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CLERK
U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

In re
WASHINGTON MUTUAL, INC., *et al.*,¹
Debtors.

Chapter 11
Case No. 08-12229 (MFW)
(Jointly Administered)

Hearing Date: July 28, 2011 at 11:30 a.m.
(ET)
Obj. Deadline: July 22, 2011 at 4:00 p.m.
(ET)

**MOTION OF BETTINA M. HAPER TO COMPEL ALL WASHINGTON
MUTUAL, INC. CREDITORS² TO FULLY COMPLY WITH
FEDERAL RULE OF BANKRUPTCY PROCEDURE 2019**

Bettina M. Haper hereby, files this Motion for an order to compel all Washington Mutual, Inc. Creditors to fully comply with Federal Rule of Bankruptcy Procedure 2019 and respectfully represents as follows:

BACKGROUND

1. On August 6, 2009 JPMorgan filed a motion to compel the Settlement Noteholders' compliance with Bankruptcy Rule 2019 [Docket No. 1444]. On August 19, 2009 the Settlement Noteholders filed objections [Docket No. 1515]. The hearing on JPMorgan's motion to compel compliance with Bankruptcy Rule 2019 commenced on August 24th

¹ The Debtors in this chapter 11 case is Washington Mutual, Inc., located at 1301 Second Avenue, Seattle Washington, 98101. The last four digits of the Debtors federal tax identification number is 3725.

² Creditors refer to any holders of Washington Mutual, Inc. debt, who are members of an official committee or participated in settlement negotiations or whose representatives took part in either.



2. On December 2, 2009 the Court ruled that the Settlement Noteholders would be required to submit a detailed list of their positions in WMI securities, as well as a comprehensive summary of all trading activities with respect to such [Docket No. 1953]. In its opinion, the Court clarified the reporting requirements by highlighting the following sections 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)].

3. On April 6, 2010, The Court further stated during a hearing on that date:

“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.**” [Hearing transcript, 4/6/2010, p 35, emphasis added].

4. On April 15, 2010, the Debtors gave notice to the creditors that they were to comply with Rule 2019:

“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.**” [Docket No. 3447, emphasis added].

5. On November 19, 2010, Nate Thoma filed an Objection [Docket No.

6058] to the Sixth Amended Joint Plan of Affiliated Debtors, pursuant to Chapter 11 of the United States Bankruptcy Code (“the Plan“). Mr. Thoma’s objection provided documentation that Owl Creek Asset Management, L.P., Centerbridge Partners LP, Aurelius Capital Management LP, Appaloosa Management, LP., (collectively, the “Settlement Noteholders”) traded on material, nonpublic information obtained during negotiations of the Plan.

6. On December 7, 2010 Mr. Thoma appeared at the Confirmation Hearing to present his objection before the court. Again, the Settlement Noteholders made virtually no attempt to refute Mr. Thoma’s allegations.

7. On January 7, 2011, this court rendered an opinion denying the Settlement Noteholders releases under the Plan. Part of the opinion noted:

“Further, one of the individual creditors who objected to the Plan, Mr. Thoma, sought to introduce evidence that the Settlement Noteholders used their position in the negotiations to gain nonpublic information about the Debtors which permitted them to trade in the Debtors’ debt. While the evidence was not admitted because it was hearsay, the Court is reluctant to approve any releases of the Settlement Noteholders in light of those allegations.” [Docket No. 6528]

8. On January 18, 2011, the Equity Committee filed a motion to conduct a Rule 2004 examination of the Settlement Noteholders based on the court’s opinion in regards to the Settlement Noteholders questionable activities [Docket No. 6567]. On February 8, 2011, the Court heard arguments on the Equity Committee’s motion. After hearing oral arguments from the parties, the Court granted, in part, the Equity Committee’s motion, and allowed discovery to proceed [Docket No. 6725].

9. Throughout this case, Creditors and parties-in-interest have submitted generalized and aggregated lists of current holdings with ranges of dates and prices over

which those holdings were acquired. They have engaged in constant changes between representation, all of which obscures the possibility of determining any consequential information, rendering the intended compliance of Rule 2019, meaningless.

JURISDICTION

10. This court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

STANDING

11. Washington Mutual, Inc. is currently under the ownership of its shareholders unless and until such time as its equity is cancelled. As I am a shareholder of Washington Mutual, Inc. securities and this court has recognized the rights of shareholders to appear as parties in interest, I have standing to assert those rights in this proceeding.

RELIEF REQUESTED

12. By this Motion, Bettina M. Haper respectfully request the Court to enter an order substantially in the form attached hereto, compelling all Washington Mutual, Inc. Creditors to: fully comply with Federal Rule of Bankruptcy Procedure 2019, by requiring each representative to submit disclosures broken down by each Creditor, detailing their individual claims or equity interests, the amounts, the date(s) such claims were acquired, the amounts paid thereof and the date of any sales or other dispositions thereof and the amounts received in connection therewith, and to submit any material changes that may arise in connection with the individual Creditor's interest.

BASIS FOR RELIEF

13. Bankruptcy Rule 2019(a) sets forth that:

Every entity or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of the entity or indenture trustee, and, in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of the entity, the organization or formation of the committee, or the appearance in the case of any indenture trustee, 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 therefore, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the entity, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

14. Bankruptcy Rule 2019(b) sets forth that:

On motion of any party in interest or on its own initiative, the Court may (1) determine whether there has been a failure to comply with the provisions of subdivision (a) of this rule or with any other applicable law regulating the activities and personnel of any entity, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit that entity, committee, or indenture trustee to be heard further or to intervene in the case; (2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any entity or committee in contemplation or in the course of a case under the Code and grant appropriate relief; and (3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by an entity or committee who has not complied with this rule or with § 1125(b) of the Code.

ARGUMENT

I. THIS COURT HAS DETERMINED THAT THE CREDITORS ARE REQUIRED TO SUBMIT TO PROCEDURE 2019

15. In this Court's December 2, 2009 decision, it determined that Creditor committees were governed under Rule 2019 and required to comply with disclosure. The Court was not persuaded by the arguments of the creditors and found that a "loose affiliation" was the very definition of an ad hoc committee, that it possessed "virtually all the characteristics of an ad hoc committee" and that "they are acting as an ad hoc committee".

II. RULE 2019 DEMANDS TRANSPARENCY

16. The purpose of Rule 2019 is to ensure transparency in the Bankruptcy process. In this Court's December 2, 2009 ruling, it references the history of Rule 2019 and its prevailing relevance. Specifically, a Creditor's duty to act in good faith when purporting to assume a fiduciary role for the benefit of a class. In 2009, JPMorgan alleged that certain Creditors were not acting in good faith, as creditors, but as investors. In this instance, there is reason to believe that this case cannot be legitimately dispensed without full transparency. Questions regarding investment activities are not limited to a few and will continue to linger beyond this company's exit from bankruptcy if not resolved.

17. Several of the Creditors in this case have changed representation in a way that makes it extremely difficult to ascertain who is representing which claim or interest. Furthermore, the creditors are not simply seeking new counsel. They are moving between counsels that are representing other Creditors in this case.

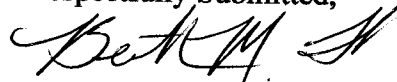
18. Due to the current submissions by various representatives of various parties it is impossible to determine the holdings of any one Creditor. There appears to have been an organized effort to obscure those holdings and subsequently, the investment activities of many parties involved in this bankruptcy. This lends credence to JPMorgan's initial claim that they are acting as investors and not Creditors.

19. It is interesting to note that JPMorgan has asserted itself as a creditor, with the Debtor supporting this assertion, yet has to this date never complied with Rule 2019. Since JPMorgan was a primary negotiator in this proceeding, it is clearly incumbent that they comply with Rule 2019 and submit disclosures for any interests they may have or had during the course of this bankruptcy through any of their holdings or holdings they controlled.

20. **WHEREFORE**, in light of the above, Bettina M. Haper respectfully requests that the Court enter an order, substantially in the form attached hereto, compelling all Washington Mutual, Inc. Creditors to fully comply with Bankruptcy Rule 2019 and otherwise bar their participation in these proceedings until these deficiencies are fully remedied and grant such other relief as it deems just.

Dated June 30, 2011

Respectfully Submitted,



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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
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In re
WASHINGTON MUTUAL, INC., *et al.*,
Debtors.

Chapter 11

Case No. 08-12229 (MFW)

(Jointly Administered)

Ref No. _____

**ORDER GRANTING THE MOTION OF BETTINA M. HAPER TO COMPEL
ALL WASHINGTON MUTUAL, INC. CREDITORS TO FULLY COMPLY
WITH FEDERAL RULE OF BANKRUPTCY PROCEDURE 2019**

Upon consideration of the Motion of Bettina M. Haper to Compel All Washington Mutual, Inc. Creditors to Fully Comply with Federal Rule of Bankruptcy Procedure 2019 (the "Motion"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 157 and 1334; and consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation; it is hereby:

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that within five (5) business days from the entry of this Order, the Washington Mutual, Inc. creditors shall comply with Bankruptcy Rule 2019 and that each of the Washington Mutual, Inc. creditors shall disclose their debt and/or equity broken down by each creditor, detailing their individual claims or equity interests,

the amounts, the date(s) such claims were acquired, the amounts paid thereof and the date of any sales or other dispositions thereof and the amounts received in connection therewith, and to submit any material changes that may arise in connection with the individual creditor's interest.

ORDERED, that until the Washington Mutual creditors comply with Bankruptcy Rule 2019 as set forth above, the Washington Mutual creditors shall be otherwise refused right of participating in these proceedings; and it is further

ORDERED, that the Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the implementation and enforcement of this Order.

Dated: July____,2011
Wilmington, Delaware

The Honorable Mary F. Walrath
United States Bankruptcy Judge

**Washington Mutual, Inc
Bankruptcy Case No. 08-12229 MFW**

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