UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

WASHINGTON MUTUAL, INC., et al.,

Debtors

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

SHAREHOLDER'S OBJECTION TO THE CONFIRMATION OF THE DEBTORS SIXTH AMENDED JOINT PLAN OF REORGANIZATION

Be it known to this honorable court, that I declare myself to be an 'interested party' to these cases before this Court – as a retail shareholder of preferred and common equity, as well as a retail shareholder of the PIERS – and therefore, I, Charles S. McCurry, file this formal Objection to the Debtors Sixth Amended Joint Plan of Reorganization ("The Plan").

I represent to the Court that I am one of thousands of shareholders who ask for clarity and sunshine in this process. There are several specific items that shareholders have not been able cull from the thousands of filings. Whether by our lack of collective sophistication, or by intentional obfuscation, I represent to this Court that the items noted here have not been sufficiently explained to the interested parties, including the shareholders.

The age of the internet is a wonderful thing. It has brought together the openness of PACER filings and a certain level of open disclosure of this case and dialogue between and among thousands of shareholders across the globe. Perhaps unlike any case prior to this Court, the level of understanding by the 'common man' is profound.

These same shareholders, where time and finances allow, travel and appear in the gallery of the Court, to listen and attempt to understand this process and the judicial fairness and patience, and even occasionally to speak to the Court. Some, as I am here, write to the Court.

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Others simply follow the Court and attempt to analyze and understand the laws of the land, as being interpreted by this honorable court.

The interest in this case is far beyond the institutional holders of securities, the creditors, and the lawyers receiving their paychecks due to this case.

Equally as profound is the confusion and lack of clarity created by the filings, specifically of the Debtor's Sixth Amended Joint Plan of Reorganization.

It is not lost on this shareholder, and should not be lost on this Court, that highly intelligent people read virtually every filing in this case. Those same individuals then attempt to reconcile the filings against both the naturally intuitive answers, as well as the legal understanding.

Those following this case, with obvious significant interest, cover all gambits of pursuits. I am personally aware of retirees, young professionals, college professors, real estate professionals, construction workers, engineers, accountants, and many others – all trying to make sense of these filings, and the overall case. Collectively and individually, I am a participant-in-understanding among a highly intelligent group of thousands. And courtesy of the internet, these thousands are located around the globe.

Certainly, it is <u>not</u> apathy that makes these cases difficult to understand. The daily interest in the filings is huge. Correspondingly, it is <u>not</u> a lack of collective or individual intelligence that makes this a difficult task. The collective wisdom and shared analysis are profound.

Therefore, I represent to the Court: If it is neither a case of apathy, nor a case of lacking intelligence that leads to this stated void of understanding, then it must be a lack of clarity and openness.

Without clarity and openness, "The Plan" should not be confirmed. To that end, I proffer that, at a minimum, the following items are necessary to bring the essential openness to the confirmation process:

1. **A Valuation and Summary of Estate Assets.**
2. **A Valuation and Summary of Estate Liabilities.**
3. **An Understandable Summary of the Releases.**

It may be argued that these items are already provided, as stated in the Plan of Reorganization. I proffer to this Court that it has not. I represent to the Court that as intelligent individuals, I and others cannot discern the fairness of 'The Plan'. And I and others cannot discern what has been asked here by summary. All that can be determined at this time is the obfuscation; whether this is intentional, nefarious, or accidental, this obfuscation renders "The Plan" as unable to be confirmed.

I come before this Court, through this writing, to ask this Court to remedy this issue. I beseech this Court to actively ask the participants, specifically the Debtors, but all others as well - to resolve these issues.

It is apparent to this interested party that the Debtors, left to their own devices and filings, will not voluntarily address these issues. And without this Court's direction and influence, the Debtors obfuscation will undoubtedly continue.

Therefore, **the Court** must remedy this harm.

This harm must be resolved so that a proper plan, with openness and clarity – can be heard and ruled on by the Court. "The Plan" must be made understandable, without the obfuscations inherent to date. So that, ultimately, this honorable Court can deliver such rulings, which will be affecting thousands of individuals' lives, that are conspicuously open, transparent, and just.

To this end, to resolve these presented problems, the resolution(s) are proposed herein.

Proposed Resolution of item 1: **A Valuation and Summary of Estate Assets.**

It is the understanding of this interested party that the Court has the overall duty to ensure that the Estate has been maximized to the most reasonable extent of the law. Similarly, it is the understanding of this interested party that the Debtors also owe a similar responsibility – to forcefully recover all assets for the benefit of the Estate.

Secondly, it is understood that in **most** Bankruptcy proceedings, this attempt to maximize the Estate – performed by the Court, and the Debtors – does not sufficiently address the debts owed to the creditors, etc., of the Estate. It is viewed by thousands of shareholders, that this is not the case in **this** bankruptcy. This being a highly unique bankruptcy case, with billions of dollars involved.

I state to this Court, that the perception of improper and un-audited valuations is so high, and the valuations performed to date, in the public eye of sunshine, so dark, that the apparent risk of another classic "K-Mart" case is of a paramount issue that has gone unresolved.

This respected Court should not infer any jaundice directed at the court here; my jaundice is towards the Debtors with "The Plan", and its lack of openness.

The potential for "The Plan" to result in another "K-Mart" – where assets 'appear' after plan confirmation – is not acceptable to those interested parties in this case. Also, it should not be acceptable to the Court.

The apparent risk here is many assets remain either undervalued, unaudited, unknown, and unreported or inaccurately reported in "The Plan". Additionally, many of the intangible "forward looking" assets, which have significant value to a reorganized company, are not reflected in "The Plan" and their associated value would be realized post-confirmation, and hidden from view in the confirmation process of "The Plan".

There is a need for full disclosure of **all** the current assets of the Estate, as well as the intended dispersal of those assets through the "The Plan" Confirmation process, and specifically those assets which are today as intangible, but have long-term or "forward looking" value to the Estate in a post-bankruptcy world. That is, assets that are believed to be significant, and have residual value to the estate in a merged entity, or acquired entity, in a forward-looking manner.

1. The Debtors own financial counsel, Blackstone, have represented to this Court that they did not provide an independent valuation of the asset values provided or created by the Debtors. The record indicates to this interested party, that Blackstone simply 'accepted the word' of who hired them, the Debtors.
2. The Examiner has stated that he did not perform an independent valuation of the Estate. And once again, accepted 'the word' of the Debtors and Blackstone, as to the correctness of their provided valuations. This was of particularly disturbing news to this shareholder. It was understood that one of the directives by this Court, to the Examiner, was this independent valuation. This repetitive lack of transparency and double-checking is of grave concern.

3. The Debtors continue to file, after their Sixth Amended Joint Plan of Reorganization, items (see Docket # 5885 – Filed November 12, 2010 – "Debtors' Motion… to Abandon") which further call into question the valuations being applied to the Estate. This filing has "new" information of billions of dollars, without clear indication of where this benefits the Estate, or other parties.

4. The Debtors have only provided, to the public, that information which appears on the Monthly Operating Reports and/or their Statement of Financial Affairs (SOFA). However, this information is clearly misleading and incomplete. Each Monthly Operating Report (MOR) states:

> *"The Monthly Operating Report was not audited or reviewed by independent accountants, was not prepared in accordance with Generally Accepted Accounting Principles in the United States…"* **and** *"The Monthly Operating Report was not audited or reviewed by independent accountants; does not purport to present the financial statements of WMI in accordance with generally accepted accounting principles;"*

5. Additionally, each MOR has stated:

> *"…this Monthly Operating Report was prepared, in part, based upon the information and work product and/or representations made available to the Debtors and their professionals by representatives of WMB and JPMorgan."*

6. It is unclear to this reasonable person, and is submitted, how could the Court accept the MOR as representative of the affairs of the Estate, when the MOR itself is unaudited, does not conform to generally accepted account principles, and consists of information provided by an adversary, JPMorgan.

7. Assets are listed as notations in "footnotes" without valuations. This leaves this interested party in a quandary of what is being disguised, or obfuscated through the un-audited MORs.

Therefore:

In earlier hearings, a request was made by the Court for the Debtors to prepare a comparison table of Disclosure Statement objections, against the Debtors resolution of those objections. Correspondingly a "table" was created by the Debtors to identify how each objection to the Disclosure Statement was addressed.

Similarly, to avoid the obfuscation apparent, a similar "simplified" table of valuation should be ordered by the Court of the valuations being represented by the Debtors. These valuations may be alluded to within the various filings or they may be carried on the current MOR or within the SOFA or simply not yet disclosed.

To wit, this interested party would suggest that, at a minimum, the Debtors be instructed by The Court to provide the following simplified information in a table form, summarized for the understanding of The Court, as well as the affected interested parties.

"The Proposed Valuation Table"

1. The name of the asset or asset group
2. The valuation to the Estate immediately prior to the Bankruptcy filing
3. The valuation to the Estate immediately after the Bankruptcy filing
4. The valuation to the Estate as of today.
5. The valuation to the Estate, after "The Plan" is confirmed.
6. The name of the entity that, today holds the asset.
7. An identification of if this is an audited, unaudited, or estimated valuation.
8. The source of the valuation presented.
9. The proposed resolution of the asset if "The Plan" is confirmed.

Additionally, it is imperative that proper argument be made in open court as to the validity of the above valuations.

It is not sufficient, certainly with billions of dollars at stake, to simply take the "word" of any one party as to the accuracy and truthfulness of any valuation represented to the Court.

The Court should, I proffer, must, conduct an appropriate "Valuation Hearing" to discern the accuracy and truthfulness of the representations made in "The Plan" as to the values placed. Specifically, both the tangible values to the Estate, as well as the intangible values to the Estate and the going concern that will, it is assumed, exit bankruptcy.

It is certainly reasonable to this interested party that the valuations presented to-date via the Monthly Operating Reports, be audited to generally accepted accounting standards before "The Plan" is confirmed.

Otherwise, billions of dollars in assets will be resolved through the plan confirmation, without any audit. And, of course, without the proper public disclosure. The Court should find that proceeding with confirmation, without an audit to these standards, is unacceptable. And the court should find that an un-audited and un-verified asset number used, anywhere within "The Plan" renders the plan unconfirmable.

Proposed Resolution of item #2: **A Valuation and Summary of Estate Liabilities.**

This interested party has been closely following the resolution of claims through the Omnibus process. To-date, the Debtors have filed over Fifty (50) Omnibus claims and have either litigated, solved, dismissed, or otherwise addressed the vast majority them, with relative speed and judicial efficiency.

This methodical process is expected within the Bankruptcy process. It is understood that it does take time to work through the thousands of claims against the Estate.

However, it is key to note that through this process, the claims against the Estate continue to diminish, in drastic numbers.

The Debtors have represented to this Court varying estimates as to the total value of these claims, and how they may ultimately impact this case.

The representations to the court have changed widely:

- In January 2010, the debtors stated that the claims outweighed equity by over $100 billion.
- Then in March of 2010, that number, in court, was changed to over $30 billion.
- Then in July of 2010, that number was now $1.5 billion.
- And "The Plan" now states, "[T]he Debtors' best estimate of eventually allowed claims in both cases will be approximately $375 million."

Notwithstanding, while over Fifty Omnibus claims have been submitted to the court, certain "key" claims and their corresponding Omnibus objections, have been left languishing by the Debtors. These key claims appear to form a basis for maintaining the appearance of Assets being unable to meet Liabilities. It is not lost on this observer that resolution of these "key" and large claims, has direct bearing on the appearance of Assets being unable to meet Liabilities.

These claims repeatedly show up on Omnibus agendas, and then are deferred by subsequent "amended" agendas, or deferred in court.

This is not an isolated issue. Therefore cannot be viewed as 'normal' to the process of this case. Other Omnibus claim issues are resolved relatively quickly, and these 'key' ones hang on for what appears to be obvious reasons. And due to their exceptionally high claimed amount, they carry a direct impact on the overall Bankruptcy process.

These substantial claims must be properly adjudicated by this Court before the "The Plan" can possibly be confirmed.

To clarify and provide sunshine to the remaining liabilities in this case, the following table is proposed. To wit, this interested party would suggest that, at a minimum, the Debtors be instructed by The Court to provide the following simplified information, in a table form, summarized for the understanding of The Court, as well as the affected interested parties.

"The Proposed Liabilities Table"

a. The name of the Liability or Liability group
b. Identification as to the Estate's best expectation of how this Liability will be fully or partially resolved, and if prior to exiting Bankruptcy.
c. Identification as to the Estate's best expectation of when this Liability will be fully or partially resolved, and if prior to exiting Bankruptcy.
d. The valuation of this Liability to the Estate immediately prior to the Bankruptcy filing
e. The valuation of this Liability to the Estate immediately after the Bankruptcy filing
f. The valuation of this Liability to the Estate as of today.
g. The valuation of this Liability to the Estate, after "The Plan" is confirmed.
h. The name of the entity that, today, is owed this Liability.
i. An identification of whether this is an audited, unaudited, or estimated valuation of Liability.
j. The source of the Liability valuation presented.
k. The proposed resolution of the Liability if "The Plan" is confirmed.

Proposed Resolution of item 3: **An Understandable Summary of the Releases.**

This shareholder understands that virtually every Bankruptcy includes releases as part of the process. This is an understandable requirement of bringing resolution to the case at hand.

However, I proffer that the releases in this case bear the hallmarks of obfuscation and apparent intentional distraction through their convoluted wording, use of double-negatives, and their repeated attempts to refer the 'common man' forwards and backwards through volumes of the text and chapters of their legal recitation.

This has the impact of making the releases virtually impossible to discern, and likely to lead to interpretation issues due to their lack of clarity. "The Plan" currently has this form of releases. These issues should also make "The Plan" unconfirmable unless resolved.

The obfuscated nature of the proposed releases was not lost in court on October 18th, 2010, when a party there asked for a "Simple English" version of the releases to be provided. None has been forthcoming.

These releases also bear the hallmarks of being overly broad. And even if found by the Court not to be overly broad, there remains the issue that voters of "The Plan" – through the acceptance or rejection of these releases – were forced to endure a classic "trap door" in their decision to "opt-out" or not. This was identified by the US Trustee on 6/16/2010 in Docket# 4717 as:

> *"[T]he "trap door" concept – if you don't give a release, you lose your distribution – is unduly coercive and effectively vitiates any proposed consent that may be obtained. Further, the provision probably renders the plan unconfirmable, as creditors within voting classes will undoubtedly be unfairly discriminated against depending upon whether they gave a release."*

Therefore, it is requested of this Court that a similar order be given to the Debtors to rectify this obfuscation in the releases, for the benefit of the Court, as well as interested parties. And separately, the Debtors must provide a resolution to the "trap door" provision.

To wit, this interested party would suggest that, at a minimum, the Debtors be instructed by The Court, to provide the following simplified information in a table form, summarized for the understanding of The Court as well as the affected interested parties.

"The Proposed Releases Table"

1. The name, category, or description used in "The Plan" of the released party.
2. If not a specific individual, then also a list of individuals, to the best of the ability known and/or intended by the Debtors to be released.
3. The nature of the release proposed in "The Plan" to this party.
4. Any conditions of release of the party.
5. A disclosure as to whether this is a criminal, civil or other release.
6. A disclosure of the compensation received from, or provided to, the released party.
7. A disclosure of the overall valuation of that release, and method for determining that valuation.
8. Disclosure of what value the Estate has or will receive for the granting of this release.

WHEREFORE, I, Charles S. McCurry, as an identified 'interested party' thereby requests of this honorable Court, that:

1. The Court directs the Debtors to provide the Proposed "Asset Valuation Table".
2. The Court directs the Debtors to provide the Proposed "Liabilities Table".

3. The Court directs the Debtors to provide the Proposed "Releases Table".

4. Unless and until the Debtors address the "trap door" issues within the releases, that this Court deems "The Plan" as unconfirmable.

5. If the Court should find that the original vote was improper, due to the "trap door" provisions identified on 6/16/2010 by the US Trustee, the vote should be nullified, and "The Plan" should be deemed unconfirmable.

6. Additionally, if the Court should find that these releases are overly broad as proposed by "The Plan", the plan should be deemed unconfirmable.

7. Unless and until the Debtors divulge the source of their valuations – for both Assets and Liabilities, the method in which they were created, and provide audited figures to justify them – that this Court deem "The Plan" unconfirmable.

8. Unless and until the Debtors disclose the ongoing and future 'value' of all tangible and intangible assets to the reorganized WMI, post-bankruptcy, this Court deems "The Plan" as unconfirmable.

9. Any other relief that this Court deems just and fair.

Additionally, I reserve all rights to further objections to this Plan of Reorganization.

It is with the highest respect to our judicial system, and to this Court, that my hope and prayer for openness and sunshine prevails here.

With profound respect to the Court, witness my hand to this statement of objection:

November 16, 2010

Charles S. McCurry

I, Charles S. McCurry, hereby certify that I caused, on 11/16/2010, one copy of the forgoing document to be served upon the parties of the attached list, by First-Class mail.

Charles S. McCurry

November 16th, 2010

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