

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	§	
	§	CASE NO. 08-12229-MFW
WASHINGTON MUTUAL, INC., <i>et al.</i> ,	§	
	§	CHAPTER 11
DEBTOR	§	(Jointly Administered)

**ANICO PLAINTIFFS’ RESERVATION OF RIGHTS REGARDING THE MODIFIED
SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS**

AMERICAN NATIONAL INSURANCE COMPANY, AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, FARM FAMILY LIFE INSURANCE COMPANY, and FARM FAMILY CASUALTY INSURANCE COMPANY, and NATIONAL WESTERN LIFE INSURANCE COMPANY (the “ANICO Plaintiffs”),¹ parties-in-interest, submit this Reservation of Rights to the Modified Sixth Amended Joint Plan of Affiliated Debtors dated February 7, 2011, as modified (“Modified Plan”), and respectfully submit the following:

1. The ANICO Plaintiffs are plaintiffs in a lawsuit pending before the United States Court of Appeals for the District of Columbia Circuit, styled *American National Insurance Company, et al. v. JPMorgan Chase & Co., et al.*, Case No. 10-5245 (D.C. Cir., appeal filed July 19, 2010) (the “ANICO Litigation”).

2. Previously, at the confirmation hearing held before this Court on December 2, 3, 6, and 7, 2010, the ANICO Plaintiffs objected to the proposed broad releases contained in the Debtors’ Sixth Amended Plan, which attempted to release the defendants in the ANICO Litigation, and attempted to invoke the power of this Court to enjoin and bar the ANICO Plaintiffs from pursuing their claims in the ANICO Litigation.

¹ The term “ANICO Plaintiffs” is used as a matter of convenience, and does not imply any business relation between the members of the ANICO Plaintiffs group. National Western Life Insurance Company is not an affiliate of American National Insurance Company.



3. On January 7, 2011, the Bankruptcy Court entered an Order and an Opinion denying confirmation of the Debtors' Sixth Amended Joint Plan [Docket No. 6528] (the "Opinion"). In the Opinion, the Court identified deficiencies in the Debtors' Sixth Amended Plan, including deficiencies in the treatment of the ANICO Plaintiffs, that precluded this Court from confirming the plan.

4. Among other things in the Opinion, the Court instructed the Debtors that in order for any proposed plan of reorganization to be confirmable, the modified plan must contain three safeguards of the ANICO Plaintiffs' rights in the ANICO Litigation.² Specifically, this Court identified and mandated that any plan by the Debtors must contain the following safeguards:

- (i) The Plan must state that "there is no release being provided under the Plan or the Global Settlement by the ANICO Plaintiffs of their direct claims against any party (other than the Debtors)";
- (ii) The Plan must state that "the Court is making no determination as to who owns the claims in the ANICO Litigation"; and
- (iii) Any stipulation of dismissal that the Debtors file in the ANICO Litigation must expressly state that the Debtors "are dismissing only claims which they own."³

5. The Debtors, in response to the Court's Opinion regarding the ANICO Litigation, included a new section in the Modified Plan, Section 43.6(g), "Releases by Holders of Claims, Texas Litigation." In addition, the Debtors added language to their proposed "Stipulation of Dismissal of Texas Litigation" (the "Stipulation of Dismissal"), which is attached as Exhibit K to the Global Settlement Agreement.⁴

² See Opinion at 80-81.

³ Opinion at 80-81.

⁴ Modified Plan, Exhibit H (Global Settlement Agreement), Exhibit K to Global Settlement Agreement (Stipulation of Dismissal of Texas Litigation).

6. The Modified Plan appropriately provided that the Modified Plan and Confirmation Order shall not “release, enjoin or restrain” the direct claims asserted in the ANICO Litigation.⁵

7. However, the Modified Plan also provided that the Debtors and other signatories to the Global Settlement Agreement could file a “Stipulation of Dismissal” in the ANICO Litigation, despite that none of the parties to the Global Settlement Agreement were plaintiffs in the ANICO Litigation. At the hearing on the Debtors’ Motion to approve their Disclosure Statement on March 21, 2011, the ANICO Plaintiffs raised concerns that the language contained in the Stipulation of Dismissal might be misinterpreted by a court in another jurisdiction to indicate that this Court made a determination as to ownership of the claims asserted in the ANICO Litigation.

8. At that hearing, JPMC, by way of its counsel and in response to the ANICO Plaintiffs’ concerns, assured this Court that the Modified Plan and the Stipulation of Dismissal relating to the ANICO Litigation would have no effect on the ANICO Plaintiffs’ rights to pursue their direct claims against JPMC. In particular, JPMC’s counsel stated,

If these people have direct claims in that action, the stipulation isn’t going to affect that one bit. There is nothing, Your Honor, is doing in this action that affects that one bit.⁶

9. The Court, in response to the ANICO Plaintiffs’ concerns, stated that “maybe the disclosure statement can be amended to say that I am not deciding whether the debtor or the FDIC has any claims to that litigation.”⁷ Counsel for JPMC agreed with the Court’s suggestion.⁸ The Debtors did not object.

⁵ Modified Plan, Section 43.6(g), p. 88.

⁶ *In re: Washington Mutual, Inc.*, Case No. 08-12229 (MFW), trans. of hearing Mar. 21, 2011, p. 124.

⁷ *Id.* at p. 125.

10. Accordingly, the Debtors added language to the Modified Plan, at Section 43.6(g), that provides:

The Bankruptcy Court is not making, either pursuant to the Plan or the Confirmation Order, a determination as to which Entity, including without limitation, the Debtors, owns the claims asserted, or that could have been asserted, in the Texas Litigation

11. Given the above, the ANICO Plaintiffs do not object to the Modified Plan so long as an Order is issued that provides for no release, injunction, or stay of the ANICO Plaintiffs' litigation or their claims against JPMC, and so long as the Order states that no determination is made by this Court regarding ownership of the ANICO Plaintiffs' claims against JPMC. The ANICO Plaintiffs reserve their rights to object to confirmation of the Modified Plan to the extent

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⁸ *Id.*

the plan or the proposed Order confirming the plan is not consistent with the above and/or if the Modified Plan is further modified or construed otherwise.

Dated: May 13, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael P. Migliore, hereby certify that, on this 13th day of May, 2011, I caused true and correct copies of the ANICO PLAINTIFFS' RESERVATION OF RIGHTS REGARDING THE MODIFIED SIXTH AMENDED PLAN OF AFFILIATED DEBTORS to be served on the parties listed below via U.S. first class mail:

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