Docket #8068 Date Filed: 7/1/2011

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WASHINGTON MUTUAL, INC., et al.,	Case No. 08-12229 (MFW)
Debtors.	Jointly Administered
	Re: Docket # 6966

OBJECTION BY CHARLES S. McCURRY TO THE MODIFIED SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

Be it known to this honorable court, that I represent that I am an 'interested party' to this case before this Court —through the basis as a retail shareholder of preferred and common equity, as well as a retail shareholder of the PIERS — and therefore, I, Charles S. McCurry, file this formal Objection to the Debtors Modified Sixth Amended Joint Plan of Reorganization ("The Plan").

BACKGROUND:

1. The debtors have set and modified several Deadline dates for Objections to the Modified Sixth Amended Joint Plan. These dates have been publicly disclosed, and in some cases, privately communicated among certain other parties. This has represented a moving target. And in material cases, undisclosed to the public.
2. Recent, new, material information has come to light, to this securities holder, in the recent filings and recent hearings.
3. This shareholder did not have benefit of this information prior to the past deadlines.
4. However, this information was known or likely was to have been known, to the debtors, but not publicly disclosed.
5. This objection does not prejudice the debtor's ability to respond constructively to this objection.
6. The Debtors already are expecting, likely, a significantly longer objection to be filed by the Equity Committee, and with the court's approval, that objection shall be received by July 1st per docket # 7976.
7. The debtors have, per the court's agreement and direction, through July 11th to: (Docket# 8010)

> "ORDERED that the Debtors are authorized to file an omnibus ***reply to <u>any</u> objection to confirmation*** of the Modified Sixth Amended Plan at or before 12:00 P.M. (noon) (Eastern Daylight Time) on July 11, 2011" *(Emphasis added)*

BASIS OF OBJECTION:

1. "The Plan" fails the legal reasonableness test, in light of new information provided by the so-called Settlement Note Holders ("SNH")
2. "The Plan" fails the legal reasonableness test, in light of new information illuminating the failure of the Debtors to perform their fiduciary responsibilities to all parties – creditors and equity alike.
3. In light of new information, the scope of prior 2019 disclosures failed to meet the disclosure requirements under the law, and may have unduly and improperly influenced the construction of "The Plan".
4. "The Plan" does not provide for the court for any alternative choices within "The Plan" for alternative resolutions such as applying the Federal Judgment rate and/or Equitable Subordination and/or Disallowance of certain class claims, as may be appropriate in light of recent information.

Objection #1
"The Plan" fails the legal reasonableness test, in light of new information provided by the so-called Settlement Note Holders ("SNH")

In developing the original Plan of Reorganization and the underlying original Global Settlement Agreement, certain parties became in possession of Material Non-Public Information ("MNPI").

Among those parties were Aurelius Capital Management L.P. , Appaloosa Management L.P., Centerbridge Partners, L.P. and Owl Creek Asset Management, L.P. – Hereinafter referred to as the Settlement Note Holders ("SNH").

The recent filings and the hearing heard on June 29th, bring to light simple facts that are simply plain to see.

a. The SNHs participated in the drafting of earlier incarnations of "The Plan", earlier incarnations of the Global Settlement Agreement ("GSA"). The current Modified Sixth Amended Plan and its underlying GSA are materially similar and in much substantial form word-for-word identical to the earlier incarnations. For the purposes of class waterfall, nothing has substantially changed.

b. The SNHs received, pursuant to recently disclosed confidentially agreements, confidential Material Non-Public Information in the process of these settlement negotiations.
c. Prior testimony in the Plan Confirmation hearings stated that the SNHs **initiated** and proffered early versions of the 'term sheets' and in fact were responsible for restarting negotiations after they had failed.
d. At least two different confidentiality periods existed.
e. The SNHs, while stating they did not trade during those confidentiality agreements, immediately traded upon their expiration or upon the direction of the Debtors that the confidentiality agreements did not apply.
f. The SNHs traded with full knowledge that they were in possession of Material Non-Public Information that had not been disclosed. Regardless of whether the Debtors disclosed the information or not, the SNHs – to this day – have information which has not been disclosed to the public.
g. Remaining private and confidential, and undisclosed to this day – this includes: Information of Debtor's legal strategies, analysis by the Debtor's as to strengths and weaknesses of arguments, the willingness's of various settling parties to compromise various claims and assets, as well as likely determinations of such assets as the $4b of Estate funds on deposit at JPMC.

Now, in very recent filings and in the Hearing of June 29th, we find the SNHs specious claim that this Material Non-Public Information was "cleansed" in the process of them creating a "safe harbor" which exonerates them from any activities they may have done, and any gerrymandering of the classes for which "The Plan" provides a recovery.

This is exceptionally convenient. That the exact securities that the SNHs owned – and more importantly – as recently disclosed – were securities that were additionally purchased *immediately following* the execution of this so-called "safe harbor". With information, that to this day, remains out of the eyes and knowledge of the public.

The "safe harbor", as claimed in court on June 29th, was for the Debtors to take responsibility for disclosing any confidential information – absolving the SNHs from such responsibility.

"Safe harbor" or not – This information remains Material Non-Public Information until disclosed by **somebody**.

Engineered to exacting Machiavellian standards – and at **the specific request** of the SNHs – the "confidentiality agreement" added this "safe harbor" provision, presumably to exploit this 'hole' in information awareness to their exceptional benefit. And, most importantly, to the detriment of "The Plan" and other stakeholders in classes not reached by the gerrymandered waterfall.

Addressing this issue of the responsibilities of holders of Material Non-Public Information, the Securities and Exchange Commission republished online "Insider Trading – A U.S. Perspective" from the "16th International Symposium on **Economic Crime**". [1]

> **From "III. Insider Trading Law in the United States"** (Emphasis added)
>
> [...] Far less clear was whether Section 10(b) and Rule 10b-5 prohibited insider trading by a corporate "outsider." In 1961, in the case of *In re Cady Roberts & Co.,* the Securities and Exchange Commission, applying a broad construction of the provisions, held that they do. The Commission held that the duty or obligations of the corporate insider could attach to those outside the insiders' realm in certain circumstances. The Commission reasoned in language worth quoting:
>
>> Analytically, the obligation [not to engage in insider trading] rests on two principal elements: first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone, and second, **the inherent unfairness involved where a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.** In considering these elements under the broad language of the anti-fraud provisions we are not to be circumscribed by fine distinctions and rigid classifications. Thus, it is our task here to identify those persons who are in a special relationship with a company and privy to its internal affairs, and thereby suffer correlative duties in trading in its securities. Intimacy demands restraint lest the uninformed be exploited.
>
> Based on this reasoning, the Commission held that a broker who traded while in possession of nonpublic information he received from a company director violated Rule 10b-5. **The Commission adopted the "disclose or abstain rule": insiders, and those who would come to be known as "temporary" or "constructive" insiders, who possess material nonpublic information, must disclose it before trading or abstain from trading until the information is publicly disseminated.**
>
> Several years later in the case of *SEC v. Texas Gulf Sulphur Co.*, a federal circuit court supported the Commission's ruling in *Cady*, stating that anyone in possession of inside information is required either to disclose the information publicly or refrain from trading. **The court expressed the view that no one should be allowed to trade with the benefit of inside information because it operates as a fraud all other buyers and sellers in the market.**-This was the broadest formulation of prohibited insider trading.

This so-called "safe harbor" did not exonerate the SNHs from their responsibilities here. They, to this day, hold Material Non-Public Information. And pursuant to "Insider Trading" – cannot

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[1] Speech by SEC Staff: Insider Trading – A U.S. Perspective. Remarks by Thomas C. Newkirk, Associate Director, Division of Enforcement. Melissa A. Robertson Senior Counsel, Division of Enforcement, U.S. Securities & Exchange Commission - 16th International Symposium on Economic Crime, Jesus College, Cambridge, England September 19, 1998 - http://www.sec.gov/news/speech/speecharchive/1998/spch221.htm

use that information in exploiting their positions in the marketplace – or in this case, exploiting their positioning in creation of "The Plan" to those securities they already have, and then subsequently – and secretively – purchasing more of those exact securities to which they gerrymandered a plan, and/or selling securities outside of that which would be covered by "The Plan". The SNHs had confidential knowledge of where the waterfall stopped, in advance of "The Plan" being made public.

Recapping:

> *... [T]he inherent unfairness involved where a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.*
>
> *Intimacy demands restraint lest the uninformed be exploited.*
>
> *The Commission adopted the "disclose or abstain rule": insiders, and those who would come to be known as "temporary" or "constructive" insiders, who possess material nonpublic information, must disclose it before trading or abstain from trading until the information is publicly disseminated.*

The SNHs had the responsibility to "disclose or abstain" from trading. They cannot pass-the-buck over to their lawyers, or to the Debtors to be responsible for "disclosure". They themselves, and only themselves, must ensure that a level and fair, and non-fraudulent playing field exists.

The SNHs intentionally attempted to draft such a "confidentiality agreement" to create this so-called "safe harbor" to allow them to do exactly what they did.

a. To place themselves at the negotiating table, as substantial contributors to "The Plan".
b. To gain confidential, Material Non-Public Information.
c. To claim "safe harbor" in the event that they did not disclose the information.
d. To exploit the marketplace to the detriment of those who did not have this Material Non-Public Information
e. And to purchase the securities that they, themselves, had a hand in determining would be covered by the waterfall.

Additionally - In all but one case, the SNHs did not even bother to construct an Ethical Wall. For the one SNH that did, it was highly – and intentionally – ineffective and purely was rote in nature.

And lastly, the SNHs did not seek the court's permission or guidance. In other Bankruptcy cases, those who wish to continue to trade in the securities of the affected Debtors, make a plan available for court approval. The court has the opportunity to review such a plan, and the 'trading entities' have brought their intention to light, and to the public.

The SNHs **intentionally** did not do this. They, instead, took to crafting their own private "confidentiality agreement" – outside of the court, and without review or public display.

Therefore, the burden shifts to the SNHs for any inadequacies in their agreement or its execution.

They intentionally chose not to seek court approval for a viable method for trading in the securities, and chose on their own what would be acceptable and not acceptable.

And it is apparent that the SNHs clearly designed the process so that it was most advantageous to them.

This caused a direct harm to this 'interested party' through the potential noted above by the SEC: **"because it operates as a fraud all other buyers and sellers in the market."**

As this court knows, Bankruptcy court operates as a court of equity (i.e., a court charged with fairly weighing the interests of all parties involved and ensuring that those parties have the opportunities to plead their cases).

In re Beaty, 306 F.3d 915,922 (9th Cir. 2002)

> "[A] bankruptcy court is a court of equity and should invoke equitable principles and doctrines, refusing to do so only where their application would be inconsistent with the Bankruptcy Code."
>
> "Torts such as fraud and deceit rest on the notion that parties should not be able to create informational advantages through deception. See 37 C.J.S. Fraud § 3."

Parties, in front of this court - should not be allowed to gain an advantage through concealment or intentional obfuscation. This clearly includes how "The Plan" was developed and the underlying GSA.

I must trust in this court to not allow this advantage, of the SNHs and others, to corrupt "The Plan" and distort a level of equity and equality.

Equally this court should, in fact must not, approve such a corrupted "Plan".

When a "safe harbor" and/or "ethical wall" is intentionally constructed so that it is paper thin – so much so as to clearly infer fornication in the next room by silhouette and sound -- then that "wall" or "harbor" ceases to be functional or valid.

This is not by accident, this was by intentional design.

Objection #2:
"The Plan" fails the legal reasonableness test, in light of new information illuminating the failure of the Debtors to
perform their fiduciary responsibilities to all parties – creditors and equity alike.

The Debtors have demonstrated their abandonment of fiduciary responsibility – effectively destroying the basis of "good faith" in the construction of "The Plan" and the corresponding GSA.

The debtors, at the request of the SNHs, added the "safe harbor" language, and agreed to it by signing the updated agreement.

This was, heretofore, also Material Non-Public Information – the existence and specificity of these undisclosed "confidentiality agreements" with the SNHs

If the claims of the SNHs for "safe harbor" are to be believed – the debtors assumed the responsibility for disclosing the Material Non-Public Information to the general public, so that a level playing field may continue.

The debtors were asked by the SNHs not once, but twice – in completely separate confidentiality time windows -- if this disclosure had been done, and the debtors claimed that all information was released. Or more specifically, all information that they WERE going to release was released.

This so-called "safe harbor" was used as a Debtor Authorization for the SNHs, sophisticated Hedge Fund investors, to return to trading – with information that continued NOT to be disclosed to the public.

Complete "plausible deniability" was being sought by the SNHs (as sophisticated hedge funds), and complete fiduciary irresponsibility and abandonment done by the debtors.

Even if the "first time" (first confidentiality agreement) it happened was somehow excusable based on "We didn't know the SNHs were going to trade on this Material Non-Public Information" – then by the time the second occurrence happened (the second confidentiality agreement) – the debtors clearly were "on notice" on the behaviors to be expected, and the fiduciary responsibilities – claimed by the SNHs in the confidentiality agreement – of the Debtors to perform the disclosure.

In both instances, the Debtor did not. Once again, this goes to discredit the "Good Faith" in which "The Plan" was constructed and subsequently proposed to the court.

The debtors had reason (legal and otherwise) to keep certain information, including assets, status of negotiations, etc., not released to the public. If this is obvious to the average-Joe Retail investor, this certainly was obvious to 'sophisticated investors'

The debtors may have released "all they could" or "all they would" – but certainly did not release "everything known" to the SNHs that was confidential. That confidential information persisted, and persists to this date.

I do not know any of the working details of what was and was not acceptable to the different parties. HOWEVER - The SNH Hedge Funds still do, and traded with it, and can continue to trade with it.

No 'safe harbor' absolves the hedge funds of information that cannot, or clearly did not become public. Information about the status of the negotiations – where the various parties were in agreement and what remains in disagreement – is highly confidential information – never appears in a MOR or in a press release or SEC 8-K filing, or in any other public filing.

Earlier, SNHs claimed, in response to the Pro Se allegations by Nate Thoma, (but no longer) that they traded only on publicly available information. Information to the contrary was presented in court – by these very same SNHs – that instead of prior claims, they traded immediately upon 'release' (presumably by safe harbor) with this still-confidential information.

The SNHs claims have significantly changed from "we traded only on public information", to "it was the debtor's job to make public what Material Non-Public Information we knew and traded on" – a hugely significant difference in stance and the change in what the SNHs now admit really happened.

I can only imagine my personal glee in knowing I can safely trade in the market, at low costs to buy or at high prices to 'short', all based on my confidential information – but I'm protected by a manufactured 'safe harbor' – a crafted "get out of jail free" card.

A singular vague paragraph in an email and a singular vague response – may not be sufficient to prove criminal level conspiracy – but in this case it need not. This bankruptcy case is a civil matter, not a criminal matter. And the standards for "beyond a reasonable doubt" vs. a "preponderance of the evidence" are different.

Emails provided [2] - Page 58 of Docket 8004 – ("Exhibit E" in original)

"Uzzi, Gerard" <guzzi@ny.whitecase.com>

05/07/2009 02:55 PM

To brian.rosen@weil.com
cc
Subject Wamu

Brian,

Thanks for yesterday's meeting. I think it will help us advance the case constructively. I wanted to follow up on one point relating to the expiration of the confidentiality agreement so that there is no confusion. I would like to confirm that, pursuant to the confidentiality agreements, the debtors believe that no further disclosure is required. You confirmation of this point is greatly appreciated. As you can appreciate it, this is an important point to the note holders.

Jerry

From: brian.rosen@weil.com [mailto:brian.rosen@weil.com]
Sent: Thursday, May 07, 2009 3:00 PM
To: Uzzi, Gerard
Subject: Re: Wamu

No problem. The Debtors believe that all required disclosure has been made.

Also, thanks for yesterday and the tone of the meeting.

Brian

Page 69 of Docket 8004 – ("Exhibit G" in original)

From: Rosen, Brian [mailto:brian.rosen@weil.com]
Sent: Monday, December 28, 2009 4:06 PM
To: Roose, Matthew
Cc: 'bkosturos@alvarezandmarsal.com'; Chad Smith; 'Jon Goulding'; 'jmaciel@alvarezandmarsal.com'; Sapeika, Tal; Rodden, Kelly; Curro, Matthew; Scheler, Brad Eric
Subject: RE: WMI - MOR

Matt,

I have spoken to folks at WMI/A&&M. We will be filing the MOR on Wednesday at some point. At that time, WMI will consider all necessary disclosure obligations to have been satisfied and the Confidentiality Agreement may be deemed terminated. Inasmuch as we will not be seeking comments and suggestions to the MOR, WMI believes it would be inappropriate for an advanced review of the MOR by your clients.

Brian

[2] Attachment (b) of Docket 8004 – "Aurelius Capital Management, LPs Objection to Motion of the Official Committee of Equity Security Holders for an Order Compelling Production of Documents"

Clearly, the Debtors were aware of the expectations of the SNHs for disclosure of the Material Non-Public Information.

The level of seriousness, of billions involved – should have prompted the Debtors as well as the SNHs to do more than rely on just a simple email exchange to demonstrate the effectiveness of the "ethical walls" where created, and the proofs of disclosure of the Material Non-Public information.

Absolutely no proof of meeting disclosure obligations was provided by the SNHs.

And, absolutely no proof of meeting disclosure obligations was provided by the Debtors.

The debtors failed their fiduciary responsibility – both through the failure to disclose what remains, to this date, Material Non-Public Information, -and- equally failed their fiduciary responsibility by condoning – in fact downright **actively enabling** -- the behavior of the SNHs to resume trading while holding this same Material Non-Public Information.

A failure of fiduciary responsibility, by one of the developers of "This Plan" shows a gross lack of "good faith" to all affected classes and especially to this equity security holder.

Here, for approval of "The Plan" – the standard is a 'reasonableness' test – and I suggest that there is nothing remotely reasonable about the behavior of the SNH Hedge Funds, nor of the debtors – both of which who – together – drafted and proffered the original GSA and POR and the debtor has been responsible for all subsequent iterations of both, up to and including the one being considered here for confirmation.

Objection #3: In light of new information, the scope of prior 2019 disclosures failed to meet the disclosure requirements under the law, and may have unduly and improperly influenced the construction of "The Plan".

The scope of prior 2019 disclosures failed to meet the disclosure requirements under the law, and may have unduly and improperly influenced the construction of "The Plan", and/or may improperly disguise the nature and veracity of holders of 'confidential information' in the construction of "The Plan" and hide from the view of the court and the public such information.

The importance of such information as lacking, being magnified by recent information, and the recent in-court comments made by Owl Creek Asset Management, one of the SNHs is directly demonstrated:

From the Transcript of the Omnibus hearing of February 8th, 2010, PDF Page 57 - 59

> 18 MR. HARRIS: Good morning, Your Honor. Adam Harris
> 19 from Schulte Roth & Zabel on behalf of Owl Creek Asset
> 20 Management.
> [...]
> 6 Your Honor, just a couple other points to make. And
> 7 that is, the settlement noteholders here were not the only
> 8 people in this case that had access to material nonpublic
> 9 information. Various other parties were engaged in
> 10 negotiations with the debtors during various points in the case
> 11 in other creditor constituencies represented by other people.
> 12 **They were restricted for some periods of time. They were**
> 13 **unrestricted for some periods of time. But we were not the**
> 14 **only people who were out in the marketplace.**

This clearly states that Owl Creek, at a minimum, is applying the tried and true "if they did it, then it is OK that we did it" defense.

It did not work with my mother. It should not work in this court.

2019 Disclosures are designed to address just this kind of issue. Who, as separate entities choose to be represented as a collective entity under common legal representation, must file with the court information regarding their holdings and interests in the Debtors securities.

This Court specified the 2019 reporting requirements on 12/2/2009 (Docket No. 1952). In clarifying the Court's opinion, it noted the following from Rule 2019(a):

> "...the amounts of claims or interests owned by the entity, the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. ... A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision." [Fed. R. Bankr. P. 2019(a)].

And later, a second time, the Court again advised interested parties on its expectations of 2019. On 4/6/2010 the court said: (emphasis added)

> "Thank you. Well, let me do this. I do believe, respectfully, disagreeing with my colleagues Judges Sontchi and Rich Lavitch, that Rule 2019 does require that a group of creditors being represented by counsel as a group comply with 2019 and **specifically state when the position was acquired and the amount paid for it.**"

The Debtors further, in Docket 3447 stated the 2019 requirements – echoing the prior statements of this court: (Emphasis added)

> "NOTICE IS HEREBY GIVEN that, (a) in accordance with the Court's directive of April 6, 2010 (the "Directive"), and (b) consistent with the Court's Opinion, dated December 2, 2009 [Docket No. 1952] (the "Opinion"), on or prior to may 17, 2010, at 5:00 p.m. ... every entity or committee representing more than one creditor or equity security holder in the above-referenced chapter 11 cases shall file a verified statement (the "Statement") with the Clerk of the Bankruptcy Court consistent with the provisions of Rule 2019(a) of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), including, without limitation, setting forth (1) **the amount of claims or equity interests owned by the entity or the members of the committee** (including claims against Washington Mutual Bank which form the basis of alleged claims against Washington Mutual, Inc. ("WMI")), (2) **the date on which any such claims or equity interests were acquired,** (3) **the amounts paid therefor** and (4) **the date of any sales or other dispositions thereof and the amounts received in connection therewith.**"

To date, **not a single** 2019 disclosure has met the full requirements – those requirements stated by the court, and re-stated again by the Debtors.

Various end-run attempts at "summarization", "ranges of prices", "ranges of dates", etc., have been tried by various parties to skirt around the requirements of 2019 disclosure.

This came to a head on 5/19/2010 where the Court stated that full compliance with 2019 would require MORE than any party had submitted to-date, but for the proposes of the case, what had been submitted was – at that time – sufficient.

From the Transcript of 5/19/2010 (Emphasis added)

> The Court Stated: **"Others submitted statements which gave a range of dates and a range of prices. I do not think that complies with 2019. But for the purposes of this case I am going to allow that to stand**, because of the fact that after seeing all these verified statements it's clear that, at least to me, that there's not one counsel representing any sufficiently large group of creditors in any one class that I'm going to be convinced to buy that counsel's argument alone, as to how that class should be treated."

Although the Court requested a form of order for 2019 disclosure during the hearing on 5/19/2010, it does not appear that a written order **was ever submitted** into the case record.

Given the recent illumination of the potential misuse of Material Non-Public Information, combined with the clear statement of Owl Creek that "we were not the only people who were out in the marketplace." (In the context of in the marketplace with others with potentially Material Non-Public Information) - It is quite reasonable and, in fact, clearly necessary to readdress the lack of compliance with rule 2019.

As the Court previously noted, a full 2019 disclosure should include the following attributes – in specificity without summarization or other obfuscation:

1) The amount of each claim or equity interest owned by the entity
2) The date that each claim or equity interest was acquired
3) The amount paid for each claim or equity interest
4) The date of any sale or disposition of a claim or equity interest
5) The amount received for each sale or disposition.

This court, in order to properly weigh the veracity of the participants in the creation of "The Plan" must have full disclosure of 2019 affected parties.

Therefore, I object to the confirmation of "The Plan" until the court has requested, and further evaluated an updated 2019 reporting – in full and complete detail.

To that end, pursuant to the powers of the Court in Title 11 USC § 105.

> Power of court
>
> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Therefore, **sua sponte**, it is requested that this court revisit the 2019 reporting requirements, previously deemed as incompliant with the 2019 rule, and at the courts direction, require an updated 2019 from all affected parties, compliant with items 1 through 5 above.

Objection #4
"The Plan" does not provide for the court for any alternative choices within "The Plan" for alternative resolutions such as applying the Federal Judgment rate and/or Equitable Subordination and/or Disallowance of certain class claims.

Lastly, and simplistically, it has already been noted in the Disclosure Statement hearing that this plan is highly rigid. Effectively a "take it or leave it proposition".

It provides little, if any, latitude to apply Federal Judgment Rate ("FJR"), Equitable Subordination and/or complete Disallowance of certain claims of certain classes.

As noted here, the concerns of the behavior of the SNHs, and with the lack of 2019 reporting of other "in the marketplace" players who may have held Material Non-Public Information – for these reasons and/or other equitable ones, this court may find that any/or of these solutions is warranted.

This plan cannot be confirmed simply, and only, because "it is the one on the table".

Regardless of the debtors repetitive drum beating of "delay is costing the estate millions a month" – those delays are LARGELY at the Debtors doorsteps. They continue to put forward plan after plan, with revisions, modifications, etc – each one suffering from one or more fatal flaws.

This latest fatal flaw was identified at the Disclosure Hearing, well before re-Voting even commenced – that the plan was overly rigid and provided the court little flexibility.

To that end, this plan is grossly inadequate in this area. "The Plan" should not be confirmed if the court finds that it would, otherwise, effect a solution -- such as applying FJR --to reach an equitable solution and resolution to the estate.

I would state that more drastic measures are required due to the inability to "unring the bell" that the SNHs have caused through their trading while holding Material Non-Public Information, and the Debtors have caused by continuing to withhold valuation information, and failing to disclose confidential information that should have been made public.

Those more drastic measures that the court should consider, and "The Plan" does not provide the mechanisms for the flexibility to consider them, would also include Equitable Disallowance and/or Equitable Subordination.

From Jones Day "*Business Restructuring Review*", [3]

> Section 510(c), which provides that the bankruptcy court may, "under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of allowed interest to all or part of another allowed interest."
>
> In 1977, the Fifth Circuit Court of Appeals articulated what has become the most commonly accepted standard for equitably subordinating a claim. Under the Mobile Steel standard, a claim can be subordinated if **the claimant engaged in some type of inequitable conduct that resulted in injury** to creditors (or **conferred an unfair advantage** on the claimant) and if equitable subordination of the claim is consistent with the provisions of the Bankruptcy Code.

This is not just simply a bell that cannot be un-rung. The SNH hedge funds, and potentially others (once full and complete 2019 disclosures are made) - have played an entire symphony that cannot be un-rung.

[3] Jones Day- Business Restructuring Review - Bankruptcy Court Empowered to Recharacterize Debt as Equity - October 2003 - http://www.jonesday.com/newsknowledge/publicationdetail.aspx?publication=1414

The rectification of the harm caused by the SNHs and the Debtors – sought, by this interested party would include, at a minimum, the following:

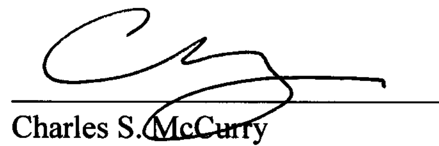
1) Deny this plan due to the gross "lack of good faith" and intentional gerrymandering displayed.

2) Equitably Disallow the claims of the SNHs

3) Apply Federal Judgment Rate to all remaining debt

Sunshine, as well as fairness in the judicial process, extended to all affected parties, is a cornerstone of justice.

With profound respect to the court, witness my hand to this statement of objection:



Charles S. McCurry

June 30th, 2011

Section 1128 of the Bankruptcy Code provides that any party in interest may object to the confirmation of a plan. Any objection to confirmation of the Modified Plan must be in writing, [...] and must be filed with the Bankruptcy Court, with a copy to Chambers, together with proof of service thereof, and served upon:

I, Charles S. McCurry, do certify that one copy of this Objection was served via first class mail upon all of the following parties:

(i) Washington Mutual, Inc. 925 Fourth Avenue, Seattle, Washington 98104 (Attn: Charles Edward Smith, Esq.), on behalf of the Debtors;

(ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Brian S. Rosen, Esq.), as counsel to the Debtors;

(iii) Richards Layton & Finger P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19899 (Attn: Mark D. Collins, Esq.), as co-counsel to the Debtors;

(iv) Quinn Emanuel Urquhart & Sullivan, LLP, 55 Madison Avenue, 22nd Floor, New York, New York 10010 (Attn: Peter Calamari, Esq.), as Special Litigation and Conflicts Counsel to the Debtors;

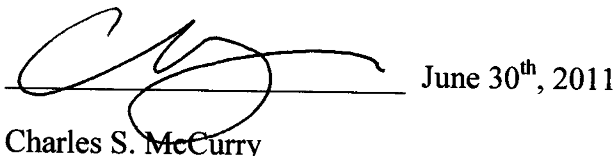
(v) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19899-0035 (Attn: Jane Leamy, Esq.);

(vi) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attn: Fred S. Hodara, Esq.), as counsel to the Creditors' Committee;

(vii) Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, Delaware 19801 (Attn: David B. Stratton, Esq.), as co-counsel to the Creditors' Committee;

(viii) Susman Godfrey, L.L.P., 1201 Third Avenue, Suite 3800, Seattle, Washington 98101 (Attn: Justin A. Nelson, Esq.), as counsel to the Equity Committee; and

(ix) Ashby & Geddes, P.A. 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, Delaware 19899 (Attn: William P. Bowden, Esq.), as local counsel to the Equity Committee



June 30th, 2011

Charles S. McCurry