May 10th, 2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

WASHINGTON MUTUAL INC., et al.
Debtors.

Chapter 11
Case No. 08-12229 (MFW)

Objection Deadline: 5/13/11 at 4:00pm E.t.
Hearing Date: 6/6/11 at 9:30am E.t.

From: **Ediz Kara**
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To: **The Honorable Judge Mary F. Walrath**
United States Bankruptcy Court
District of Delaware
824 Market Street, 5th Floor
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Objection of Ediz Kara to the Confirmation of the Debtor's Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code as dated/filed of February 08th 2011 (cf. Docket Number 6696) ***and in consequence of it*** **Motion for an Order defining a specific roadmap**

Dear Honorable Judge Walrath,

I am a shareholder and member of United Equity International from Germany holding Washington Mutual Equity. I am a pro se objector and a party of interest in this Case.

I object to the most recent amended 6th Plan of Reorganization (for the sake of brevity in the following: the "Plan") based on the following:

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I.1 The above mentioned Plan cannot be confirmed, it should be DENIED.

I.2 MOTION for an Order defining a specific roadmap to enhance evidence by *first* finishing the *Discovery* of the Settlement Noteholders, according to the Court's order, proceeding and finishing *valuation hearing* on all matters related to the Estate, and *then* appointing, proceeding and finishing a *confirmation hearing*.

II.1. Legal Basis

The Rules of Chapter 11 resp. Federal Rules of Bankruptcy Procedures express inter alia that:

(a) This Court has jurisdiction to consider this Objection.

(b) The Objection to confirmation of a proposed plan of reorganization is admissible under 11 U.S.C. § 1128(b) and Federal Rules of Bankr. Procedures § 3020(b)(1).

In particular:

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

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

(e) The "Objection to Confirmation" of a proposed Plan or reorganization 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.", 11 U.S.C. § 1128(b) and Fed. R. Bankr. P. § 3020(b)(1).

(f) 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) is not met, permitting confirmation under 11 U.S.C. § 1129(b) (the "cram-down" provision) if the provisions of that subsection are met.

(g) "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. 22B.R. 591 (Bankr.D.Del.2001)].

II.2 Background, relevant Documents

The Debtors have filed among others the following documents ...

1) Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, **dated/filed February 08, 2011** (Docket Number 6697)

2) **Modified** Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, **dated/filed February 08, 2011** (cf. Docket Number 6696)

3) **Revised** Supplemental Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, **dated March 16, 2011** (Docket Number 6966)

4) **Modification** of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, **filed March 16, 2011** (Docket Number 6964)

5) **Second Modification** of Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code **dated/filed March 25, 2011** (Docket Number 7038) resp.

6) **Second Modification** of Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code **dated/filed March 26, 2011** (Docket Number 7040)

7) **Revised Supplemental** Disclosure Statement for the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (docketed on the kccllc-Server as **Solicitation Version** of Revised Supplemental Disclosure Statement and Composite Modified Sixth Amended Plan)

8) **Plan Supplement** in Support of Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code **dated/filed April 28, 2011** (Docket Number 7217).

Additionally the following Documents have been considered in preparing the objection:

(A) Objection to the Government Examiner Not Investigating Crucial Issues Needed for Resolution of the Case and the Proposed Plan of Organization of Washington Mutual Filed by Sankarshan Acharya **filed November 15, 2010** (Docket Number 5912)

(B) Objection to Modified Sixth Amended Joint Plan Filed by William Duke **filed April 28, 2011** (Docket Number 7215)

(C1) The Official Committee of Equity Security Holders' Petition, Pursuant to 11 U.S.C. § 105(a), 28 U.S.C. § 158(d)(2), and Fed. R. Bankr. P. 8001(f), for Certification of Direct Appeal to the Untied States Court of Appeals for the Third Circuit of the Opinion and Order Denying Plan Confirmation **filed January 19, 2011** (Docket Number 6575)

(C2) Motion to Shorten Notice and Schedule Hearing on the Official Committee of Equity Security Holders' Petition, Pursuant to 11 U.S.C. § 105(a), 28 U.S.C. § 158(d)(2) and Fed. R. Bankr. P. 8001(f), for Certification of Direct Appeal to the United States Court of Appeals for the Third Circuit of the Opinion and Order Denying Plan Confirmation **filed January 19, 2011** (Docket Number 6576).

The Court has issued the ...

9) **Opinion** Denying Confirmation of Sixth Amended Plan of Reorganization **dated/filed January 7**, 2011 (Docket Number 6528)

10) **Order** (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, **dated/filed March 30, 2011** (Docket Number 7081).

III. Reasons for Objection

1. The **shareholders'voting procedure** is not as clearly described as required by the Plan. A distinctive example is the voting when a shareholder holds shares of different classes; in consequences such voting when different classes have to be considered is not sufficiently discussed there which leads to a contradictory viewpoint of the shareholder, and these circumstances yield, from the viewpoint of a shareholder, that her or his choice to vote simultaneously for these classes is not based on substantial information as required. Please refer to **Exhibit B**, page 2, "Voting". Concluding, this Plan driven action is not fair and reasonable.

This is a blatant neglection of the Order of Approval of the Disclosure Statement, in particular that there are more questions than answers *how* to correctly fill out those ballots within the very narrow time window which result in lack of transparency and therefore affecting evidence.

Again, ballots have been demonstrable not delivered automatically to me as shareholder to practise my rights. However the debtors may argue hat they have no influence on how and when voting documents and information will or have been provided by the shareholder's bank or broker. But still it is not clear to the

shareholder how this request has been forwarded to brokers and banks respectively and hence shareholders can not prove whether those documents had been provided improperly.

Additionally: Upon my request to my broker to provide the voting documents, I had been advised that I would be charged fees in the amount of 100.- € (approx. 150.- US-$) being partitioned for the US-depository and for the 'liquidator' if I want to get the voting documents. As I did not choose this procedure I question whether this is correct procedural manner or not?

2. Related to the **Releases** as pointed out in section 43.6(a) of the Plan, the exclusion of JPMC Entities and Related Persons as well as the FDIC-R and Corporate Related Persons from being excluded from potential scrutiny and sanctions resulting from this shall not be allowed since the Bankruptcy shall not be a safe haven for such kind of potential offense to the law. Please refer to **Exhibit B**. Concluding, this Debtor's action is not fair and reasonable since it degrades credibility and therefore degrades evidence. Also this release still has to be considered to be to broad.

3. BOLI/COLI; Please refer to **Exhibit B**, page 3/4, "Bank Owned Life Insurance"; this matter is as to date not resolved so concluding, this Debtor's action is not fair and reasonable due to lack of verification.

4. The **valuation of the Assets** of WMI still lacks evidence: Such fundamental process as a basis for confirmation of a Plan is based merely on some course estimations and assumptions. Please refer to the **Exhibit A** item 6, where the examiner is asked, *how* he gets his decision, that WMI was most likely solvent, although there was no Asset List found as the FDIC failed to provide the examiner with same. Even though I am well aware that your Honor has no jurisdiction over the process of the seizure I consider it of being utmost important to know which *Assets* have been transferred to JPMC by the FDIC.- In this context and upon the situation, that there are to date now no such documents comprehensible and evidently demonstrating the Liquidating Trust to assign remaining Assets as a terminal bonus for claims of all individual classes (cf. the Doc. **(8)**). It shall therefore be referred to the efforts of the Equity Committee – please cf. the **Exhibit C1/C2** – to resolve this matter by the US Circuit Court of Appeals which action should be strongly recommended and unquestionable to get confidence and therefore evidence as required *in the confirmation process*. Concluding, this Debtor's action is not fair and reasonable since it degrades evidence.

5. Similar an **amended detailed valuation of the NOLs** should arise from the following discrepancies between statements within the Doc. **(8)**, "Form of Certificate

of Incorporation of Washington Mutual Inc."as given on page 71, footnote 2, where it is determined, that *beside* the unknown amount of shares, which shall be offered to Bondholders at Effective Date, further 50 Mio. shares shall be issued at a later stage, in particular, top of page 72 and in addition 5 Mio Preferred shares. *In contrast to this*, within the Valuation Analysis of the supplement to the POR, please cf. the Doc. **(7)** Exhibit E, pdf-page 910, it has been determined, that it will be assumed, that the reorganized WMI does not raise further capital: *"Of note, the Updated Projections do not take in account the possibility of the Debtors raising future capital, whether equity or debt, and the potential future taxable income stream that could be generated from investment of that capital"*. Concluding from this, if the reorganized WMI would possess for safety reasons a granted capital, the consequence would be *a higher valuation of the NOLs*. Concluding, this Debtor's action leaves many questions by non-correctly applying adequate valuation methods.

6. Tasks to be resolved by the Debtors by virtue of the Opinion

The Court has accomplished on p.100 of Doc. **(9)**: "The Equity Committee and the LTW Holders argue that the PIERS Claimants should be classified as equity, not as creditors, ...The Plan Supporters disagreed, ...they argue that the PIERS claims represent Debt." On p.101: "Consequently, the Court is unable to determine whether the PIERS are properly classified as creditors ahead of the equity security holders."

It cannot be ascertained that the Debtors have endeavoured anything to remedy this *lack on evidence*. The simple repetition of the classification is certainly no clarification of the matter. *Concluding*, the Plan is based furthermore on *speculation*, although this has been explicitly admonished by The Honourable Judge in the Court and documented in her Opinion. However, 'speculation' means *'no evidence'*.

IV. Confirmation Criteria

It is stated in the Court's Opinion (please cf. Doc. **(9)**, page 14): "The Plan Objectors argued at the confirmation hearing that because the Debtors' principal negotiators of the *Global Settlement* represented JPMC in other matters, they were reluctant to push for the best possible deal for the estate. The Debtors and their representatives vigorously deny this and contend that the allegations are a "sideshow" to divert attention from the real issues in the case. The Plan Objectors presented no evidence to support their contentions, *however, and the record in this case refutes the suggestion that the Debtors' professionals acted in any manner other than in the best interests of the estate*. ..."

And in addition it is stated in the Court's Opinion (please cf. again Doc. **(9)**, page 17): "... In making its evaluation, the court must determine whether "the compromise is fair, reasonable, and in the best interest of the estate." ... The court does not have to be convinced that the settlement is the best possible compromise, *but only that the settlement*

falls within a reasonable range of litigation possibilities. ...". Even this as set forth below an in view of the intellectual properties is not the case.

This *reasonable range of litigation* depends surely on *how* evident and reasonable a matter has been performed before the Court. It is obviously related to the Rule as given under chapter "II.1.(g)", Legal Basis, of this objection. The answer to the question: *how* can it be assured, that "*the compromise is fair, reasonable, and in the best interest of the estate*"?- is obviously strongly related to mediate a *balance* between a Settlement Agreement as being fair and reasonable *which is simultaneously* in the *best interest of the Estate*. Such kind of Settlement should involve ALL the parties having their interests *and* the interest of the Estate in particular; i.e. under participation of the Equity Committee even though as to date there appears to be no contribution for shareholders or at least very minor.

Therefore, the EC should participate directly in negotiations on settlement matters to help creation of such balance.

The creation of such required *balance* runs the risk of being scotched, when the great lot of the bankruptcy proceeding perpetuating matters is protected by the Debtor's *Attorney-Client Privilege* or *Attorney Work-Product*- i.e. not discoverable (please cf. again Doc. **(9)**, e. g. page 22); this impression forces everyone who has been repeatingly asked for a valuation of amounts of specific matter. Notwithstanding or assuming there can – possibly but not necessarily – be *no generic answer* given, *when* and *under which* circumstances such "Attorney-Client Privilege" will be withdrawn when major interests shall antecede. But there may be a solution to 'circumnavigate' this problem and to boost the creation of the required "*balance*": It is the appointment of a **valuation hearing** as foreseen by the Bankruptcy Rules and which could give the answers of the Parties open questions, in particular answers to the questions of the **Equity Committee** to create and/or enhance evidence in certain matters-being in *better interests of the estate* than actually made belief by the Debtors.

Additionally, as long as the Court's Order for production of Documents by the Settlement Noteholders to create and enhance evidence by answering important basic questions is not fulfilled, a Plan confirmation meeting as such seems to be not reasonable since there is a high potential that the *Global Settlement Agreement* (GSA) becomes majorly affected if not even nil and void, the assumed interest rates become obsolete if the Plan in all becomes destroyed due to a *non-sustainable* GSA et cetera. The consequences of this should be clear for all involved parties.

From a Case's procedural-economical point of view – and moreover, to save time *and* the Estate's cash, which *as such* is in a good interest of the Estate – it should be proceeded as follows:

First, proceed and finish the *discovery* of the Settlement Noteholders, and proceed and finish with an *valuation hearing* on *all* matters related to the Estates Assets, including in all the IP matters, and after this, secondly, appoint, proceed and finish a *confirmation hearing* w.r.t. a required *balanced and honestly produced Plan* being founded on a comparably more profound basis than it actual does.

Concluding, based on the analysis above, the mentioned Plan evidently is not produced in good faith, is not fair and reasonable and lacks on traceable valuation, transparency and reasons given by the Debtors, it lacks on compulsory substantiation and therefore – mandatory – on evidence.

Therefore, the Plan should be considered as not complying with the specific Rules as applicable for the Confirmation of a Reorganization Plan in a Chapter 11 Case.

The Plan cannot be confirmed.

V. Full Authorization to the Official Committee of Equity Security Holders

As a shareholder, in addition to entering my objection; by my signature below *I hereby give my full authorization to the 'Official Committee of Equity Security Holders'* to take my enclosed objection into account and to use it - *if they believe*, it is helpful in support of their arguments and procedural strategy - consistent with their standing as fiduciaries to the Estate and to the Equity.

Respectfully submitted,

Dated: May 10th, 2011

Hamburg, Germany

Ediz Kara

CERTIFICATE OF SERVICE

I, Ediz Kara, hereby certify that, on May 10th, 2011, I caused one copy of the foregoing to be served upon the parties listed below.

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Respectfully submitted,

Dated: May 10th, 2011

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