

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : **Chapter 11**
 :
WASHINGTON MUTUAL, INC., *et al.*,¹ : **Case No. 08-12229 (MFW)**
 :
 Debtors. : **(Jointly Administered)**
 :
-----X **Hearing Date: August 12, 2011 at 10:30 a.m. (ET)**

**NOTICE REGARDING
DEBTORS' MOTION PURSUANT TO SECTION 554(a)
OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO
ABANDON WMI'S EQUITY INTERESTS IN WASHINGTON MUTUAL BANK**

PLEASE TAKE NOTICE that, on November 12, 2010, Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (together, the "Debtors"), filed a motion [D.I. 5885] (the "Motion") for an order authorizing, but not directing, WMI and its chapter 11 estate to abandon all equity interests in Washington Mutual Bank ("WMB") and scheduled a hearing to consider the Motion for December 1, 2010, at 10:30 a.m. (Eastern Time). Responses to the Motion and the relief requested therein were due on or prior to November 29, 2010, at 4:00 p.m. (Eastern Time) (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that (a) prior to the Objection Deadline, Tricadia Capital Management, LLC ("Tricadia") filed an objection to the Motion [D.I. 6117], (b) following discussions with the Debtors, Tricadia withdrew its objection to the Motion [D.I. 6272], and (c) pursuant to the Debtors' review of the docket, no other objection to the Motion was ever filed.

PLEASE TAKE FURTHER NOTICE that, notwithstanding the absence of an objection, because, for tax purposes, any order with respect to the Motion should be entered shortly before the effective date of the Debtors' chapter 11 plan, the Debtors had adjourned the hearing with respect to the Motion.

PLEASE TAKE FURTHER NOTICE that, because the sole objection with respect to the Motion had been withdrawn, on July 8, 2011, the Debtors filed a certification of no objection [D.I. 8104] (the "CNO") and requested that the Court enter an order with respect to the

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.



Motion without a hearing. After the filing of the CNO, certain individual shareholders notified the Debtors and/or the United States Trustee for the District of Delaware (the "U.S. Trustee") that certain other pro se shareholders had objected to the Motion. Although the Debtors did not believe that anyone other than Tricadia had ever objected to the Motion, the Debtors immediately notified the Court and, that same day, filed a withdrawal of the CNO [D.I. 8119]. The Court nonetheless entered an order granting the Motion on July 11, 2011 [D.I. 8135] (the "Order"), and, as of the date hereof, neither the Order has been vacated nor has a motion been filed by any party seeking the vacature thereof.

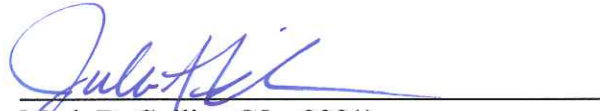
PLEASE TAKE FURTHER NOTICE that, since entry of the Order, the Debtors have undertaken an extensive review of the Court's docket, including, among other things, objections filed to the Debtors' chapter 11 plan and hearing transcripts, and have not found any objection to the Motion and the relief requested therein, other than the one filed by Tricadia.

PLEASE TAKE FURTHER NOTICE that, notwithstanding the foregoing, including the ongoing effectiveness of the Order, the Debtors provided notice that the Motion has been rescheduled and shall be heard on August 12, 2011, at 10:30 a.m. (Eastern Time) (the "Hearing").

PLEASE TAKE FURTHER NOTICE that, in support of the Motion, and in lieu of the Debtors having to provide witnesses to present live testimony at the Hearing on August 12, 2011, the Debtors request that excerpts of the transcript of the confirmation hearing held on July 13, 2011 be incorporated by reference and introduced into evidence in support of the Motion. Such excerpts are attached hereto as Exhibit A and include testimony from James Carreon, who was questioned extensively on cross examination regarding the abandonment of WMI's equity interests in WMB.

PLEASE TAKE FURTHER NOTICE that, if any party wishes to cross-examine Mr. Carreon, and thus require his attendance at the Hearing, such party shall serve a notice of intention thereof upon Weil, Gotshal & Manges LLP, attorneys for the Debtors, 767 Fifth Avenue, New York, New York 10153, Attn: Brian S. Rosen, Esq., by August 8, 2011, at 5:00 p.m. (Eastern Time).

Dated: Wilmington, Delaware
July 29, 2011



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ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

Exhibit A

Excerpts of the Transcript of the July 13, 2011 Hearing

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,
Debtors.

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

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NANTAHALA CAPITAL PARTNERS, LP,
BLACKWELL CAPITAL PARTNERS, LLC,
AXICON PARTNERS, LLC,
BRENNUS FUND LIMITED,
COSTA BRAVA PARTNERSHIP III, LLP,
SONTERRA CAPITAL MASTER FUND, LTD.

Plaintiffs,

Adv. Proc. 10-50911 (MFW)

v.

WASHINGTON MUTUAL, INC.,
MICHAEL MURPHY,
WILLIAM REED, JR.
THOMAS LEPPERT,
STEPHEN CHAZEN,
STEPHEN FRANK,
REGINA MONTOYA,
PHILLIP MATTEWS,
ORIN SMITH,
MARGARET OSMER MCQUADE,
JAMES STEVER,
FRANCIS BAIER,
DAVID BONDERMAN,
CHARLES LILLIS

Defendants.

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1 Q. And what is your understanding of the overall results of
2 the stock elections?

3 A. My understanding is that the senior noteholders will
4 receive approximately twenty-four million shares, and that the
5 senior subordinated noteholders will receive approximately
6 thirteen million shares, and that the peers claimants will
7 receive approximately one hundred twenty-three million shares.

8 Q. Okay. And would that result in an ownership change under
9 Section 382?

10 A. Yes, it would.

11 Q. Okay. And would there still be an ownership change if
12 there were value in the estates to distribute to stakeholders
13 junior to the peers?

14 A. Yes. That would still be the case, because the plan
15 contemplates that any recovery beyond the peers class would be
16 in the form of cash, and liquidating trust interest, and not in
17 the form of a stock of reorganized WMI.

18 Q. Okay. Now, let's turn to your analysis of the net
19 operating losses potential available to reorganized WMI. Did
20 -- you have prepared a demonstrative, showing what amount of
21 pre-2011 net operating losses might be available to reorganized
22 WMI?

23 A. That is correct.

24 Q. Okay. And if I can pull up --

25 MR. MASTANDO: Kim, please.

1 Q. -- Demonstrative 1, which is entitled Pre-2011 Loss Carry
2 Forward Potentially Available to Reorganized WMI while WMB is
3 part of the tax group.

4 Is this the demonstrative that you had prepared?

5 A. Yes, it is.

6 Q. And from where is the information on this demonstrative
7 taken?

8 A. It is taken from the disclosure statement, the plan, and
9 Mr. Zelin's report.

10 Q. Okay. And if you take a look at the demonstrative, what
11 information is contained in the first line of the
12 demonstrative?

13 A. The first line is the amount of pre-2011 net operating
14 loss carry forward in the amount of 17.7 billion dollars.

15 Q. And that's the amounts available to the WMI tax group?

16 A. That amount is currently available to the tax group
17 because WMB is currently a member of the tax group.

18 Q. And what is the WMI tax group?

19 A. The WMI tax group is a group of affiliated corporations
20 that files a consolidated return for federal income tax
21 purposes, of which WMI is the common parent, WMB is currently a
22 member of, and Wimrick is a member of.

23 Q. Okay. And under the plan, what limitations, if any, apply
24 to the tax groups use of the 17.7 billion dollar NOL?

25 A. Well, taking into account August 31st, effective date and

1 change date, the tax group would experience an ownership change
2 and its ability to use all of its pre-change losses would be
3 subject to limitation under 382.

4 That, of course, assumes that WMB continues to be a member
5 of the group, because the 17.7 billion dollars is almost
6 exclusively attributable to WMB. And once WMB leaves the
7 group, whether that's through abandonment or liquidation, the
8 tax group would no longer have access to that 17.7 billion
9 dollar NOL.

10 Q. And what durational limitations apply to the pre-2011 loss
11 carry forward?

12 A. Well, in general, as I've stated, NOLs are subject to a
13 twenty year carry forward period, but for practical purposes,
14 the tax group will be limited to the period that WMB continues
15 to be a member of the group.

16 Q. Okay. And you touched on this as well, but under what
17 circumstances would WMB cease to be a member of the tax group?

18 A. Well, WMB will cease to be a member of the tax group upon
19 abandonment, and it also would cease to be a member of the
20 group upon its liquidation which would likely take place once
21 the FDIC receivership winds down.

22 Q. Okay. Now, turning back to the demonstrative, what is the
23 information contained in the second line item?

24 A. The second line item shows the market value of reorganized
25 WMI, and that amount is 160 million. The next line item is the

1 long term tax exempt rate, which is 4.3 percent. And the final
2 item is the 382 limitation, calculated for the August 31st
3 change date of seven million dollars.

4 Q. Okay. So could you just explain, please, the calculation
5 that is being done here, and why it's being done with these
6 numbers?

7 A. Certainly. The Code provides that the 382 limitation is
8 based on the equity value of the taxpayer multiplied by the
9 appropriate long term exempt rate. Here again, because of the
10 special rules, bankruptcy rules for Section 382, the equity
11 value is immediately after the change date.

12 So it's the 160 million multiplied by the 4.3 percent,
13 which provides for an annual limitation of almost seven million
14 dollars. And so what that means is that the tax group's
15 ability to use its losses prior -- generated prior to an August
16 31st effective date is subject to a rate of seven million
17 dollars per year.

18 Q. Okay. And is it in the best interests of the debtors'
19 estates to attempt to preserve the pre-2011 loss carry forward
20 by retaining the WMB stock?

21 A. I don't believe so because the WMB will not be a member of
22 the tax group on a long term basis.

23 The debtor has before the Court a motion to abandon the
24 stock prior to the effective date, so obviously if that were
25 granted, then WMB would no longer be a part of the tax group.

1 WMB would also be liquidated upon the winding up of the
2 FDIC receivership. So in either regard, WMB is not going to be
3 a member of the tax group long term, and because of that, we
4 have an opportunity here to, in a sense, control the timing of
5 the worthless stock loss associated with the stock of WMB.

6 Q. So can you just explain what the tax benefit is of
7 abandoning the investment in WMB prior to a July 31st or August
8 31st effective date?

9 A. Right. Taking into account an August 31st effective date,
10 the benefit associated with abandoning prior to that date, is
11 that you would trigger the worthless stock loss. There are
12 unique rules under 382 which provide that to the extent a
13 taxpayer experiences an ownership change and in the same year,
14 incurs a loss, these rules allow the taxpayer to allocate a
15 portion of the loss to the pre-change period and a portion of
16 the loss, more importantly, to the post-change period.

17 The portion of the changer in NOL that is allocated to the
18 post-change period is not subject to the 382 limitation. So,
19 for example, here, the portion of the loss allocated to the
20 period after August 31st would not be subject to the August
21 31st 382 limitation.

22 Q. Okay. Now, would that -- well, the stock loss, would that
23 loss be subject to any provisions of the tax code that might
24 limit it? I think you started to explain.

25 A. Well, certainly, you know, the stock loss would be subject

1 to continuing testing under 382. It could be potentially be
2 subject to 269 and 384, Section 384 could possibly be a
3 consideration as well.

4 Q. Now, before taking into account of any adjustments,
5 approximately what amount of net operating losses would result
6 from taking the worthless stock deduction?

7 A. We have calculated the amount of the worthless stock loss
8 deduction to be at least 5.4 billion dollars.

9 Q. Okay. And what would be the impact, if any, of current
10 year activity on the amount of available NOLs?

11 A. We are projecting current year activity to yield a gross
12 loss of approximately 1.1 billion dollars. That amount would
13 be reduced by the projected amount of cancellation of
14 indebtedness income, which is approximately five hundred
15 million dollars. That would yield a net loss of approximately
16 six hundred million dollars.

17 That six hundred million dollars would be in addition to
18 5.4 billion dollar worthless stock loss. So we're projecting
19 in the aggregate a six billion dollar loss for the current
20 year.

21 Q. Okay. And what would be the impact, if any, of any
22 capital contributions deemed to occur under the global
23 settlement agreement on the amount of available and net
24 operating losses?

25 A. The global settlement agreement provides that certain

1 payments to JPMorgan Chase and to the FDIC shall be treated as
2 capital contributions to WMB. If that were to be respected, it
3 would increase the stock basis of WMB. That increased stock
4 basis would translate to a larger worthless stock loss
5 deduction.

6 Q. Okay. Now, just to be clear, what actions, if any, have
7 the debtors taken to abandon the stock of WMB?

8 A. The debtors have filed a motion with the Court seeking
9 approval to abandon the stock of WMB prior to the effective
10 date to take advantage of the allocation ruled under 382.

11 Q. Okay. Now, you mentioned adjustments being made to the
12 current year net operating loss, inclusive of the stock loss
13 carry forward under 382 and 269. Generally, how does 382,
14 Section 382 effect the ability to utilize the current year NOL?

15 A. Well, Section 382 to the extent an ownership change occurs
16 would limit a taxpayer's ability to use the pre-change NOLs to
17 offset post change taxable income.

18 Q. Okay. And which portion of the current year net operating
19 loss would be subject to the Section 382 limitation?

20 A. It is the portion of the -- it's the pre-change portion of
21 the changer NOL.

22 Q. And did you prepare a demonstrative showing the
23 calculations of the limited versus the non-limited portions of
24 the net operating loss?

25 A. I have.

1 Q. If I could have you take a look at Demonstrative 2
2 entitled Calculation of Limited and Non-limited Portions of NOL
3 Pursuant to Section 382. Is that the demonstrative that you
4 had prepared?

5 A. Yes, it is.

6 Q. Okay. Now, if you take a look at the demonstrative, what
7 is reflected by the blue and green bar graph on the top?

8 A. The bar graph reflects the allocation of the number of
9 days between the pre-and-post change period taking into account
10 an August 31st effective date and change date.

11 So if you were to look at the blue section of the graph,
12 it shows 243 days. So under the general proration rule in
13 Section 382, it provides that 243 days are allocated to the
14 post-change period.

15 On the flip side, the green section of the bar graph shows
16 the 122 days allocated to the post change period.

17 Q. Okay. And if you look at the box on the left-hand side of
18 the demonstrative entitled limited portion of NOL, can you
19 describe how you calculate the limited portion of the stock
20 loss carry forward?

21 A. Certainly. The rule in 382 is the general proration rule.
22 So if you were to look at line one, you take the number of days
23 allocated to the pre-change period. So here it's 243. You
24 divide that by the total number of days in the tax year. Here
25 it's 365. That yields a percentage, here it's 66.6 percent.

1 You multiply that percentage by the stock loss, you also
2 multiply that by the amount of other activity, which is
3 approximately six hundred million dollars. That yields an
4 aggregate number of approximately four billion dollars. So
5 what that means is, you have a current year NOL of six billion
6 dollars. Of that six billion dollars under the general
7 proration rule, four billion of it will be allocated to the
8 pre-change period, and subject to the August 31st 382
9 limitation.

10 The final line shows that limitation to be seven million
11 dollars a year. So that means that the tax group would have
12 access to that four billion dollar pool of limited NOLs at a
13 rate of seven million dollars per year.

14 Q. Okay. And if you look at the box on the right-hand side
15 of the demonstrative, how do you calculate the non-limited
16 portion of the NOL?

17 A. It's the mirror calculation. You take the number of days
18 allocated to the post-change period. Looking at line number
19 one, that's 122 days. Again, you divide that by the total
20 number of days in the tax year to get a percentage. That
21 percentage 33.4 percent is multiplied by the stock loss, as
22 well as the other activity during the current year, and that
23 yields an aggregate number of approximately two billion
24 dollars.

25 So that means that the tax group would have two billion

1 dollars of unlimited or non-limited NOLs, based on the
2 proration rule.

3 Q. Okay. So in total, how much of the estimated six billion
4 dollar current year NOL would be available to reorganize WMI
5 based on these two pieces of the chart?

6 A. The tax group would have essentially two layers of NOL.
7 First it would have the two billion dollars of NOL that's
8 allocated to the post-change period, and is not subject to the
9 August 31st 382 limitation.

10 It would also have access to the four billion limited pool
11 of NOLs at a rate of seven million dollars per year.

12 Q. Okay. Now, does Section 382 place any other limitations
13 on reorganized WMI's ability to use 2011 NOLs?

14 A. It does; 382 has a provision that essentially provides
15 that the taxpayer must continue its historic business for the
16 two-year period after an ownership change, otherwise, it loses
17 its ability to access those pre-change NOLs.

18 And, of course, the tax group would continue to be subject
19 to the testing regime under Section 382, and there could
20 possibly be a future ownership change, which would create an
21 additional 382 limitation.

22 Q. Okay. And so that could be the effect of a subsequent
23 ownership change, right?

24 A. Certainly. The effect of a subsequent ownership change
25 would mean that the entire lot of NOLs would be separate to an