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U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

Document Delivery to:

US Bankruptcy Court
District of Delaware
824 N. Market St.
Wilmington, DE 19801

Attn: The Honorable Mary Walrath

Re: Washington Mutual Case # 08-12229

Date of Delivery: December 10, 2010

Time:



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Asher M. Benjamin
P. O. Box 711
New York, NY 10024

December 10, 2010

Honorable Judge Mary Walrath
824 North Market St.
5th floor
Wilmington, DE 19801

Subject: Case 08-12229 -- WMI, Inc. Confirmation Hearing For Plan of Reorganization

Please include this letter in the docket of Case 08-12229 Washington Mutual, Inc. After listening to WMI confirmation hearing for plan of reorganization and no action on my letter docket #3088, I decided to write again

WMI Valuation Workup

Because of revenue matching principle from GAAP accounting, the tax refund of \$5.8 Billion belongs to WMI. Revenue matching is the basis for the tax refund. If nothing happened on Sept 25, 2008, then there would be no question. All tax refund would go to WMI. But, what is not being stated is that the **\$5.8 Billion was not included in the Purchase and Assumption Agreement (PA)**! So to equilibrate the Purchase and Assumption Agreement, assets need to be raised by \$5.8 Billion.

Let's use simply math and dates:

WMI Sept 25 2008	P.A. Black Box Valuation – (\$1.88 Billion)
WMI Cash	\$0.9 Billion
Tax Refund	\$5.8 Billion
“Known Value”	\$6.7 Billion (5.8+0.9)

The current plan states WMI assets value is roughly \$7.1 Billion, which is extremely low. Comparing the \$7.1 Billion with \$6.7 Billion in known value, the difference is \$400 Million. (WMI has paid an aggregate amount of **\$412 Million** for bankruptcy services as of 10/31/2010). For roughly \$400 Million, WMI is purportedly surrendering its legal claims surrounding the seizure of WMB and WMBfsb.

Let's start over using simply math again:

WMI Asset – WMI Liabilities = Net Worth.

WMI Assets Sept 25 2008 + WMI Liabilities Sept 25 2008 + Tax Refund = Net Worth.

Net worth = \$7.1 Billion Achieved through “GSA.”
Tax Refund = \$5.8 Billion

WMI Assets Sept 25 2008 + WMI Liabilities Sept 25 2008 + \$5.8 Billion = \$7.1 Billion

WMI Assets Sept 25 2008 + WMI Liabilities Sept 25 2008 = \$1.3 Billion = \$400 mil + \$900mil

(Offsets: FDIC and JPM both lay claims to these tax refund assets. The claims may overlap significantly.)

WMI Valuation With NewCo

So, WMI a 100 year old company with \$11-\$12 Billion in revenues with 2200 branches worth only \$1.3 Billion or \$400 Million less cash. That is what the Disclosure Statement and Plan of Reorganization implies. It could easily be argued that the branches were worth more than \$182,000 per branch (\$400 Million/2200). (A range estimate for branches of \$500,000 to \$750,000 yields a \$1.1 Billion to \$1.65 Billion valuation for branches alone.) How can an **\$11 Billion** revenue company reorganize itself as a **\$100 Million run-off** company and call itself a reorganized company? NewCo may meet the de minimis requirement for calling the plan a reorganization, but NewCo likely represents less than 1% of revenue and less than 1% of profit of WMI.

I request the Court to please remove the ability to capitalize the NewCo. If WMI states that the usable NOL is \$100 Million, force NewCo to only use the NOL stated in the plan and nothing higher. If WMI states \$5 Billion NOL is not usable, do not let them use it. Lock them down.

I request the Court to please do not allow Alvarez and Marsal/Weil Gotshal & Manges to represent NewCo in any way. NewCo states it may need to staff via Alvarez and Marsal. The deal looks like "pay for play" negotiating. But, the reason is beyond me why staff up for a run-off company. Most insurance companies need regulator capital, which is Cash. Where is the capital going to come from? I request the Court to please insure no WMI cash is used upon exit to support regulatory capital for NewCo.

Back to math:

WMI Assets Sept 25 2008 + WMI Liabilities Sept 25 2008 + NewCo = \$1.3 Billion

WMI Assets **less cash** Sept 25 2008 + WMI Liabilities Sept 25 2008 + NewCo = \$400 Million

(Blackstone's Zelin stated the NewCo is worth \$150 Million, could go higher)

WMI Assets **less cash** Sept 2008 + WMI Liabilities Sept 2008 + \$150 Million = \$400 Million

WMI Assets **less cash** Sept 2008 + WMI Liabilities Sept 2008 = **\$250 Million.**

According to Justin Nelson of the Equity Committee, JPM is only contributing \$25 Million to resolve this case. When comparing his comment to the above number of \$250 Million, his number seems very plausible. Except, the \$25 Million does not include all the earnings WMI assets have produced since the seizure and sale. The open question is which is the value for WMB and WMBfsb? There is still open question if WMB and WMBfsb are two subs of WMI or if WMBfsb is a sub of WMB.

The Voting Percentage implies WMB and WMBfsb was worth at least \$32.2 Billion

<u>Entity</u>	<u>Dollars Voted</u>
FDIC	\$28 Billion
JPIG	\$10 Billion
WMB Bondholder	\$2.2 Billion
Total above	\$32.2 Billion
Total voted	\$48 Billion

The knife cuts both ways. The value FDIC received as voting power must have some bearing on asset value acquired or damaged received.

There is a big disconnect between \$250 Million and \$32.2 Billion. Unless of course, the \$32.2 Billion plus \$250 Million is a point estimate for the value of WMI.

Now:

WMI Asst less cash 2008Q2 + WMI Liab 2008Q2 + WMB/WMBfsb Earnings 2008Q3 to 2010 = **\$250 M.**

WMB earnings 2008Q3 to 2010Q4 = ?? Billions

Legal Claims

Since WMI's CRO Mr. Kosturos would not name the legal claims that were being settled. Mr Kustros has given the Court the responsibility to guess or speculate: what is being settled and the dollar amount. In order to settle a disagreement, two (or more) parties need to specify: what it is the two parties disagree about. During the actual settlement process, the parties will know exactly what are the issues and the merits of the counter-parties case. This learning about the other sides merits is why parties try to settle case before taking them to trial. In this case, WMI legal claims would have been discussed by all settling parties; therefore, WMI, JPM, FDIC, **Creditor Committee** and their respective legal teams. All the parties would know exactly or deduce the other parties legal strategy or at least what the claims are. If the counter-parties do not know the other parties legal strategy, then they must not have talked, like the Equity Committee and the Court.

So, the Court and everyone outside of the negotiating parties are in the dark. The only way not to disclose your legal claims strategy would have been not to negotiate. Without verifiable information, the value in settlement needs to be assumed as zero:

This is an incomplete list:

Goodwill Litigation	Value = \$0
Fraudulent Conveyance	Value = \$0
Tortious interference by FDIC for keeping \$1.9 Billion	Value = \$0
Tortious interference by JPM for keeping \$4.4 Billion Cash Deposit	Value = \$0
Asymmetric Bidding Litigation	Value = \$0
BOLI/COLI missed valuation in Purchase and Assumption Agreement	Value = \$0
Unjust Enrichment	Value = \$0
Visa Shares	Value = \$50 Mil
Add The Court's Guess issue #1	Value = \$?
Add The Court's Guess issue #2	Value = \$?
Add The Court's Guess issue #3	Value = \$?

Visa Shares: JPMC states it has economic value of the shares, but fails to show a contract between owner, WMI, and itself.

So simply stated, does the above list net to \$250 Million or \$200 Million. How can the Court possible decide in favor of **Approving** the Plan of Reorganization, in which WMI's CRO refused to identify which above:

- 1) Were assets
- 2) Were assets being settled
- 3) Were assets not being settled
- 4) Were not considered as assets

Creditor Committee 2019

Upon examining the Creditor Committee 2019's, there is something **missing**. The 2019 section is to show the economic exposure the Creditors had to WMI securities, even derivatives. The purchase prices were there, but the exposure or disclaimer to credit default swap (CDS) were not mentioned. WMI/Alvarez and Marsal are complicit in their actions by not requesting credit default transactions reports. Or, issue a disclaimer that no credit default swaps were used by any creditor committee.

The news reports cited in the docket #3088 could be considered hearsay, but the DTC and ISDA records are not. Because WMI declared bankruptcy, the news reports stated around \$38 Billion of WMI settled with 43 cents on the dollar payout. Now, WMI has only \$8 Billion and WMB having \$13 Billion in debt. The combined debt is \$21 Billion. **In a nutshell, there was a higher notional amount of swap contracts than there were bonds.** There is no proof that the Creditor committee used credit default swap (CDS). But the converse is also true, that they didn't use CDS.

If it is found that the Creditor committee did use CDS, their bonds should be cancelled. They were paid an insurance claims, which should void their bankruptcy claim. The holder of record should be at the firm level not the partnership level. This would insure fair treatment in case, the hedge fund has multiple partnerships. This would prevent using CDS in one partnership and the bonds in another partnership.

Clearly, CDS is not Creditor Committee friendly issue. That is why I beseech the Court to take action.

WMI Valuation Continued with Disputed Cash

Back to math:

Now add \$4.4 Billion in disputed cash.

WMI Assets Sept 2008 + WMI Liabilities Sept 2008 + **Cash** = \$250 Million.

WMI Assets **less disputed cash** Sept 2008 + \$4.4 Billion + WMI Liabilities Sept 2008 = \$250 Million.

WMI Assets **less disputed cash** Sept 2008 + WMI Liabilities Sept 2008 = (-\$4.150 Billion)

So, if \$4.4 Billion was a deposit and the Summary Judgment was in WMI favor, WMI is now **paying** around \$4.1 Billion to settle this case. Yet, the creditor committee is getting paid in full and equity is out of the money.

Backdating of GSA

The Court should not allow backdating of GSA until it shown that the backdating adds value to the WMI estate, not for the mere convenience of FDIC and JPMC.

Request for Appointment of Bankruptcy Trustee

Let me state my disgust for the job done by CRO Mr. Kosturos and the 22 Alvarez and Marsal employees at preserving and recovering WMI assets. I would request the Court appoint a trustee, and keep the creditor and equity committee intact. In a sum, remove of Alvarez and Marsal and Weil Gotshal & Manges

Preferred Shareholders Lost Rights

In the offering documents for preferred, after six missed payments the preferred shareholders have a right to elect two board members. WMI owes the preferred shareholder two board seats.

Sincerely,

/signed/
Asher M. Benjamin
12/10/10