.R. 389, 393* (W.O. Pa. Bankr. 1996) (trustee was free to abandon a suit where the secured interest of other principals in the suit were greater than the proposed settlement value of the suit thus resulting in no net recovery for the estate); see also *In re Wilson. 94 B.R. 886* (E.O. Va. Bankr. 1989) (The court held that the only consideration in determining whether to abandon a claim under the Bankruptcy Code is whether such an action is in the best interests of the estate.)

Nevertheless, a Debtor's power to abandon property is not unfettered. The party seeking to abandon the property must show it to be of "inconsequential value and benefit to the estate," a finding of the presiding court. See *Northview Motors. Inc. v. Chrysler Motors Corporation, 186 F .3d 346* (3rd Cir. 1999) (noting bankruptcy court ordered trustee to abandon property).

Nothing in the Plan discusses why the WMI claims should be abandoned under Section 554. It merely states that the Plan "is In the best interests of [WMI's} estate and creditors" and further says that:

"[E]ntering into the Global Settlement Agreement is the best way to secure considerable value for the estates as opposed to proceeding with expensive, protracted litigation with no certainty of additional gain. In the absence of the Global Settlement Agreement, the Debtors would be forced to continue to prosecute the litigation pending at the risk of ultimately obtaining less net value for their estates and creditors." GSA, at p. 176.

Accordingly, under Section 554 WMI must establish that abandoning the WMI Claims, a key element of its Plan, is in the best interests of its estate because the WMI Claims are of inconsequential value and benefit.

As stated previously, the WMI Claims are under the jurisdiction of the D.C. Court, U.S. District Judge Rosemary Collyer presiding and, as the defendant is the FDIC Receiver, pursuant to 12 U.S.C. 1819(b)(2)(A) and 12 U.S.C. § 1821(d)(6)(A), Congress has granted her exclusive jurisdiction over those claims. As stated by Judge Collyer in her January 7, 2010, order denying

the 'Partial Motion to Dismiss of Defendant Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank ("Collyer Order") (attached as Exhibit A): *"[the Bankruptcy Court's determination of what constitutes the property of the estate is an issue over which it has exclusive jurisdiction" and the main factor weighing against [my] abstention is that some of WMI's claims arise under the FDI Act; thus the District Court has* ***exclusive*** *jurisdiction over those claims."* Collyer Order, pp. 4, 6. (Emphasis in original.) Accordingly, while this Court has jurisdiction over WMI's bankruptcy estate, and the WMI Claims are assets of that estate, it does not have jurisdiction over the assets themselves.

As the WMI Claims arise under 12 U.S.C. § 1821(d)(6)(A) and this Court cannot adjudicate their value, it therefore cannot order their abandonment under Section 554. Of course, this Court can order WMI (or another party in interest) to go to Judge Collyer to have matters (including value and validity) pertaining to the WMI Claims adjudicated in her forum.

As abandonment of the WMI Claims is a key component of the GSA and Plan, this Court cannot order the consummation of it unless and until the value and validity of the WMI Claims is adjudicated by Judge Collyer. Afterwards, if her rulings with respect to the WMI Claims' allow WMI to establish that the WMI Claims are of inconsequential value and benefit to the estate, this Court could order abandonment under Section 554.

Though the foregoing analysis only discusses jurisdictional limits arising under Section 554, it leaves open the question of what else in the GSA and Plan are beyond your jurisdiction but that WMI is asking you to order regardless.

Acceptance of The Plan under Sec. 1126

1. **Subsection (c) requires that the same disclosure statement be transmitted to each member of a class.**

2. Contrary to the representations in court, all German potential voters were not contacted proactively. Most German brokers didn't know of any voting process. Voters could not vote because of this.

3. Contrary to the representation in court, voting materials containing the Disclosure Statement, Plan of Reorganization and the Letter of the Equity Committee were **not** made available to any German shareholders of Class 20. Some of the German shareholders did print the voting materials from the Internet and did send it out, but without the knowledge of acceptance of this way of voting, because of the confusion and conflicting information.

4. German shareholders **did not** get any documentation of the Disclosure Statement, the Plan of Reorganization and the Letter of the Equity Committee .

5. Contrary to the representations made on the docket, the subcontractor KCCLLC, hired by the Debtor, did not obtain a list of **all** individual shareholders as of the record date for voting. The list placed on the docket by KCCLLC is missing all German shareholders.

As a result, those shareholders did not receive any voting instructions, or the promised materials for voting.

6. The debtors, through their hired subcontractor, stated – in capital letters - "IF YOU HAVE ANY QUESTIONS REGARDING THE BALLOT... PLEASE CONTACT THE VOTING AGENT, KURTZMAN CARSON CONSUKTANTS LLC, AT (888) 830-4644. When contacted, KCCLLC advised numerous shareholders that they were not providing any assistance or answering any of the shareholders' question, thus leaving certain shareholders further disenfranchised, even if they made it this far in the obscure voting process, with no answers to their questions.

Conclusion on voting mechanism

1. This voting mechanism is designed to "rig" balloting and win support.

2. **The voting mechanism is neither fair nor equitable.**

3. **Negligent** misrepresentation to the court occurred. Mr. Rosen did carelessly make a representation while having no reasonable basis to believe it to be true.

4. German shareholders of Class 20 did not get the documents of the voting mechanism, and Class 20 and Class 22 did **not** get the notice of hearing and the objection deadline.

5. The Plan is unconfirmable and should be **denied**.

Reserve all rights

I reserve all rights to assert additional objections prior to the time of the hearing on the motion.

WHEREFORE, Philipp Schnabel requests:

1. An open market valuation of any assets of the Debtor;

2. That this Honorable Court deny confirmation;

3. Even when stockholders do not vote, **all** shareholders should get a summary of the disclosure statement, and a notice on how to file an objection to the plan. Stockholders should also receive other notices unrelated to the plan of reorganization, such as a notice of a hearing on the proposed sale of the debtor's assets, or notice of a hearing if the company converts to a Chapter 7 bankruptcy; and

4. Provide any other relief that it deems just and proper.

Respectfully submitted,

/s/ Philipp Schnabel
Pro Se
Date: November 16, 2010

Philipp Schnabel
Steinstrasse 6
01454 Radeberg
Germany

Holdings as of November 16, 2010:
WAMUQ: 1294 shares
WAMKQ: 850 shares