UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**

OBJECTION TO 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 SUPPLEMENTAL DISCLOSURE STATEMENT AND THE FORM AND MANNER OF THE NOTICE OF THE PROPOSED SUPPLEMENTAL DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING SOLICITATION AND VOTING PROCEDURES, (III) SCHEDULING A CONFIRMATION HEARING, AND (IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE DEBTORS' MODIFIED PLAN

Charles Eldridge, creditor and shareholder, hereby submits this 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 SUPPLEMENTAL DISCLOSURE STATEMENT AND THE FORM AND MANNER OF THE NOTICE OF THE PROPOSED SUPPLEMENTAL DISCLOSURE STATEMENT HEARING, (II) ESTABLISHING SOLICITATION AND VOTING PROCEDURES, (III) SCHEDULING A CONFIRMATION HEARING, AND (IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE DEBTORS' MODIFIED PLAN (the "Motion"), and states the following:

INTRODUCTION

I am both a creditor and an equity shareholder of the Debtors, having holdings of junior subordinated debt (PIERS, or WAHUQ) claims and preferred (WAMPQ) and common (WAMUQ) stock interests. Being a prepetition common shareholder, I have followed this bankruptcy case from its inception, reading hundreds of docket filings, listening to dozens of bankruptcy court hearings and reading the resulting transcripts, and discussing a multitude of details with other creditors and shareholders. Consequently, I qualify as an informed investor, being as well informed about this bankruptcy case as is possible without the benefit of material non-public information.

OBJECTION

I object to the Motion (D.I. 6711) to, among other things, approve a proposed Supplemental Disclosure Statement (the "Disclosure Statement", D.I 6697) on the basis that the Disclosure Statement (1) does not

disclose adequate information that would allow me (or any other similarly situated investor) to make an informed judgment about the Debtors' proposed Modified Sixth Amended Plan of Reorganization (the "Plan", D.I. 6696), and (2) cannot disclose such adequate information because there are too many significant issues affecting potential creditor and shareholder recoveries which remain unresolved in this bankruptcy case. The Disclosure Statement fails to, and cannot at this time, meet the "adequate information" and "typical investor" standards of 11 U.S.C §1125 and its approval should therefore be denied.

The Disclosure Statement does not meet the "typical investor" standard for Class 16 (PIERS) creditors

11 U.S.C §1125 governs post-petition disclosure and solicitation. For the Debtors to proceed with Plan solicitation, the Disclosure Statement must be approved by the Court as containing "adequate information", meaning information of a kind, and in sufficient detail, that would enable a hypothetical investor typical of holders of claims or interests of the relevant class "to make an informed judgment about the plan" (11 U.S.C §1125(a)(1)). An "investor typical of holders of claims or interests of the relevant class" means an investor having, among other things, "such ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interests in such class generally have" (11 U.S.C §1125(a)(2)(C)).

As a holder of Class 16 (PIERS) claims, I find myself an investor in a class in which a large majority of the claims are owned by a small number of investors represented by a single legal team, Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"). The investors represented by Fried Frank have been described as four "hedge fund" groups: Appaloosa Management, L.P., Centerbridge Partners, L.P., Owl Creek Asset Management, L.P., and Aurelius Capital Management, LP ("Aurelius"). In prior filings, the Debtors referred, collectively, to this group of clients of Fried Frank as the Settlement Note Holders ("Settlement Note Holders"). According to the Rule 2019 filing (D.I. 3761) in May, 2010, by Fried Frank for its clients, at that time the Settlement Note Holders owned over 70% of the Class 16 (PIERS) claims.

Notwithstanding the recent filing (D.I. 6810) indicating that, as of February 14, 2011, Fried Frank no longer represents Aurelius, and notwithstanding the fact that, as stated in the Disclosure Statement, the Settlement Note Holders are not a party to the latest revision of the Global Settlement Agreement (termed the Second Amended and Restated Settlement Agreement and dated February 7, 2011), it is clear that the Settlement Note Holders' "ability to obtain such information from sources other than the disclosure required by this section" has been far greater than that which "holders of claims or interests in such class generally have".

The Settlement Note Holders were one of the creditor groups involved in settlement negotiations (Dec. 2, 2010, hearing transcript, p.596):

> MR. NELSON: Q. I believe the PIERS or the settlement note holders questioned you and your response was that you included all creditor groups in the negotiations. Is that right?

> MR. KOSTUROS: A. As it relates to -- let me just be specific. The creditors committee, the Fried, Frank group and the White & Case groups were the creditor groups I was referring to.

The Settlement Note Holders were involved in negotiations to such an extent that they produced term sheets during the negotiation process (Dec. 2, 2010, hearing transcript, p.590):

> MS. NAGLE: Q. About how many term sheets or settlement proposals did you receive?
>
> MR. KOSTUROS: A. Well, I'm not sure I could estimate but it has to be in the 10 to 20 range.
>
> MS. NAGLE: Q. And did you receive them from groups other than the settlement note holders and JPMorgan?
>
> MR. KOSTUROS: A. I think that there was a number of groups that weighed in with structures. I believe the FDIC had some ideas, the bank bondholders had some ideas, the senior note holders had some ideas, that would be the White & Case group, all floating completely different structures and ideas.

The Settlement Note Holders consider themselves "co-architects" of the Plan (Dec. 7, 2010, hearing transcript, p.143):

> MR. SCHELER: Good afternoon, Your Honor. Brad Scheler, Fried, Frank, Harris, Schriver & Jacobson. Your Honor, my firm represents four independent and separate clients; Appaloosa, Centerbridge, Owl Creek and Aurelius. Collectively, they've been referred to in these cases as the settlement noteholders. Our clients have requested, Your Honor, that I address the Court today. And in doing so, I am speaking on behalf of my Fried Frank colleagues, Ms. Nagle, Mr. de Leeuw, Professor Resnick. The four of us and our colleagues at Fried Frank participated as co-architects of the integrated plan and global settlement agreement with our fellow professionals in these Chapter 11 cases.

Due to their ownership of over 70% of Class 16 (PIERS) claims, the Settlement Note Holders are expected to become the majority shareholders of the reorganized company ("WMRIC") upon Plan confirmation (Dec. 2, 2010, hearing transcript, p.588):

> MS. NAGLE: Q. Is it your understanding that the settlement note holders, as of the effective date when these shares are initially distributed for the reorganized WMRIC, is it your understanding that they will be the majority shareholders of reorganized WMRIC?
>
> MR. KOSTUROS: A. Yes, I believe they'll be the majority shareholders of WMRIC.

The Settlement Note Holders were intimately involved in negotiations which ultimately led to the Plan and its integral Global Settlement Agreement, have described themselves as "co-architects of the integrated plan and global settlement agreement", and are situated to become the majority shareholders of the reorganized Debtors. I, as a fellow Class 16 (PIERS) creditor, was neither given the opportunity to be

involved in settlement negotiations nor kept appraised of the progress of these negotiations. The Settlement Note Holders had the ability to obtain material information from sources other than the Disclosure Statement which was fundamentally not the same as other Class 16 (PIERS) investors, such as myself, generally had. The Disclosure Statement fails to uphold the "typical investor" standard and therefore its approval should be denied. In the alternative, the Debtors should be required to include all of the the information to which the Settlement Note Holders, but not other Class 16 interest holders, had access in a revised Disclosure Statement before it is approved.

The Disclosure Statement does not meet the "adequate information" standard for Class 16 (PIERS) creditors

As a Class 16 (PIERS) creditor, according to the Disclosure Statement's Voting and Election Procedures for my class, I will have to make several important choices with respect to the Plan. First I will have to decide whether or not to vote a ballot. If I decide to vote a ballot I will then have to decide whether I want to (1) accept or reject the Plan, (2) opt out or not opt out of providing third-party releases, and (3) elect to receive some or all of my distribution as stock of the reorganized Debtors in lieu of cash or liquidating trust interests. Each of these choices has significant ramifications for my investments, not all of which are readily discernable from the Disclosure Statement.

If I vote a ballot, there is one outcome which is certain: my PIERS securities will be "tendered" ("locked up" or "frozen") into a special DTC account and I will be unable to trade them for an unknown amount of time. The Disclosure Statement states, "If the Plan is not confirmed, DTC will, in accordance with its customary practices and procedures, return all Securities held in the election account to the applicable Voting Nominee for credit to the account of the applicable beneficial holder." The Debtors can, however, apparently override this language at their own discretion and keep securities tendered for an indeterminate amount of time after the Plan is not confirmed, as evidenced by the experiences of securities holders whose shares were tendered as a result of voting on the previous version of the plan of reorganization (November, 2010), which contained identical language regarding the release of tendered securities. In that case, although that plan of reorganization was not confirmed (it was, in fact, denied) in a ruling issued on January 7, 2011, the Debtors refused to permit the tendered securities to be released until over six weeks later, and only after sustained complaints by the owners of those securities to the Debtors and their representatives, the Equity Committee, and the United States Trustee. Thus, the Disclosure Statement does not provide "adequate information" regarding release of tendered securities in the event that the Plan is not confirmed because it fails to disclose the extent to which the Debtors can exercise their discretion in releasing tendered securities.

If I vote a ballot and do not elect to opt out of granting third party releases, I will be eligible to receive a distribution. The Debtors now estimate (Liquidation and Recovery Analysis) that Class 16 (PIERS) will see a recovery of 57% on prepetition claims under the proposed Chapter 11 Plan. In other words, Class 16

(PIERS) is where the distribution waterfall stops, so significant economic uncertainties with respect to the Plan or the Debtors' estate will directly affect the recovery of this class of creditors. If, at this point in time, the Debtors had resolved the issues that could significantly affect both the value of the Debtors' estate and the nature of the recovery waterfall, the Disclosure Statement would provide a typical investor, such as myself, with adequate information with which to make an informed judgment regarding the choices I must make with respect to the Plan. This is, unfortunately, not the case. The Debtors, apparently in their rush to Plan confirmation (for a second time), have left unresolved so many significant issues that the Disclosure Statement does not, and cannot possibly, provide adequate information with which a typical investor can make an informed judgment. Some of the most important unresolved issues which would affect my informed judgment regarding the Plan are as follows:

- Rate of post-petition interest: the Court, in its January 7, 2011, ruling denying Plan confirmation, did not reach a conclusion as to the proper post-petition interest rate, but noted that the unresolved allegations of "insider trading" by Settlement Note Holders could affect the Court's ultimate decision regarding payment at the federal judgment rate rather than the contract rate. According to the Plan (Exhibits D, E, and G), there is over $700 million in post-petition interest claims at the contract rate above Class 16 (PIERS) in the recovery waterfall. Given that the waterfall currently ends in Class 16 (PIERS), a decision by the Court that payment should be made at the federal judgment would have a very significant effect on the recovery of Class 16 (PIERS). The Court recently approved a motion by the Equity Committee for a Rule 2004 investigation of the allegations of "insider trading" by the Settlement Note Holders, who collectively, according to their 2019 statement (D.I. 3761) own approximately 9% of Senior Notes, 82% of Subordinated Notes, and 73% of Junior Subordinated Notes (PIERS). Until that investigation is completed, the Court cannot make a determination regarding the proper rate of post-petition interest, and I cannot make an informed decision regarding the Plan.

- Equitable subordination or disallowance of claims: The aforementioned Rule 2004 investigation could find evidence of conduct so egregious that Settlement Note Holder claims could be subject to equitable subordination or disallowance. As large majority holders of claims of both Subordinated Notes and Junior Subordinated Notes (PIERS), a subordination or disallowance ruling could greatly affect my recovery as a Class 16 (PIERS) claimant. Because I am not privy to the progress of the Rule 2004 investigation, I cannot possibly make an informed judgment regarding the Plan before that investigation is concluded.

- Stock election: As a Class 16 (PIERS) creditor I will be allowed to elect to receive up to all of my distribution as common stock of the reorganized Debtors in lieu of cash or liquidating trust interests (Disclosure Statement, p.41). Such election is subject, however, to nullification should the Debtors choose to enter into a retention/sale transaction by the effective date of the Plan (Plan,

p.64), a fact that is not described in the Disclosure Statement. Given that the Debtors may choose to enter into, and disclose, such a transaction at any time, it is impossible for the Disclosure Statement to provide adequate information regarding this issue which would have a profound effect on my informed judgment about the Plan.

- Valuation of Debtors: This valuation plays a critical role in enabling me to make an informed judgment regarding the Plan. The Disclosure Statement provides a limited valuation analysis of the *reorganized* Debtors (i.e., after Plan confirmation), but no information regarding the valuation of the current Debtors or listing of their assets, apparently due to the fact that the Plan has no such information. 11 U.S.C §1125(b) provides that, "The court ***may*** approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets" (emphasis added). Thus, such valuation is not required by the bankruptcy code, but in a case of this magnitude and complexity it is incomprehensible that an interest holder could make in informed judgment regarding the Plan without this information. The Debtors appear to have decided that such information is, essentially, of no importance to their bankruptcy case, admitting in a recent filing (D.I. 6805, Application for an Order Authorizing the Retention and Employment of Ernst & Young LLP) that during more than two years in bankruptcy they have never employed an outside accounting or auditing firm: "During the course of their chapter 11 cases, the Debtors did not employ or retain any accounting or auditing firms."

CONCLUSION

As a Class 16 (PIERS) creditor, in order to make an "informed judgment about the plan" I need to be able to determine with reasonable certainty what will be the outcome of my investment should the Plan be approved. A disclosure statement containing "adequate information" is a critical source of information in making an informed judgment. The Disclosure Statement fails to provide such adequate information, in part because of its inherent lack of adequate information and in part because it cannot provide such information because the Plan itself lacks such information. The Motion should therefore be denied.

Charles Eldridge

Seattle, WA