

April 28, 2011

Hon. Mary F. Walrath

United States Bankruptcy Court

District of Delaware

824 Market Street, 5th Floor

Wilmington, DE 19801

Re: In re Washington Mutual, Inc., et al. Case Number 08-12229 (MFW) (Jointly Administered)

U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

2011 MAY -6 AM 10:07

FILED

Objection to the Plan of Reorganization

Dear Judge Walrath,

I am writing on behalf of myself as a shareholder of various Washington Mutual securities (and those similarly situated). I have been tracking the progress of this case since its inception. I hold PIERS units, preferred equity of WMI, and common equity of WMI.

I formally object to the plan of reorganization for the following reasons:

JP Morgan Chase has no claim to the tax refunds:

From Bracewell & Guiliani's report to the FDIC (examiner's materials, page 19).

"Further, JPM has no right to any refund arising with respect to the Sale Losses or the WMB Post-Sale Losses since they were not accrued as of the WMB Closing."

Even if JPM had a valid claim, there can be no division of the carryback to "the first and second NOL" it was an irrevocable decision that created one refund—a refund that JPM cannot claim as a TARP recipient.

The attempt to make this irrevocable decision into something that might have occurred (but did not) is a violation of the Substance over Form Doctrine.*

* (http://www.irs.gov/pub/irs-utl/ii.b_-_judicial_doctrines_ii.pdf)



"The concept of the substance over form doctrine is that the tax results of an arrangement are better determined based on the underlying substance rather than an evaluation of the mere formal steps by which the arrangement was undertaken. For instance, two transactions that achieve the same underlying result should not be taxed differently simply because they are achieved through different legal steps. The Supreme Court has found that a "given result at the end of a straight path is not made a different result because reached by following a devious path." In *National Alfalfa Dehydrating & Mill & Co.*, the Supreme Court ruled as follows: "***This Court has observed repeatedly that, while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, and may not enjoy the benefit of some other route he might have chosen to follow but did not.***"

The debtors are well aware of this exclusion that prevents JP Morgan Chase from claiming any of the NOL refunds, this is likely why rather than paying the refunds directly to JPM, they propose the following in the POR:

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Section 2.4. Tax Matters. It is the understanding of the Parties that this Section 2.4 allocates (i) the Homeownership Carryback Refund Amount thirty and three hundred fifty-seven thousandths percent (30.357%) to the FDIC Receiver and sixty-nine and six hundred forty-three thousandths (69.643%) to WMI, and (ii) all other Net Tax Refunds eighty percent (80%) to JPMC and twenty percent (20%) to WMI, and this Section 2.4 shall be interpreted in a manner consistent with this understanding.

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"Section 2.4(j) Capital Contributions. WMI, WMB, the FDIC Parties and JPMC shall treat, solely for Tax purposes, all amounts paid, waived, allocated or transferred by WMI to WMB or to JPMC (on behalf of WMB or any subsidiary acquired by it from WMB, and hereby at the direction of the FDIC Parties) pursuant to the terms of this Agreement (other than any amounts paid or properties transferred to JPMC pursuant to this Section 2.4 and Sections 2.15, 2.17 and 2.18 hereof) **as capital contributions from WMI to WMB**, and then, as applicable, as a transfer from WMB to JPMC pursuant to the terms and conditions of the Purchase and Assumption Agreement.

This attempt to skirt the very law that created the tax refunds in order to further enrich JP Morgan Chase is *contradicted by law*.

Relief Requested:

- 1) As JPM can make no legitimate claim to this asset and the attempt to grant them this money by a series of steps is in violation of the Supreme Court ruling. The Global Settlement is, at its core, unconfirmable.
- 2) As debtors' counsel has made such great attempts to enrich JPM at the expense of equity stakeholders and creditors, these efforts are egregious and the most direct sign of conflict of interest. The removal of Weil, Gottshal & Manges, a firm heavily conflicted with the enriched party (JPM), would go far to expedite the judicious conclusion of this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom White', with a stylized flourish at the end.

Tom White