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) **Deadline: August 10, 2011 at 12:00 p.m. (ET)**

WRITTEN CLOSING ARGUMENT OF BETTINA M. HAPER TO THE CONFIRMATION HEARING OF THE MOTION FOR AN ORDER APPROVING THE SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS AND SUBSEQUENT CONSIDERATION OF THE CURRENT GLOBAL SETTLEMENT AGREEMENT

Bettina M. Haper hereby, files this written closing to the Confirmation Hearing of the Motion for an Order Approving the Sixth Amended Joint Plan of Affiliated Debtors and subsequent consideration of the current Global Settlement Agreement and respectfully represents as follows:

I. NO VERSION OF THE GLOBAL SETTLEMENT IS CONFIRMABLE.

1. The current Global Settlement Agreement (GSA) must either be considered a new agreement or essentially the same agreement as manufactured prior to the first confirmation hearing. Either way, the GSA cannot succeed.

2. If one advances with the understanding that the GSA is a new and unique understanding, it is bound by the recent Supreme Court ruling in *Stern v. Marshall*, which calls into question the jurisdictional ability of this court to adjudicate certain matters within the GSA [See Stern v. Marshall No. 10-179]. Additionally, the reversal in the ANICO case also dramatically changes the landscape in this case [See Am. Nat'l Ins. Co. v. FDIC No 10-5254].

Despite JP Morgan's unpersuasive response to the Trust Preferred Security Holder's Second Supplemental Objection [DC 8100], the Debtors specifically expelled the Settlement Noteholders from the GSA in an effort to cleanse the agreement and have it reviewed with new eyes. This shareholder believes that the GSA should be evaluated with those new eyes.

3. Especially now as JP Morgan has recently changed its position on this matter and asserted, as in the Lehman case, that the Supreme Court in *Stern* held that "The district court, not the bankruptcy court, has jurisdiction over these categories of claims…". It is evident that only the Debtors are left to see the clarity of that astute observation.

4. If one presupposes the GSA is ultimately the old agreement with new window dressing, it doubly fails. Not only is it subject to the Stern v. Marshall and ANICO rulings, it bears the tainted influence of negotiations conceived and executed in bad faith. After the testimony given at the Confirmation Hearing, there can be no denial of the events that took place during the course of this bankruptcy. Virtually every party involved was engaged in some form of unethical or illicit activity in relation to this case.

II. PARTIES TO THE GLOBAL SETTLEMENT AGREEMENT AND PLAN OF REORGANIZATION ENGAGED IN ACTIVITIES CONTRARY TO THE ESTATE AND POTENTIALLY THE LAW.

THE FDIC

5. Certain parties to the Global Settlement Agreement have no legitimate claims to the estate. Their claims are based on arguments that have failed in several recent court proceedings and as such are subject to the same scrutiny that defeated them in those cases. Several cases have been adjudicated recently, which challenge the FDIC's claim to tax refunds and NOL's. Based on case law, the FDIC has no claim to these estate assets and therefore, any Global Settlement Agreement involving the FDIC cannot stand.

6. In Colonial Bank v. FDIC, the Court stated that the bank holding company was not liable to the FDIC for any setoffs against their tax refunds or NOL's and that the FDIC was

ineligible to use setoff against those assets. The Court also stipulated that those assets belonged to the Debtors. In Team Financial, Inc. v. FDIC, the Court determined that the FDIC had no rights to the tax refunds or NOL's in bankruptcy and that those assets were property of the estate.

7. Additionally, FDIC-Corporate has no role in this case and is not entitled to any releases whatsoever. This brings into question the FDIC-Receiver's role in this case. Since the FDIC seized WMB from WMI, FDIC-Receiver can only act on behalf of WMB, provided WMB was actually harmed. And if WMB was harmed, the FDIC would become a creditor, just like any other. Naturally, the claims being made against the Debtor must be examined and adjudicated. The claims being made are dubious at best. One of which is that WMB is owed for their share of tax refunds. However, if one scrutinizes the tax sharing agreement (Exhibit A), there was a clear contractual breach once the seizure occurred and the Debtors no longer were subject to the agreement. No monies are owed to the FDIC. And as such, giving the FDIC any monies would essentially constitute an abandonment of property on the part of the Debtor. To date, the Debtor has not filed any such request with the court to abandon billions of dollars to the FDIC. This shareholder suspects, because no bankruptcy court would allow such a request to prevail.

8. However, even if the court rules that monies are owed to WMB, those funds are limited to 1.5 billion dollars tax receivable on WMB's books at seizure. And once the FDIC's claim is satisfied, JP Morgan's claim to those monies is void (See Exibit B). Aside from the voidance, they were never harmed and they cannot profit from any tax refunds issued to WMI or any monies rewarded to the FDIC on behalf of WMB. Nor can this court violate federal law by allowing JP Morgan to collect on any funds that are specifically prohibited by provisions in the TARP legislation. According to the Worker, Homeownership, and Business Assistance Act of 2009, any firm that received funds from TARP is not eligible to receive NOL's (Exhibit C).

9. The FDIC is also asserting multiple claims in order to extort money and property from WMI. Most importantly to them are the releases for liability that FDIC-Corporation will assuredly have. This action is typical of the coercive and extortive behavior which is the long-standing hallmark of this organization's reputation.

10. The extortive nature of the FDIC in this particular case was revealed during the testimony of Mr. Bolin on July 20, 2011. During the December Confirmation Hearing, Mr. Califano stood before this court and declared

> *"Your Honor, I would also, just briefly on the releases, it is essential to the FDIC and it was part of our deal that we get these third-party releases because we're compromising very significant statutory rights. We're not doing that. The FDIC is not in this for the money, Your Honor. We're in there for the resolution."* (Exhibit D)

However, on July 20th, this court learned that the FDIC's intentions were not noble at all. That the FDIC was attempting to get as much money out of the estate as it could. Mr. Bolin stated under oath that:

> *"That was their judgment. The deal that was struck that was -- became the global settlement agreement was struck between the debtor, the FDIC, and JPMorgan, and it was handed to us as a fait accompli. You can talk about it, you can comment on it, you can try to negotiate at the edges, but this is the deal, you can take it or leave it. When the FDIC reneged on that deal and a new deal had to be cut, it was much the same story. Additional money was given to the FDIC over our objection, and then when -- that's the -- that agreement expired in September and had to be renewed, the FDIC again asked for more money, and again they received it over our objections."* (Exhibit D)

11. Even after having heard the testimony, the FDIC publicly stated that it still supported confirmation of a plan that would essentially reward creditors who were suspected of insider trading during the negotiation process of the plan. It is more likely that the FDIC only supports the plan because it is the only one tied to a GSA that will provide non-legal releases to FDIC-Corporate, while providing a few dollars in their pocket.

12. This is also not the first time the FDIC has countenanced unethical or illicit activities in order to extort money or property. In *FDIC v. Hurwitz*, Judge Hughes chastised the

FDIC in a scathing 133 page opinion on sanctions for criminal acts the FDIC took part in; namely, the extortion of a private citizen in order to obtain money and his private property. In that case the FDIC was also cited as having lied to the court (Exhibit E).

JP MORGAN

13. After days of testimony, it is clear that JPMorgan used the 2019 motion and this Court, to compel the Debtors, through the Settlement Noteholders, to act against the Estate, by threatening to communicate their knowledge of suspect trading activities, thereby subjecting the Settlement Noteholders to potential exposure of criminal penalties and public ruin. In acting against the Estate, the Debtors dropped Washington Mutual, Inc.'s claims against JPMorgan and turned over valuable assets.

14. This assertion is supported by the fact that the Debtors twice asked the Court to delay a ruling on $4 billion in cash accounts, which would have been extremely beneficial to the Estate. Also, certain Wind investments that were under a "Letter of Intent" [DC 1661] with Goldman Sachs, were suddenly gifted to JPMorgan under the Global Settlement Agreement. It is also supported by the testimony of all four Settlement Noteholder representatives.

THE SETTLEMENT NOTEHOLDERS

15. The Settlement Noteholders would have this court believe that negotiations were immaterial because the settlement was in constant flux and the terms were not fixed. However, these same Settlement Noteholders traded according to those terms. And the law does not define materiality by what is in flux. It is defined by what a rational investor would consider when making investment decisions. This would include any decision, at any point, on any given day. And it is clear that information which was earlier traded on would have affected the trading public's investment decisions prior to the market learning of it, since that information did significantly affected the market once made public. This is the very essence of insider trading.

APPALOOSA MANAGEMENT

16. Appaloosa likely committed insider trading by liquidating Series R Preferred stock while in possession of material non-public information. They appear to have acquired over 25 percent of the Series R Preferred, despite this Court's Order [DC 0315] restricting them to no more than 4.5 percent or approximately 135,000 shares. When caught with a position well in excess of the Court ordered limit, they appear to have liquidated these shares through StockCross Financial Services. Following this, they failed to disclose these Series R purchases and sales either in their 2019 statement or in the trading records provided to the Equity Committee as ordered by this Court. They instead decided to hide behind the clause declaring those purchases void and *ab initio* as a violation of the automatic stay, in effect pretending that they had never even happened (Exhibit F).

17. StockCross Financial Services ("StockCross"), trading under the market maker symbol STXG, had no reported trades of Series R Preferred in all of 2008, or in either January or February of 2009. In March of 2009, they arrived in the marketplace, apparently with an infinite supply of Series R Preferred shares to sell. No attempt was being made to maximize the sales price as they simply set the ask just under $5 per share and filled all orders at that price, no matter the size. On two of the days, volume was so heavy that over 10 percent of the three million issued and outstanding Series R Preferred shares were traded. These were March 16, 2009 with 308,460 shares traded, and March 23, 2009 with 359,460 Series R Preferred shares changing hands. (Exhibit G).

18. StockCross Financial Services liquidated 721,340 Series R Preferred shares in March 2009, and another 44,946 shares in the first two trading days of April 2009. While StockCross was selling, other market makers and investors were snapping up shares due to the highly anticipated lawsuit which was filed against the FDIC on March 20, 2009. Knight Capital Americas, L.P., trading under the market maker symbol NITE, appears to have purchased hundreds of thousands of the Series R Preferred shares StockCross sold in March of 2009. On

April 2, 2009, StockCross appears to have run out of shares to sell, and on April 3, share prices increased by over forty percent from prior levels. During the remainder of 2009, 2010, and 2011, StockCross had minimal activity. The table below is a compilation of data from the StockCross monthly share volume reports provided in (Exhibit H).

Time Period	**Series R Shares Traded**
Full Year 2008	0
January 2009	0
February 2009	0
March 2009	721,340
April 2009	44,946
May to December 2009	1,368
Full Year 2010	7,672
Year to date 2011	5,514

19. Appaloosa's strategy was to acquire a blocking position. On April 7, 2009, Appaloosa Counsel sent an e-mail to the Debtors, detailing their combined holdings. These were 14 percent of the Senior Notes, 45 percent of the Senior Subordinate Notes, 41 percent of the PIERS, and 29 percent of the Reit Preferred. Note that they hold blocking positions in the Senior Subordinated notes, the PIERS, and nearly hold a blocking position in the Reit Preferred. Teaming up with a partner like Centerbridge would guarantee that their input would not be ignored by the Debtors, no matter which class of securities became the pivot point in the capital structure.

20. Since the amount of Series R preferred sold by StockCross Financial in the March to April 2009 time frame totaled 766,286 shares and they have a liquidation preference of $1000 per share, their total liquidation preference is over $766 million. This represented over 25.5 percent of the Series R shares outstanding, and was approximately ten percent short of a blocking position in all WMI preferred later consolidated into Class 20. A blocking position in WMI Preferred could easily have been obtained by teaming up with another large Preferred shareholder, or by purchasing the majority of the Series K Preferred stock.

21. The assertion that Appaloosa could not purchase Series R preferred is not credible. When asked if it was his testimony that Appaloosa never owned or believed they owned any interest in Series R Preferred, Mr. Bolin's reply was, *"I can't stand here and tell you today that we never owned or didn't – I don't believe we did. I believe the Series R was privately placed, and I don't think it was made available to the public. I don't believe we owned it."* Mr. Bolin's assertion that his firm may have been unable to purchase Series R Preferred is patently false, as hundreds if not thousands of retail shareholders are able to trade in them with just the click of a mouse. While Series R Preferred initially started out as a private placement, the same holds true for the Series K Preferred that Appaloosa has admitted owning. Both have traded freely on the open market since prior to WMI's bankruptcy filing. The notion that average retail shareholders were able to trade in Series R Preferred while the highly sophisticated investors at Appaloosa could not, strains credulity well beyond the breaking point. Despite a multitude of recollection deficiencies, Mr. Bolin was able to confirm his knowledge that Series R preferred were indeed *pari passu* with Series K and Reit Preferred stock. This memory loss may have been a judgment call on his part, as the penalties for man with 30+ years of experience in the market, having a faulty memory in bankruptcy Court, are significantly less severe than the potential criminal penalties for insider trading.

22. The assertion that Appaloosa did not purchase Series R preferred is not credible.

This Court has ordered trading restrictions on Series R Preferred of approximately 135,000 shares, while Series K Preferred are unrestricted. Both are in Class 20, so both are likely to receive equal treatment in this bankruptcy based upon their liquidation preference. Throughout this bankruptcy, the Series R Preferred have traded at a significant discount relative to the price of Series K per dollar of liquidation preference, so it makes no sense to have purchased only Series K.

23. Appaloosa purchased nearly a blocking position in the Reit Preferred securities, and admitted some purchases of Series K Preferred. Both of these are *pari passu* with Series R. Given these facts, and knowing Appaloosa's obvious goal to have a blocking position in the lower classes of the securities they owned, it is highly likely that Appaloosa did indeed purchase Series R Preferred shares since they represented the largest potential return.

24. At the confirmation hearing, the Equity Committee attorney questioned Appaloosa's representative regarding PIERS and Series K Preferred stock. Notably absent was any mention of Series R Preferred. It is only logical to assume that this is because Appaloosa reported no Series R trade data at all. They failed to disclose these Series R purchases or sales in their 2019 statement or in the trading records provided to the Equity Committee as ordered by this Court.

25. The Debtors were also aware that Appaloosa was in violation of the trading restrictions. The Appaloosa representative confirmed that he knew of the trading restrictions that this Court has placed on the ownership of Washington Mutual Incorporated securities, which were intended to protect the NOLs. When asked if his firm was ever in violation of these restrictions, Mr. Bolin stated, *"We had a disagreement on the interpretation of those terms with the Debtor, rather than argue about it, we agreed with the Debtor that we would dispose of those shares and donate the profits to charity."* While he would not confirm that the violations were regarding the Series R Preferred, the notion that an astute professional would not

remember the details of an event so serious that it forced the liquidation of a significant portion of his firm's holdings, is at best, suspect. Unless it's commonplace for such activities to occur within Mr. Bolin's firm, it's simply not believable that he wouldn't remember even some of the details of an event that constituted a willful violation of this Court's Order. Honest people do not forget the minutia of their offenses.

26. Since those 766,286 Series R Preferred shares were over five times the allowed holdings under this Court's ownership restrictions, the Debtors had a problem. The only way to liquidate a position of that size would be to wait until some very significant positive news. And that is exactly what happened: StockCross began their liquidation on March 16, just four days before the Debtors filed suit against the FDIC seeking recovery for their damages. The public view was that WMI was aggressively pursuing their claims, and that JP Morgan would almost certainly be next. Retail shareholders armed with knowledge of potential claims, expected JPM and the FDIC to quickly settle with WMI. The insider view, however, was that the Debtors were willing to settle for an amount so low that Preferred would certainly be out of the money. White & Case's term sheet was no better for Equity. Following this forced liquidation, the hedge funds dropped any attempt to obtain a recovery for Preferred, focusing instead on their PIERS. Apparently aware of this, JPMC filed a motion to compel all parties to comply with Rule 2019, obtaining further leverage by alleging parties were trading on events in this case. On March 12, 2010, one year after this Series R liquidation, the terms of the GSA were read into the record.

27. The Debtors' January 2009 term sheet and the knowledge obtained at the March 10, 2009 meeting both constitute material non-public information. Despite arguments to the contrary, the term sheet is material because it provides information about where the waterfall is likely to stop, allowing anyone in possession of that information to maximize their profit by selecting the most profitable securities to purchase while shorting those they know the waterfall will never reach.

28. On March 10, 2009, Appaloosa was in possession of at least two items that constituted material non-public information. The first is the knowledge of the Debtors' January 2009 proposed term sheet, which only became public at the July 2011 Confirmation Hearing. Knowledge of this term sheet would have informed Appaloosa that WMI intended to settle for an amount which was not enough to provide a recovery for Preferred stock. The second is their knowledge of the $2.6 to $3.0 billion first tax refund obtained by signing the confidentiality agreement. Appaloosa appears to have liquidated $766,286,000 in liquidation preference of Series R Preferred stock while in possession of this material non-public information.

Timeline of Appaloosa's Relevant Data Points

January 2009	Appaloosa becomes aware of Debtors' term sheet to be provided to JPMC. WMI Noteholders Group vehemently objects that it is not based on the strengths and weaknesses of the claims, and gives too much to JP Morgan. If the Debtors' proposed term sheet were accepted, Preferred stock would receive at most a *de minimus* distribution.
January 22, 2009	White & Case prepares their own replacement term sheet to be submitted to JPMC as a Weil draft. Again, Preferred stock would receive a *de minimus* distribution, if any.
March 1, 2009	Appaloosa meets with the Debtors, JP Morgan, and the FDIC in a negotiating session. Appaloosa voluntarily restricts trading.
March 9, 2009	Appaloosa signs a confidentiality agreement, formally restricting trading.
March 10, 2009	Appaloosa attends a meeting and is informed of the $2.6 to $3.0 billion first tax refund. They admit this is material, non-public information.
March 16, 2009	StockCross Financial appears out of nowhere and 308,460 Series R Preferred Shares are traded on that day. Selling continues through March.
March 23, 2009	WMI's lawsuit against the FDIC is publicly announced. Another 359,460 shares of Series R Preferred are sold on this day, with the majority sold by StockCross Financial.
April 3, 2009	StockCross finally runs out of shares and the Series R price increases. $766,286,000 of liquidation preference of Series R Preferred has been sold by StockCross in less than one month.

April 7, 2009	Appaloosa Counsel sends an e-mail to the Debtors, detailing their combined holdings: 14% of the Senior Notes, 45% of the Senior Subordinate Notes, 41% of the PIERS, and 29% of the Reit Preferred.
April 30, 2009	The $2.6 to $3.0 billion first tax refund is made public in WMI's March Monthly Operating Report, allegedly releasing Appaloosa from their confidentiality agreement so they may resume trading.

29. Appaloosa seems to have acquired over 25 percent of the Series R Preferred, despite this Court's Order restricting them to no more than 4.5 percent or approximately 135,000 shares. When caught with a position over five times the Court ordered limit, they appear to have liquidated these shares through StockCross Financial Services. Without significant positive news such as the FDIC lawsuit, it would have taken many months to liquidate a position of that size. Knowing this, and with knowledge of the settlement offer they intended to propose to JP Morgan, the Debtors assisted Appaloosa in their insider trading, even providing them additional inside information just prior to the liquidation. Later, they failed to disclose these Series R purchases and sales either in their 2019 statement or in the trading records provided to the Equity Committee as ordered by this Court.

AURELIUS

30. During the negotiation period which started in March of 2009, Aurelius was a member of the White & Case group, an informal group representing most of the holders of WMI notes. Mr. Gropper also testified that the White & Case members held a significant quantity of Preferred Stock. At some point following this negotiating period, Mr. Gropper testified that Aurelius was asked to withdraw from the White & Case group for reasons not specified.

31. At the confirmation hearing, the Aurelius representative confirmed their view that the Debtors were not asking for enough in their negotiations. He also confirmed that it was his view that the bank bondholders did not have a valid claim against WMI's estate. One

example of litigation claims he thought had significant potential for recovery were the $6.5 billion in capital contributions which WMI had made to WMB in the year prior to WMI's bankruptcy filing. Another area was approximately $400 million in preference claims. Mr. Gropper confirmed that in his experience, $6.5 billion in fraudulent conveyances and $400 million in viable preference claims just do not settle for zero dollars. But that is just what the Debtors intended to do with their proposed term sheet circulated to the White & Case members prior to the March 2009 settlement negotiations. White & Case strenuously objected, and developed their own term sheet which was eventually submitted to JP Morgan as a WGM draft. Neither term sheet asked for enough of JPM or the FDIC to allow the waterfall to go beyond the PIERS.

32. Aurelius Capital Management was the only one of the Settlement Noteholders to erect an ethical wall to avoid the appearance of insider trading. Rather than restrict trading, Aurelius erected this wall in March 2009 when they signed the March 9 confidentiality agreement. When the confidentiality period expired on May 8, 2009, that ethical wall was taken down, and Aurelius was able to trade based upon the information they had learned during that confidentiality period. They claim they relied on the Debtors' assertions that all material, non-public information ("MNPI") had been disclosed, and their own assessment that they were in posession of no MNPI.

33. An ethical wall provides protection only when all material, non-public information is identified and kept out of traders hands. Despite their attempt to maintain the appearance of ethical behavior, they were actually in possession of MNPI ever since the Debtors first term sheet was circulated. That term sheet provided the knowledge that WGM intended to settle for an amount that caused the waterfall to stop at the PIERS.

Despite a 5-year lookback being enacted into law, providing billions in additional revenue to WMI, the amount the Debtors intended to settle for never changed. Much has been made of JP Morgan "resetting the bookends". Apparently it never occurred to Mr. Kosturos, WMI's lead negotiator, that he too could have reset those bookends. Aurelius' knowledge of where the waterfall would stop allowed them to purchase only those securities that they knew were likely to obtain a recovery, thanks to the Debtors term sheet circulated to the White & Case members. This insider information, available to the White & Case members since at least March of 2009, was only released to the public at the July 2011 confirmation hearings. Aurelius was aware of, and traded on, this insider information during this entire period, despite their supposed "ethical" wall intended to protect themselves from insider trading allegations.

OWL CREEK

41. In testimony taken during the Confirmation Hearing, Mr. Krueger admitted that Owl Creek was aware of the term provisions in the White & Case proposal to JPMorgan that would have brought monies into the subordinated bonds. Just days prior to sending this term sheet to Fried Frank, Owl Creek purchased significant amounts of junior debt. Unable to recall these trades, Mr. Krueger admitted to the court that his firm did not construct an ethical wall between himself and other traders. Nor could he remember if he had discussed matters pertaining to the settlement with other traders in his firm (Exhibit J).

42. Mr. Krueger stated that term sheets were not material, however, if that were true, then the debtors would have released these details to the investing public. Mr. Krueger also testified that information exchanged in negotiations could not be material until a deal had been reached. However, he also stated that the announcement of the proposed agreement was material because it had been made public on March 12, 2010. Two problems exist with this contention. First, the agreement referred to was not "reached" as Mr. Krueger had stated. In fact, the FDIC had not agree to anything at that point. And second, the materiality of information is not a

philosophical concept that is debated in classical literature. A piece of data is material or it isn't. And it is defined by what a reasonable investor would consider in making their investment decisions. Information that caused the WAMUQ market to crash the day of the announcement was clearly material prior to the announcement since the investing public reacted to it. If some investors had been leaked this information one or two days prior to the announcement, they surely would have considered it in their investment decisions. Mr. Krueger's words are simply not plausible (Exhibit J).

CENTERBRIDGE

40. It is a virtual certainty that Centerbridge acted outside the bounds of the law. As a former partner in the law firm, Fried Frank, Mr. Melwani would be in a better position than most to understand the legal definition and implications of insider trading. As an attorney of 13 years in the bankruptcy department, it is simply not credible that Mr. Melwani would not have been intimately familiar with the sort of activities that constitute insider trading.

41. And yet, Mr. Melwani admitted that after making a proposal to JPMorgan on July 28, 2009, his firm continued trading in WMI securities. Mr. Melwani asserts that because it was "their" proposal, it did not constitute material information. Unfortunately, the fact that JPMorgan accepted the meeting, indicates they assumed they were dealing with decision-makers within the scope of the bankruptcy (Exhibit K). And the fact that Appaloosa and Centerbridge even attempted to negotiate with JPMorgan in this process supports the assertion that the two hedge funds believed it as well. And that a proposal was made, along with its terms is material. Even Mr. Melwani stated that Centerbridge restricted their trading once a counter offer that they admitted was unacceptable, was made from JPMorgan, which assumes that terms they gave to JPMorgan had to have been material as well (Exhibit K). If any of the proposals and counter offers contained information regarding the waterfall recovery, the investing public would have considered "material" to their trading decisions.

42. Centerbridge then defends its trading activities of December 2009, by asserting that the Debtors were responsible for determining which information was "material" and that the Debtors did not "disclose this". However, the legal definition of materiality is not defined by the actions of the Debtors. They are not required to disclose a variety of information. This action, however, does not bear on that information's materiality. One has nothing to do with the other. Interestingly, Mr. Melwani also unwittingly admitted that this chapter 11 bankruptcy was actually a chapter 7. During cross examination, he stated that *"I mean, it's not a going concern business, it's a liquidation"* (Exhibit K).

THE DEBTORS

4. The Debtors were aware of the issues with the Settlement Noteholders and failed in their fiduciary duty to police themselves against facilitating the Settlement Noteholders in potential criminal activity. By August of 2009, the Debtors were fully aware that the Settlement Noteholders were being accused of engaging in suspect activities with regard to trading in WMI securities. However, the Debtors continued to convey material, non-public information to the Settlement Noteholders and even allowed them to participate in the settlement negotiations. The Debtors did this knowing full well the information conveyed would likely be used to commit a criminal offense. In the case of Appaloosa, they likely aided the hedge fund in covering up their violation by disclosing information they knew would be used to commit an illicit act.

5. The Debtors have engaged in concerted effort to deny equity any return from their company at every opportunity. No matter how many times money has been found, Debtors counsel has found a way to lose it or give it someone else. Additionally as the Debtors are predicting the Court will institute the Federal Judgment Rate, which would assuredly flow money down the waterfall into the hands of Equity, they have taken the predictable step of ensuring that at least 300 million dollars is taken from the estate and put into reserve for a fund

to deal with litigation against certain WMI executives. Once again, just enough to keep Equity out of the money.

36. If, as the Debtors claim, there is no money to be awarded to equity, then it is only fair to award the Federal Judgment Rate in lieu of the Contract Rate. There is no legitimate reason to award the Contract Rate to any class when there are still impaired classes remaining. This is not a punitive measure, but a fair and just one. The Federal Judgment Rate should not be used as a punitive measure in a case where it is already warranted. If the Court is inclined to direct punitive measures towards parties that have engaged in unethical behavior, a fair solution would include disallowance of claims. The Federal Judgment Rate should be applied regardless of any punitive actions that are taken against any party.

37. The Debtors also allowed this court to sign an order to abandon property knowing full well they had already withdrawn their motion to abandon after having been advised that an objection to their motion was pending on the court record [DC 5802]. They failed to take corrective action and inform the court that the motion was no longer valid, rather they hoped the order would stand and the Court would not be the wiser. (Exhibit L Motion to withdraw)

III. THE PARTIES INVOLVED HAVE UNCLEAN HANDS

37. Per the legal doctrine of Unclean Hands, a party who is seeking relief from a court cannot have the aid of the court if he/she has done anything unethical in relation to the subject of the relief sought. The parties in this case are all suspected of engaging in unethical activities in relation to this proceeding and as such the court cannot grant relief to any of them through the Global Settlement Agreement or the Plan of Reorganization.

38. Accordingly, since each of the parties in this proceeding have ulterior motives, none of which are in consideration of the estate, it is the belief of this shareholder, that the

Global Settlement Agreement and the Plan of Reorganization were, and continue to be negotiated in bad faith.

39. Once again, virtually every party involved was engaged in some form of unethical or illicit activity in relation to this case.

RELIEF REQUESTED

39. The Global Settlement Agreement is not confirmable in any form if the current parties remain a part of it. Therefore it should not be confirmed.

39. A finding of fact that the Settlement Noteholders engaged in insider trading activities.

41. A finding of fact that the Debtors knew of potential criminal violations and continued to facilitate parties engaged in these suspect activities.

42. The Federal Judgment Rate should not be used as a punitive action, but applied regardless of the actions of certain parties in this proceeding.

42. The Order to Abandon referred to in the "Argument" be revoked.

43. All or most of the participants to the Global Settlement Agreement have unclean hands and cannot seek relief from this court. Therefore, the Court should not grant it through approval of the Global Settlement Agreement or the Plan of Reorganization and the disallowance of claims, where warranted, should be implemented.

44. WHEREFORE, in light of the above, the Motion For an Order Approving the Sixth Amended Joint Plan of Affiliated Debtors due to the suspicious and illicit actions of the participants raised in this Argument and the testimony during the Confirmation Hearing should be denied, and that the Court grant such other relief as it deems just, and enter an appropriate Order to such effect.

Dated August 10, 2011	Respectfully Submitted, Bettina M. Haper

EXHIBIT A

Washington Mutual Inc · 10-K · For 12/31/99 · EX-10.1

Filed On 3/14/00 · SEC File 1-14667 · Accession Number 891020-0-493

As Of	Filer	Filing	As/For/On	Docs:Pgs	Issuer	Agent
3/15/00	Washington Mutual Inc	10-K	12/31/99	6:140		Bowne Northwest/FA

Annual Report · Form 10-K
Filing Table of Contents

Document/Exhibit	Description	Pages	Size
1: 10-K	Annual Report	132	616K
2: **EX-10.1**	**Tax Sharing Agreement**	**3**	**15K**
3: EX-21	Subsidiary Listing	1	5K
4: EX-23	Consent of Deloitte & Touche Llp	1	5K
5: EX-23.1	Consent of Kpmg Llp	1	6K
6: EX-27.1	Financial Data Schedule	2±	8K

EX-10.1 · Tax Sharing Agreement

EXHIBIT 10.1

TAX SHARING AGREEMENT

THIS TAX SHARING AGREEMENT (*"Agreement"*) is made as of August 31, 1999 by and among Washington Mutual, Inc., a Washington corporation (*"WMI"*), Washington Mutual Bank fsb, a federal savings bank (*"WMBfsb"*), Washington Mutual Bank, a state chartered savings bank (*"WMB"*), New American Capital, Inc., a savings and loan holding company whose principle subsidiary is Washington Mutual Bank, FA, a federal savings association (*"WMBFA"*) and Aristar, Inc., a Delaware corporation, on behalf of themselves, each of their current subsidiaries and all subsidiaries that any one or more of them may own in the future (together, the *"Subsidiaries"*). This agreement supersedes the Tax Sharing Agreement dated March 30, 1998 among WMI and subsidiaries.

WHEREAS, WMI owns 100% of the issued and outstanding capital stock of WMBfsb, WMB and NACI.

WHEREAS, WMI owns either directly or indirectly, 100% of the issued and outstanding capital stock of the Subsidiaries;

WHEREAS, NACI owns 100% of the issued and outstanding capital stock of WMBFA and Aristar, Inc.;

WHEREAS, WMI, WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., and the Subsidiaries join in the filing of a consolidated federal income tax return and combined or consolidated tax returns in various states and other local taxing jurisdictions; and

WHEREAS, it is the desire of the parties hereto to enter into a definitive written Tax Sharing Agreement, which agreement describes the manner in which the consolidated federal income tax liability is shared among the members of the consolidated group and the manner in which the combined or consolidated state or other local tax is shared among members of the combined or consolidated group;

NOW, THEREFORE, in consideration of the foregoing premises, the parties agree as follows:

1. For all taxable years during which WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., or any Subsidiary is a member of an *"affiliated group"* of WMI as defined in Section 1504 of the Internal Revenue Code and is required to join in the filing of a consolidated federal income tax return of WMI and its consolidated subsidiaries, the federal income tax liability of such consolidated group shall be allocated and shared among WMBfsb, WMB, NACI, Aristar, Inc., and each Subsidiary as if such entities filed a separate or consolidated return, as the case may be.

2. The federal income tax accounts between WMI, WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., and each subsidiary shall be settled in the following manner:

(a) WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., and each Subsidiary shall make payments on account of their federal income tax liability to WMI in the same manner and at the same time as if such entities were filing separate returns or separate consolidated returns with, and making payment of taxes (including estimated taxes) to the Internal Revenue Service ("IRS").

(b) WMI shall pay to WMBFA, WMBfsb, WMB, NACI, Aristar, Inc., and each Subsidiary amounts that may be due them on account of (i) any overpayment of their said tax liability for a taxable year or (ii) any credit that may result from the utilization of their net operating loss for a taxable year, such credit being determined in accordance with the provisions of item 1 above, within 30 days after the consolidated return is filed for that taxable year or, to the extent any such amount due must be recovered from the IRS, within 30 days after payment is received from the IRS, or, if the amount due represents an overpayment of estimated tax which is in excess of WMBFA's, WMBfsb's, WMB's, NACI's, Aristar, Inc.'s or a Subsidiary's estimated allocable share of the consolidated federal income tax liability for the year, then such excess shall be paid by WMI within 30 days of receipt from WMBFA, WMBfsb, WMB, NACI, Aristar, Inc., or the Subsidiary of a written explanation of the overpayment.

3. For all taxable years during which WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., or any Subsidiary is included in a combined or consolidated tax return with WMI or another of its subsidiaries, the state or other local tax liability of such combined or consolidated group shall be allocated to:

(a) WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., and each Subsidiary as if each of WMBfsb, WMB, NACI, WMBFA, and such other Subsidiary had filed a separate, combined or consolidated tax return with each of its respective subsidiaries and

(b) WMI to the extent the sum of the amounts determined pursuant to clause (a) is different from the liability of the combined or consolidated group.

In no event will the foregoing allocation result in treatment less favorable to WMBfsb, WMB, WMBFA, and their subsidiaries than if they had filed separate, combined or consolidated tax returns, as the case may be.

4. The state and other local tax accounts between WMI, WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., and each Subsidiary shall be settled in the following manner:

(a) WMBfsb, WMBFA, NACI, Aristar, Inc., and each Subsidiary shall make payments on account of their state and other local tax liability to WMB in the same manner and at the same time as if such entities were filing separate returns or separate combined returns with, and making payments of taxes (including estimated taxes) to such state or other local taxing authority. WMB shall compute its state and other local tax liability in the same manner and at the same time as if such it were filing a separate return with, and making payment of taxes (including estimated taxes) to such state or other local taxing authority.

(b) WMI shall make payments to WMB in an amount necessary to satisfy the state and other local tax liability after considering the payments computed in (a) above.

(c) WMB shall pay to WMI, WMBfsb, WMBFA, NACI, Aristar, Inc., and each Subsidiary amounts that may be due them on account of (i) any overpayment of their said tax liability for a taxable year or (ii) any credit that may result from the utilization of their net operating loss for a taxable year, such credit being determined in accordance with item 3 above, within 30 days after the combined or consolidated return is filed for that taxable year or, to the extent any such amount due must be recovered from any state or other local taxing authority, within 30 days after payment is received from such state or other local taxing authority, or, if the amount due represents an overpayment of estimated tax which is in excess of WMI's, WMBfsb's, WMBFA's, NACI's, Aristar, Inc.'s, or a Subsidiary's estimated allocable share of the or combined State or local tax liability for the year by more than 10%, then such excess shall be paid by WMB within 30 days of receipt from WMI, WMBfsb, WMBFA, NACI, Aristar, Inc., or the subsidiary of a written explanation of the overpayment

5. Deferred tax assets and liabilities of WMI, WMBfsb, WMB, NACI, WMBFA, Aristar, Inc., and each Subsidiary will be handled in a manner consistent with Statement of Financial Accounting Standards No. 109 and, as it relates to WMBfsb, WMB, and WMBFA, consistent with bank and thrift regulatory guidelines. A copy of the current regulatory guidelines is attached hereto as Exhibits A and B.

6. This agreement shall remain in full force and effect until modified or amended by the mutual agreement of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this date first above written:

Washington Mutual, Inc.

By /s/ *KERRY KILLINGER*

Kerry Killinger, Chairman, President and Chief Executive Officer

Washington Mutual Bank fsb

By /s/ *KERRY KILLINGER*

Kerry Killinger, President

Washington Mutual Bank

By /s/ *WILLIAM A. LONGBRAKE*

William Longbrake, Vice Chair and Chief Financial Officer

New American Capital, Inc.

By /s/ *KERRY KILLINGER*

Kerry Killinger, President

Aristar, Inc.

By /s/ *CRAIG CHAPMAN*

Craig J. Chapman, President

Washington Mutual Bank, FA

By /s/ *WILLIAM A. LONGBRAKE*

William Longbrake, Vice Chair and Chief Financial Officer

Dates Referenced Herein *and* Documents Incorporated By Reference

This 10-K Filing	*Date*	*Referenced-On Page* First	Last	*Other Filings*
	3/30/98	1		
	8/31/99	1		
For The Period Ended	12/31/99			8-K
Filed On	3/14/00			
Filed As Of	3/15/00			

Top List All Filings

Filing Submission - Alternative Formats (Word / Rich Text, HTML, Plain Text, SGML, XML, et al.)

EXHIBIT B

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MEMORANDUM

TO:	The Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank
FROM:	Bracewell & Giuliani LLP
DATE:	November 25, 2008
RE:	Anticipated Tax Refund

I. Background

Washington Mutual Bank ("WMB"), a federal savings and loan association and direct, wholly-owned subsidiary of Washington Mutual, Inc. ("WMI"), was placed into receivership ("Receivership") by the Office of Thrift Supervision (the "OTS") on September 25, 2008. On the same date, after the Receivership was effective, the Federal Deposit Insurance Corporation, in its capacity as statutory receiver for WMB (the "FDIC" or "Receiver"), entered into a Purchase and Assumption Agreement (the "Purchase Agreement") with JPMorgan Chase Bank, National Association ("JPM"), whereby JPM acquired substantially all of the assets of WMB, including the stock of its subsidiary, Washington Mutual Bank fsb ("WMBfsb"), in exchange for $1.9 billion and the assumption of certain liabilities of WMB. Under the terms of the Purchase Agreement, JPM did not assume the approximately $6.1 billion of senior notes or $7.6 billion of subordinated notes issued by WMB.

The purpose of this memorandum is to explain why the anticipated tax refund resulting from the carryback of WMB's 2008 losses to 2006 and 2007 income taxes paid was not sold to JPMorgan Chase pursuant to the Purchase Agreement.[1] The short answer is that the Purchase Agreement excludes claims that WMB has against WMI, and the anticipated tax refund is, from WMB's perspective, a claim by WMB against WMI under their tax sharing agreement.

II. The Purchase Agreement

The Purchase Agreement states that JPM shall acquire all of the assets of WMB from the Receiver, subject to certain exclusions. Specifically, the Purchase Agreement, in Section 3.1, provides:

> [T]he Receiver hereby sells, assigns, transfers, conveys, and delivers to [JPM], all right, title and interest of the Receiver in and to all of the assets (real, personal and mixed, wherever located and however acquired) including all subsidiaries, joint ventures, partnerships, and any and all other business combinations or arrangements, whether active, inactive, dissolved or terminated, of [WMB] whether or not reflected on the books of [WMB] as of [the close of business on the date the OTS closed WMB (the "WMB Closing")].

The Purchase Agreement further provides, in Section 3.5, that:

> JPM does not purchase, acquire or assume, or (except as otherwise expressly provided in this Agreement) obtain an option to purchase, acquire or assume under this Agreement the assets or Assets listed on the attached Schedule 3.5.

[1] This memorandum focuses on federal income tax law but there may also be relevant anticipated state tax refunds, recognizing that many states (unlike federal) do not permit the carryback of losses.

Schedule 3.5 to the Purchase Agreement specifically provides that assets so excluded from the sale to JPM include:

> [A]ny interest, right, action, claim, or judgment against...any shareholder or holding company of [WMB]...provided, that for the purposes hereof, the acts, omissions, or other events giving rise to such claim shall have occurred on or before [the WMB Closing], regardless of when any such claim is discovered....

The Purchase Agreement does not specifically identify any tax-related items of WMB as being included in or excluded from the assets sold to JPM.

For the years ended December 31, 2006 and 2007, WMB reported, in the aggregate, profits of approximately $4 billion and over $2 billion in income tax expense.[2] In 2008, however, WMB incurred losses in excess of $3 billion in the first six-months of 2008.[3] Although there is no publicly-available information regarding U.S. federal taxable income of, or taxes paid by or on behalf of, WMB for these years, it is reasonable to conclude that WMB had significant taxable income in 2006 and 2007 and incurred substantial tax losses in 2008 prior to the Receivership (the "WMB Pre-Closing Losses"). It is also believed that WMB incurred losses as a result of the Receiver's sale of WMB's assets to JPM (the "Sale Losses")

[2] Washington Mutual Inc., Annual Report (Form 10-K) (Year Ended Dec. 31, 2006); Washington Mutual Inc., Annual Report (Form 10-K) (Year Ended Dec. 31, 2007).

[3] Washington Mutual Inc., Quarterly Report (Form 10-Q) (Period Ended June 30, 2008).

and has and will continue to generate tax losses from the disposition of its retained assets until the Receivership terminates (the "WMB Post-Sale Losses").

For U.S. federal income tax purposes, WMI and WMB are members of a consolidated group that files a single U.S. federal income tax return (the "WMI Group"). WMI has been the common parent of such group for at least the past three years, and WMB was a wholly-owned direct subsidiary of WMI during such time. WMI files tax returns, and pays the taxes owing, on behalf of the WMI Group.

WMI and WMB are parties to a Tax Sharing Agreement dated August 31, 1999 by and between WMI and its subsidiaries (the "Tax Sharing Agreement"). The Tax Sharing Agreement generally provides that each subsidiary that is a party to the agreement shall pay to WMI its share of the taxes, and WMI will pay to each such subsidiary its share of the refunds, of the WMI Group. A subsidiary's share of the group's tax liability or tax refunds is determined as the tax liability it would have incurred or the refund it would have earned had such subsidiary filed tax returns separately and not as a member of the consolidated group. Specifically, the Tax Sharing Agreement provides, in relevant part, that:

> WMI shall pay to [its subsidiaries] amounts that may be due them on account of (i) any overpayment of their said tax liability for a taxable year or (ii) any credit that may result from the utilization of their net operating loss for a taxable year, such credit being determined in accordance with the provisions of item 1 above,[4] within 30

[4] Item 1 of the Tax Sharing Agreement provides, in relevant part, that "[f]or all taxable years during which [any of its subsidiaries] is a member of an 'affiliated group' of WMI as defined in Section 1504 of the Internal Revenue Code and is required to join in the

days after the consolidated return is filed for that taxable year or, to the extent any such amount due must be recovered from the IRS, within 30 days after payment is received from the IRS.[5]

III. Summary of U.S. Federal Income Tax Law With Respect to Net Operating Losses

The Internal Revenue Code of 1986, as amended (the "Code") allows a deduction for certain net operating loss ("NOL") carrybacks and carryforwards by corporate taxpayers.[6] An NOL, generally the excess of allowable deductions over gross income of a corporation,[7] is computed for each taxable year of a corporate taxpayer.[8] An NOL may be carried back two taxable years and forward twenty taxable years to offset taxable income of the corporation in such years.[9] Absent an affirmative election, an NOL must first be carried back to the second prior year, then the first prior year to obtain refunds for taxes paid in those years, with any remaining NOL carried forward to the next following taxable year or years to

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filing of a consolidated federal income tax return of WMI and its consolidated subsidiaries, the federal income tax liability of such consolidated group shall be allocated and shared among [the subsidiaries] as if such entities filed a separate or consolidated return, as the case may be."

[5] Tax Sharing Agreement, at Section 2(b).

[6] Code Section 172.

[7] Code Section 172(c).

[8] Treasury Regulation Section 1.172-2(a).

[9] Code Section 172(b)(1).

offset taxable income.[10] A corporation's "taxable year" generally is the calendar year or fiscal year ending during such calendar year, for which the taxpayer computes taxable income and files a tax return. Such period generally is the twelve month period properly adopted by the corporation for tax reporting purposes, but can be less than twelve months as corporate reorganizations and liquidations can cause an early termination of a tax year.[11] The taxable year of a subsidiary of a consolidated group does not end solely because it is placed into bankruptcy or receivership or upon a sale of substantially all of its assets, and its tax year continues until the tax year of its consolidated group ends.[12]

The NOL for a corporate consolidated group generally is the excess, if any, of the aggregate allowable deductions over aggregate gross income of all members of a group for the taxable year.[13] The consolidated NOL can be carried back and carried forward by the taxpayer to other consolidated return years under the principles of Code Section 172. If a consolidated group has an NOL in a taxable year, then the common parent corporation, or its designated agent, may file for a tentative carryback adjustment to apply such NOL against

[10] Code Section 172(b)(2).

[11] Id.

[12] Treasury Regulation Section 1.1502-75 and Rev. Rul. 63-104, 1963-1 CB 172. See also IRS PLR 200643001 (July 26, 2006).

[13] Treasury Regulation Section 1.1502-11(a).

prior year consolidated taxable income to obtain a refund.[14] A tentative application for an NOL carryback to adjust the taxes paid by a taxpayer during prior taxable years may be filed with Internal Revenue Service (the "IRS") only on or after the due date for filing such taxpayer's tax return for the year in which the NOL is generated.[15] Any refund due is then paid to the common parent of the consolidated group, or its designated agent.[16]

Notwithstanding the general rule that tax refunds attributable to a consolidated group are applied for by, and payable to, the common parent of such group, when a subsidiary of the consolidated group is an insolvent financial institution for which the FDIC is authorized to act as receiver, the FDIC may also file a carryback claim and receive the refund directly as an agent of the consolidated group.[17] While the FDIC, as receiver for a subsidiary of a consolidated group, may file for the direct receipt of a refund with respect to the consolidated

[14] Treasury Regulation Section 1.1502-78(a).

[15] Code Section 6411. Because claims for refunds often trigger a complete audit of the return(s) for the relevant tax years prior to payment of the refund, a taxpayer may be required to wait a substantial amount of time to obtain a refund. To expedite the process, Code Section 6411 enables a taxpayer to apply for a tentative carryback adjustment where the cash payment may be made prior to a full audit. The amount received by the taxpayer, however, is only a tentative allowance of any overpayment. Any overpayment made by the IRS pursuant to a tentative carryback adjustment can later be pursued by the IRS through a deficiency claim, whereas an overpayment of a refund can only obtained if the IRS commence an action to recover the refund from the taxpayer. For purposes of this letter both tentative carryback adjustments and refund claims will be referred to as refund claims.

[16] Treasury Regulation Section 1.1502-78(b).

[17] Treasury Regulation Section 301.6402-7.

group, the IRS is not obligated to pay the FDIC all or any portion of such refund and may use its sole discretion to determine the amount, if any, paid to the FDIC with respect to such claim.[18]

If a corporation is acquired through an acquisition of its stock, such corporation retains its NOLs (generally subject to limitation on future utilization).[19] In contrast, if the assets of a corporation are purchased, the purchaser cannot acquire such corporation's NOLs.[20] A corporation can, however, sell its right to receive a tax refund in connection with the asset sale.[21]

Accordingly, the WMB Pre-Closing Losses can be carried back to the two prior tax years of the WMI Group to obtain a refund of prior years' taxes paid by the WMI Group with any remaining amount of such losses being carried forward up to twenty years to offset future taxable income of the WMI Group. Any refund received by WMI and attributable to the WMB Pre-Closing Losses is payable to WMB as determined under the terms of the Tax Sharing Agreement (the "WMB Tax Payment").

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[18] Treasury Regulation Section 301.6402-7(g).

[19] Code Sections 381, 382.

[20] Mergers, Acquisitions, and Buyouts, Martin D. Ginsburg and Jack S. Levin, Vol. 3 at 1205 (January 2008).

[21] See infra footnote 27.

IV. Treatment of Consolidated Group Tax Refunds under the Bankruptcy Law

A. A Debtor's Accrued Losses Create an Inchoate Right to a Tax Refund which is Property of the Debtor's Bankruptcy Estate.

Although under the tax law a corporate taxpayer cannot obtain a refund in connection with the carryback of NOLs until after the tax year of such losses closes, the U.S. Supreme Court has interpreted the bankruptcy law to include as property in a debtor's bankruptcy estate a debtor's inchoate right to receive a loss carryback refund.[22] In Segal the debtors had incurred net tax losses for the taxable year through the date of the bankruptcy petition, which did not coincide with the end of the debtors' taxable year. The Court acknowledged that the tax law provides for calculation of tax refunds only on a full year's experience after the tax year has closed and, as of the date of bankruptcy, the amount of any tax claim with respect to losses of the debtors for such year could not be ascertained nor could any claim for payment from the IRS be made. Nevertheless, the Court held that the combination of the losses

[22] Segal v. Rochelle, 382 U.S. 375, 379-381 (1966). Bankruptcy law is relevant with respect to an FDIC receivership. The FDIC has stated that "[i]n many ways the powers of the FDIC as receiver of a failed institution are similar to those of a bankruptcy trustee." The FDIC's Role as Receiver, in The FDIC Resolution Handbook at 67-68 (Apr. 2, 2003), available at, <http://www.fdic.gov/bank/historical/reshandbook/>. See also Hightstown Rug Co. v. Nat'l Sav. & Trust Co., 186 F.2d 10, 12 (D.C. App. 1947) (stating that because similar considerations apply to the administration of both bankruptcy and receivership estates, "the legal principles applying to them naturally should follow a similar pattern"); In re Mercury Engineering Co., 60 F. Supp. 786, 788 (S.D. Cal. 1945) (noting that the same principles apply to bankruptcy and receivership cases); In re Riggs, 51 F. Supp. 961, 962 (E.D. Pa. 1943) (same); and Beck v. Fort James Corp. (In re Crown Vantage, Inc.), 421 F.3d 963, 971 (9th Cir. 2005) (finding that a receiver stands in the same capacity as a trustee in bankruptcy).

incurred by the debtors as of the date of bankruptcy and the payment of taxes in years to which such losses could be carried back for a refund was sufficient to find that there was an inchoate claim for refund that was transferable property of the bankruptcy estate. Although no refund with respect to such losses could be collected from the IRS until the following year, the "postponed enjoyment does not disqualify an interest as property."[23] The Court found a property interest in the inchoate right to a refund despite acknowledging that post-petition earnings of the debtors in the same tax year could offset the losses previously incurred, eliminating the opportunity for a refund. Further, the Court noted that had the debtors incurred additional losses in the same tax year after the date of bankruptcy, the proration of such refund would be made between the pre and post-petition periods.[24]

The Ninth Circuit has stated its acceptance of the holding in Segal. In In re Wade Cook Financial Corp.,[25] a petition for bankruptcy was filed before the end of the debtor's tax year and the debtor had incurred a tax loss for such tax year as of the date of the petition. After the debtor's tax year ended, a claim for a carryback of such losses was filed to obtain a

[23] Id.

[24] The practice of prorating tax refunds based upon the amount of losses incurred before and after a petition for bankruptcy filed before the end of the debtor's tax year has been followed in numerous cases. See, e.g. Kokoszka v. Belford, 417 U.S. 642 (1974); In re Barowsky, 946 F.2d at 1518 (cites nine cases and notes that "[e]very court that has considered [the] issue has held that the portion of an income tax refund that is based upon the pre-petition portion of a taxable year constitutes property of the bankruptcy estate.") (citations omitted).

[25] 375 B.R. 580 (9th Cir. 2007).

tax refund. The court determined that the claim for the tax refund with respect to losses incurred prior to the petition was a prepetition claim and not a postpetition claim even though the claim may have been contingent, unliquidated or unmatured when the petition was filed. To resolve any doubt about the applicability of Segal, the court noted "[t]hough Segal was decided under the prior Bankruptcy Act, it remains good law under the Bankruptcy Code applicable to the instant case."[26]

An inchoate right to a future tax refund is assignable by a debtor. In Danning v. Mintz,[27] the court held that a taxpayer's right to its tax refund is generally assignable. As long as the assignment of a tax refund is made pursuant to a valid, enforceable, contract between the parties, the assignee obtains all of the assignor's rights to receive the refund.

B. A Subsidiary Debtor's Right to its Share of a Consolidated Group Tax Refund is a Claim against its Parent in Bankruptcy.

The courts have considered the nature of an inchoate right to a refund of a subsidiary in a consolidated group when refunds payable with respect to taxes of a consolidated group generally are payable by the IRS to the common parent of such group. The courts have evaluated the subsidiary debtor's claim for tax refunds received by its parent with and

[26] Id. at 597-598. See also U.S. v. Sims (In re Feiler), 218 F.3d 948, 955 (9th Cir. 2000); Chappel v. Proctor (In re Chapel), 189 B.R. 489, 493 (9th Cir. 1995).

[27] 367 F.2d 304 (9th Cir. 1966). See also In re Lagerstrom, 300 F. Supp. 538 (S.D. Illinois 1969) and Puget Sound Nat. Bank v. State, 123 Wash. 2d 284, 292 (1994) (holding that a sales tax refund is generally assignable, because to hold would be contrary to the general principles of assignment).

without a tax sharing agreement. In the absence of tax sharing agreement between the parties, the courts generally find that if a subsidiary would have been entitled to a refund in connection with a carryback of NOLs had it always filed as a separate company, the refund received by the parent inures to the benefit of the subsidiary that incurred the loss and the parent holds such refund as an agent of such subsidiary. To permit the parent to retain such refund would result in its unjust enrichment.[28]

When a subsidiary and the parent of a consolidated group are parties to a tax sharing agreement that addresses the treatment of tax refunds, absent a clear agreement that the parent holds refunds attributable to losses generated by a subsidiary in trust for, or as an agent of, such subsidiary, the courts find the parties to have a debtor-creditor relationship with respect to refunds.[29] A tax sharing agreement generally will be found to create a trustee

[28] Western Dealer Mgmt, Inc. v. England (In re Bob Richards Chrysler-Plymouth Corp.), 473 F.2d 262, 265 (9th Cir. 1973). See also, Jump v. Manchester Life & Cas. Mgmt. Corp., 438 F. Supp. 185, 189 (E.D. Mo. 1977) ("subsidiary has a right to recover an income tax refund channeled through a parent company filing a consolidated return, and... this right is limited to the recovery which the subsidiary would have had if it had filed individual returns throughout"); U.S. v. Revco D.S., Inc. (In re Revco), 111 B.R. 631, 639 (Bankr. N.D. Oh. 1990) (held that subsidiary was entitled to loss-carryback refund based on In re Bob Richards holding, noting that where the parties made no agreement, the parent corporation acted as an agent for the consolidated group); FDIC v. Brandt (In re Florida Park Banks), 110 B.R. 986, 989 (Bankr. M.D. Fla. 1990) (held that FDIC, as receiver of subsidiary bank, was entitled to the tax refund received by debtor parent that was generated through the subsidiaries' operating losses).

[29] Franklin Savings Corp. v. Franklin Savings Ass'n (In re Franklin Savings Corp.), 182 B.R. 859, 862-863 (D. Kan. 1993), aff'd 31 F.3d 1020 (10th Cir. 2004) (holding that a debtor-creditor relationship existed where "[u]nder the terms of the agreement, the taxes were not held in trust for the benefit of the subsidiary to be automatically turned over to it").

or agency relationship between a parent corporation in possession of a tax refund and its subsidiary if it (i) requires the parent to segregate the tax refund from its other funds; or (ii) restricts the parent's use of the cash tax refund.[30] If the tax sharing agreement does not explicitly or implicitly create a trust or agency relationship between the parent and subsidiary, the court will not deem such relationship to exist.

In In re MCorp Financial, Inc.,[31] the court specifically addressed the rights of a bank subsidiary in receivership to collect its share of a tax refund received by its parent, a debtor in bankruptcy, pursuant to the terms of a tax sharing agreement. The bank subsidiary and its parent were parties to a tax sharing agreement that did not characterize the parent as receiving any refunds attributable to the subsidiary's losses as an agent or nominee for the subsidiary. Thus, the obligation of the parent to remit any portion of a tax refund it received to its subsidiary created a debtor-creditor relationship between the parties. Accordingly, the

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Similarly, in U.S. v. MCorp Financial, Inc. (In re MCorp Financial, Inc.), 170 B.R. 899, 903 (S.D. Tex. 1994), the court held that where the tax allocation agreement did not contain language creating a trustee relationship or provide that the parent held a "mere nominal claim to the refund," the agreement created a debtor-creditor relationship between the parent and subsidiary.

[30] Superintendent of Ins. v. First Central Financial Corp. (In re First Central Financial Corp.), 269 B.R. 481, 496 (Bankr. E.D.N.Y. 2001), aff'd 377 F.3d 209 (2d Cir. 2004).

[31] 170 B.R. 899, 903 (S.D. Tex. 1994).

court held that if the subsidiary bank, or the purchaser of its assets in receivership, wanted to enforce its right to such refund against the parent it must file a claim in bankruptcy.[32]

The agreement for the sale of the bank subsidiary's assets between the FDIC and the purchaser provided that the FDIC retained all claims against the parent corporation. Thus, the court found that the bank's claim against its parent for the tax refund pursuant to the tax sharing agreement was a claim retained by the FDIC. Further, the purchaser of the bank's assets could not claim any portion of the refund received by the parent on the equities of unjust enrichment because such right does not exist between a post-bankruptcy purchaser out of a receivership and a creditor of the estate.

The courts' interpretation of subsidiaries' rights to refunds received by their parent in bankruptcy is consistent with the FDIC's policy statement regarding tax allocations in a holding company structure (the "Interagency Tax Policy").[33] The Interagency Tax Policy provides that a parent company that receives a tax refund obtains such funds as agent for the consolidated group on behalf of the group members.[34] If a refund is not paid by a parent

[32] Id.

[33] Interagency Policy Statement On Income Tax Allocation In A Holding Company Structure, 64758 Interagency Policy Stmt., Federal Register/Vol. 63, No. 225 (Nov. 23, 1998).

[34] Citing Treasury Regulation Section 1.1502-77(a) that states, except as otherwise provided, the common parent for a consolidated return year is the sole agent (agent for the group) that is authorized to act in its own name with respect to all matters relating to the tax liability for that consolidated return year, for each member in the group ...[t]he common parent files claims for refund, and any refund is made directly to and in the name of the

company within a reasonable time period, the receivable should be treated as either an extension of credit or a dividend from the subsidiary to the parent. The Interagency Tax Policy also encourages holding companies and subsidiary financial institutions to enter into written, comprehensive tax allocation agreements and recommends parameters for such agreements including allocating each member's liabilities and benefits as if it had always filed on a separate entity basis.[35] The Interagency Tax Policy further provides that an institution incurring a loss for tax purposes should receive a refund from its parent in an amount that is no less than the amount the institution would have been entitled to receive as a separate entity. The Interagency Tax Policy is thus consistent with the bankruptcy law that a tax refund paid to a parent corporation inures to the benefit of the subsidiary that incurred the loss resulting in such refund; however, if a fair and reasonable tax sharing agreement exists among the parties, it should be followed to determine the rights of the parties with respect to tax refunds.

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common parent and discharges any liability of the Government to any member with respect to such refund.

[35] Interagency Tax Policy, at 64758. Moreover, one of the primary purposes of a written tax sharing agreement in banking organizations is to govern the rights and responsibilities of the consolidated group's members in order to comport with banking laws and regulations regarding transactions between an insured depository institution and its affiliates. In the absence of a written agreement among the parties of a consolidated group, intercompany tax payments may not be properly recorded and are subject to potential abuse. For example, under Section 11(a) of the Home Owners' Loan Act (12 U.S.C. § 1468(a)), transactions between WMI and WMB, as affiliates, are subject to the requirements of the provisions of Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. § 371c and 12 U.S.C. § 371c-1) and the related regulations of the OTS.

V. JPM's Entitlement to the WMB Tax Payment under the Purchase Agreement

A. The Plain Language of the Purchase Agreement.

Under the Purchase Agreement, JPM acquired from the Receiver all right, title and interest of the Receiver in and to all of the assets of WMB as of the WMB Closing. Specifically excluded from that transfer, however, was any interest, right, action, claim, or judgment against any shareholder or holding company of WMB; provided, that, the acts, omissions, or other events giving rise to such claim occurred on or before the WMB Closing. The critical questions then are: what is the nature of WMB's rights to the tax refund attributable to the WMB Pre-Closing Losses and did JPM acquire such rights?

Prior to undertaking the substantive analysis, the procedural rules for applying the Purchase Agreement must be considered. The Purchase Agreement provides that its interpretation will be governed by federal law and, in the absence of controlling federal law, the law of the state in which the main office of WMB is located.[36] WMB is a Washington corporation and its main office is in Seattle, Washington. Under Washington law, whenever possible, the plain language of a contract should be considered first[37] and words should be given their ordinary, usual, and popular meaning unless the agreement, as a whole, clearly demonstrates a contrary intent.[38] Intent should be determined by objective manifestations

[36] Purchase Agreement, at Section 13.4.

[37] Flores v. American Seafood Co., 335 F.3d 904, 910 (9th Cir. 2003).

[38] Id. (internal citations omitted).

rather than the parties' unexpressed subjective intent.[39] Accordingly, to the extent the plain language of the Purchase Agreement provides a clear expression of intent, such expression should be followed without consideration of other potentially conflicting expressions of the parties' intentions not memorialized in the agreement.

B. WMB's Right to a Tax Refund Attributable to the Carryback of WMB Pre-Closing Losses is in the Form of an Accrued Claim Against WMI under the Tax Sharing Agreement.

As discussed in Section IV of this memorandum, NOLs are computed only with respect to completed taxable years and no refunds can be claimed in connection with an NOL carryback until after the taxable year of such losses has ended. WMB's tax year did not end as a result of the WMB Closing. Accordingly, none of WMI, the Receiver or WMB had the absolute right to receive a cash refund directly or indirectly from the IRS with respect to WMB Pre-Closing Losses as of the WMB Closing. Thus, no tax receivable existed with respect to such losses as of the WMB Closing to be conveyed to JPM.

The accrual of losses together with the payment of taxes in the years to which such losses would be carried back, however, results in an inchoate right to a refund which is transferable property of a bankruptcy estate. The WMB Pre-Closing Losses were all incurred prior to the WMB Closing, and WMB paid taxes in the two carryback years (pursuant to the

[39] Paradiso v. Drake, 135 Wash. App. 329, 336 (2006) (internal citations omitted).

terms of the Tax Sharing Agreement). Accordingly, the Receiver should include the inchoate right to a tax refund relating to the WMB Pre-Closing Losses as property of the Receivership.

As previously described, a subsidiary in a consolidated group generally is not entitled to receive any refund directly from the IRS with respect to the carryback of its NOLs by the group. Instead, such refund is payable to the parent, and the subsidiary is entitled to seek recovery of its share in equity or, if a tax sharing agreement exists, as a creditor of the parent, unless the agreement otherwise provides. Because WMI and WMB are parties to the Tax Sharing Agreement as of the WMB Closing, such agreement should govern the rights of the parties with respect to any tax refund paid to WMI. The Tax Sharing Agreement does not indicate that refunds with respect to the group paid to WMI are held by WMI as an agent or nominee of its subsidiaries. Therefore, WMB's entitlement to collect any portion of a refund from WMI under the Tax Sharing Agreement constitutes a creditor claim against WMI.

As noted above, under the Treasury Regulations, the FDIC, as Receiver for WMB, has the right to request that the IRS pay WMB's share of any refund with respect to the carryback of WMB Pre-Closing Losses directly to it as Receiver. However, such right did not vest in the FDIC until it became the Receiver of WMB. The Purchase Agreement is clear that the rights and claims conveyed to JPM are determined as of the WMB Closing, which occurred when WMB was closed by the OTS. The FDIC did not become the Receiver until after such time. Thus, as of the WMB Closing, the FDIC had no right to seek a direct refund

of taxes from the IRS, thus it could not convey such right to JPM nor could it have agreed to remit to JPM any proceeds it received as a result of the exercise of such right.

Accordingly, as of the WMB Closing, the inchoate right to a tax refund with respect to the WMB Pre-Closing Losses accrued to WMB and WMB's ability to collect such refund was limited to establishing a claim as a creditor of WMI. Thus, the WMB Tax Payment is properly characterized as a fully accrued claim against WMI as of the WMB Closing which is expressly excluded from the assets conveyed to JPM under the plain language of the Purchase Agreement and the Purchase Agreement must be interpreted to provide that the WMB Tax Payment is retained by the Receiver.

Further, JPM has no right to any refund arising with respect to the Sale Losses or the WMB Post-Sale Losses since they were not accrued as of the WMB Closing. Accordingly, the right to such refunds is also retained by the FDIC for the benefit of the WMB creditors.

VI. The FDIC Can Collect the Tax Refund in One of Two Ways

As noted, the FDIC is entitled to request that the IRS pay the tax refund directly to the FDIC. However, as also noted, it is within the IRS's sole discretion to determine the amount, if any, that it will pay directly to the FDIC.

The creditors of WMB urge the FDIC, in its capacity as Receiver with the statutory obligation generally to maximize the return on the sale or disposition of the receivership

estate's assets,[40] to expediently seek direct payment from the IRS of the refunds attributable to the WMB Pre-Closing Losses, the Sale Loss and the WMB Post-Sale Losses from the IRS. In making such request, we urge the FDIC to emphasize to the IRS the importance of the refund to the Receivership and the highly inequitable results that would occur were the IRS to make the payment to WMI instead and then for WMI to successfully persuade the bankruptcy court that the Receivership should be accorded only an unsecured claim under the Tax Sharing Agreement. As a creditor of WMI, WMB would likely have a far lesser recovery of such refund for the benefit of WMB's creditors than it would have if the FDIC had successfully applied to receive such amounts directly.

Even if the IRS unjustly refuses to honor the FDIC's request, we would urge the FDIC to enforce an alternative payment mechanism that would ensure that the Receivership receives its full share of the refund, rather than merely an unsecured dividend. The FDIC is well aware of WMI's assertion that it had bank "deposits" with WMB and WMBfsb of not less than $4.4 billion. The FDIC is also aware that we have questioned whether the accounts should properly be characterized as WMI deposits. However, if the accounts are so characterized and if the IRS does not honor the FDIC's direct payment request, we urge the FDIC to invoke its duties as Receiver to exercise its legal rights to offset the tax refund

[40] FDIC Resolution Handbook, Introduction at 2, available at <http://www.fdic.gov/bank/historical/reshandbook/index.html>. See generally Golden Pac. Bancorp. v. FDIC, 375 F.3d 196, 201 (2d Cir. 2004); Phelan v. Middle States Oil Corp., 154 F.2d 978, 991 (2d Cir. 1946).

against the accounts, which will ensure payment in full to the Receivership that is rightly entitled to the refunds for the pre-Receivership taxes paid by WMB.

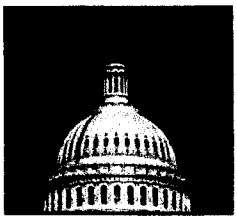
* * * * *

We are grateful for your consideration of these issues and are willing, at your convenience, to meet with you to discuss these matters or provide any other assistance needed in interpreting the rights and obligations of the parties with respect to the tax refunds at issue. Please do not hesitate to contact us with any questions or comments you may have.

EXHIBIT C

A Washington National Tax Services (WNTS) Publication

WNTS Insight*



Senate approves proposal to increase NOL carryback period

November 4, 2009

The Senate tonight passed, 98-0, unemployment benefit legislation including a provision that would allow most business taxpayers to elect an increased carryback period for net operating losses (NOLs) incurred in 2008 or 2009. This provision may provide significant benefits for taxpayers that do not qualify as eligible small businesses (ESBs) under the extended NOL carryback provision enacted earlier this year. The Senate provision excludes taxpayers that have received assistance through the Troubled Asset Relief Program (TARP).

The expanded NOL carryback provision was adopted as part of a Senate amendment to a House-passed bill (H.R. 3548) extending unemployment benefits. The Senate also approved extension of a modified homebuyer tax credit. The revenue cost of the Senate-passed bill is fully offset by a delay until 2018 in implementation of worldwide interest allocation rules, an extension of the federal unemployment surtax, an increase in penalties for failure to file S corporation and partnership tax returns, and a temporary increase in corporate estimated tax payments due during the period of July-September 2014.

House Majority Leader Steny Hoyer (D-MD) announced following the Senate vote that the House could vote on the Senate-approved legislation as early as tomorrow. President Obama is expected to sign the legislation.

Background

Taxpayers generally may claim a deduction for a tax year for NOL carryovers and carrybacks to that year. An NOL is an amount by which business deductions exceed gross income, with modifications, in a particular tax year. In general, NOLs may be carried back two tax years and forward 20 tax years. (Longer carryback periods are allowed for certain specified liability losses, disaster losses, farming losses, and certain other losses.) A taxpayer may elect to forgo the carryback period and instead carry the NOL forward.

The American Recovery and Reinvestment Act of 2009 (ARRA) provides certain ESBs the ability to elect an increased NOL carryback period for losses incurred in 2008. An ESB is generally a business that meets a $15 million average annual gross receipts test.

Summary of Provision

Under the provision approved by the Senate today, an electing taxpayer may increase the NOL carryback period for an "applicable NOL" from two years to any whole number of years that is more than two but less than six (that is, three, four, or five years). There are no restrictions on the type of taxpayer that can make the election, except for certain TARP participants (discussed below).

Observation: The ability for taxpayers to elect three, four, or five years for the increased carryback period provides added flexibility that did not exist with the five-year carryback period for 2001 and 2002 NOLs. In that case, taxpayers had to use either the increased five-year or the existing two-year carryback period. The ability to choose years may benefit taxpayers with other tax attributes, such as foreign tax credits or general business credits, or that wish to carry back the loss to a certain year for other reasons.

An applicable NOL is the taxpayer's NOL for a tax year ending after December 31, 2007, and beginning before January 1, 2010. Thus, a taxpayer may elect this provision for a tax year ending in 2008 or 2009, or beginning in 2008 or 2009. The election may be made for only one tax year, but an exception is provided for ESBs that have made (or will make) an election for an applicable 2008 NOL under current law. These ESBs also may make an election for 2009, so the extended carryback period may apply to 2008 and 2009 NOLs.

Observation: The Joint Committee on Taxation staff (JCT) technical explanation (JCX-44-09) clarifies the intention that an ESB is allowed to make a current-law election for an applicable 2008 NOL after enactment of the bill (as long as the election is made timely under the rules).

The provision suspends the 90-percent limitation on the use of AMT NOL deductions for carrybacks for which an extended carryback period is elected.

Limitation on carryback to fifth preceding tax year

The amount of an NOL carried back to the fifth tax year preceding the

tax year of the loss is limited to 50 percent of the taxable income in the earlier year. Amounts limited under this rule may be carried to other years without limitation. Unlike a proposal previously considered, this limitation is not a permanent "haircut" of the NOL.

Observation: The JCT technical explanation clarifies that the 50-percent limitation applies for both regular and AMT purposes.

An exception to the 50-percent limitation is provided for ESBs that have made (or make) an election under current law for an applicable 2008 NOL. In effect, this allows ESBs to follow the existing rules permitting full offset for the carryback of an applicable 2008 NOL.

Observation: The JCT technical explanation clarifies that the exception for ESBs applies whether the election under current law is made either before or after H.R. 3548 is enacted.

To the extent an ESB elects to carry back a loss from 2009, the 50-percent limitation does apply to that carryback. In addition, when an ESB does not make an election under current law and follows the general rules for 2008 or 2009 NOLs, the 50-percent limitation applies.

Life insurance companies

A life insurance company currently may carry a loss from operations back three tax years and forward 15 tax years. Under the bill, an electing life insurance company may increase the carryback period for an applicable loss from operations from three years to any whole number of years that is more than three but less than six (that is, four or five years). An applicable loss from operations is the taxpayer's loss from operations for a tax year ending after December 31, 2007, and beginning before January 1, 2010. The election may be made for only one tax year. The 50-percent limitation described above applies to a loss from operations carried back to the fifth tax year preceding the tax year of the loss.

Procedural rules

Elections under this provision must be made by the due date (including extension) for filing the tax return for the taxpayer's last tax year beginning in 2009. The JCT technical explanation indicates that IRS

should prescribe detailed rules for making the election similar to those included in Rev. Proc. 2009-26 for ESB-applicable 2008 losses.

Observation: Taxpayers may have carried back 2008 losses two years under current law. Under the procedural rules of the bill, taxpayers may elect the extended carryback period until filing the 2009 return. Thus, an electing taxpayer that has already filed a carryback claim will likely need to file an amended Form 1139 or otherwise revise the previously filed carryback to apply the new rules. It is expected that the IRS will issue procedural guidance similar to Rev. Proc. 2009-26 for ESB losses under current law.

Anti-abuse rules

The statute directs Treasury to prescribe anti-abuse rules to prevent misuse of the increased NOL carryback period. These anti-abuse rules may include anti-stuffing rules, anti-churning rules, and rules similar to the section 1091 wash sales rules.

Exception for TARP recipients

The increased carryback period is not available to the following taxpayers:

- Any taxpayer if the Federal Government at any time acquires an equity interest or warrant (or other right) to acquire any equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008. A limited exception exists for financial institutions receiving such assistance after the date of enactment pursuant to a Treasury program with the stated purpose of increasing the availability of credit to small businesses;

- The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; and

- Any taxpayer that at any time in 2008 or 2009 is a member of the same affiliated group (generally defined in section 1504) as a taxpayer in the first two groups.

Transition rules

For taxpayers that have previously made an election to forgo a carryback, or when the period for filing an application for tentative refund has lapsed, the following transition rules are provided for taxpayers with an applicable NOL (or loss from operations) for a tax year ending before the date of enactment:

- Any election made to waive a carryback period with respect to such loss may be revoked before the due date (including extension) for filing the tax return for the taxpayer's last tax year beginning in 2009; and
- Any application for a tentative carryback adjustment on Form 1139 with respect to such loss is treated as timely filed if filed before the due date (including extension) for filing the tax return for the taxpayer's last tax year beginning in 2009.

For more information on this WNTS Insight, please contact Darrell Poplock at 202-346-5190 or darrell.poplock@us.pwc.com.

pwc.com/wnts

EXHIBIT D

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

- -x

In the Matter of:

WASHINGTON MUTUAL, INC., ET AL.,	Case No.
Debtors.	08-12229 (MFW)

- -x

BLACK HORSE CAPITAL LP, ET AL., Plaintiffs,	ADV. Proceeding
- against -	No. 10-51387 (MFW)
JPMORGAN CHASE BANK, N.A., ET AL., Defendants.	

- -x

BROADBILL INVESTMENT CORP., Plaintiff,	ADV. Proceeding
- against -	No. 10-50911 (MFW)
WASHINGTON MUTUAL, INC., Defendant.	

- -x

U.S. Bankruptcy Court

824 North Market Street

Wilmington, Delaware

December 7, 2010

9:38 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

Your Honor, I don't want to belab -- I don't want to take too much of the Court's time, but I think it's clear that what we're having resolved here is very significant, very complicated, precedential litigation that could have gone any number of ways. And what you're hearing from the equity committee is not that they have a better plan, this isn't a debtor that's going to be operating and the equity committee is saying we're entitled to some value. What they're saying is toss out this deal that resolves all this litigation and try and swing for the fences and get us into the money and we don't care what happens to everyone else. That's what is going on here, Your Honor.

Your Honor, I would also, just briefly on the releases, it is essential to the FDIC and it was part of our deal that we get these third-party releases because we're compromising very significant statutory rights. We're not doing that. The FDIC is not in this for the money, Your Honor. We're in there for the resolution. We're not doing that so that some of these people on the other side of the room can think of another wacky theory and come out against us. So, to the extent that those releases, those third-party releases are being delivered under the settlement agreement, they're essential to our agreement to the bar. Thank you, Your Honor.

THE COURT: What third-party releases is the FDIC getting?

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
- - - - - - - - - - - - - - - - - - x
In the Matter of:
WASHINGTON MUTUAL, INC., et al., Case No. 08-12229 (MFW)
Debtors. (Jointly Administered)
- - - - - - - - - - - - - - - - - - x
- - - - - - - - - - - - - - - - - - x
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.
- - - - - - - - - - - - - - - - - - x

information from Fried Frank, did Appaloosa restrict trading --

A. Yes.

Q. -- with WMI, until it was made public?

A. Correct.

Q. There also -- there have been some assertions in this case that Appaloosa or others dominated the settlement process in this matter. Have you seen those?

A. Yes, I have.

Q. What's your reaction to that, Mr. Bolin?

A. Frankly I think they're naïve. This is a massive bankruptcy case, and it's attracted some of the most sophisticated investors and professionals in bankruptcy. The -- virtually ever distressed debt firm has had a significant position in the claims of WMI. Most of them were represented by White & Case in the WMI noteholders group. That group was certainly capable of advocating for itself, just as we did, they did, neither of us did anything wrong.

Bankruptcy counsel and creditor's counsel here are two of the most highly regarded and respected firms not only in bankruptcy but in corporate law. Alvarez & Marsal, who is restructuring advisor for the debtor is highly recognized in that business as well.

The notion that those three parties would jeopardize their businesses for lousy hedge funds makes good theater, makes a nice headline, it gets the conspiracy theorists tittering, but

there's no basis in it. And if you look at the facts of the case, we were not bashful in expressing our opinions to the debtor. More often than not, fortunately or unfortunately, they did what they wanted.

A classic example was the turnover action we were pressing for that action to be brought to judgment, and the debtor kept putting it off over our objection. That was their judgment. The deal that was struck that was -- became the global settlement agreement was struck between the debtor, the FDIC, and JPMorgan, and it was handed to us as a fait accompli. You can talk about it, you can comment on it, you can try to negotiate at the edges, but this is the deal, you can take it or leave it.

When the FDIC reneged on that deal and a new deal had to be cut, it was much the same story. Additional money was given to the FDIC over our objection, and then when -- that's the -- that agreement expired in September and had to be renewed, the FDIC again asked for more money, and again they received it over our objections.

So if we dominated the debtor and controlled the case, frankly we did a lousy job of it.

Q. Who controlled this reorganization?

A. The debtor and the creditor's committee.

Q. You mentioned that you were not bashful about expressing your views. On whose behalf were you advocating?

EXHIBIT E

Houston

Sunday, August 07, 2011.

< Berkman and Oswalt | Main | Don Willett to be nominated for Texas Supreme Court seat >

August 24, 2005

Judge Hughes hammers the FDIC in the Hurwitz case

Hurwitz.gif

One of the more interesting (and longstanding) local civil lawsuits turned an interesting corner yesterday.

U.S. District Judge Lynn Hughes -- unquestionably the Houston federal judge most likely to challenge the government's position in any case -- handed down this 133 page broadside yesterday ordering the Federal Deposit Insurance Corp. to pay Houston financier and longtime environmentalist target Charles Hurwitz $72.3 million in sanctions for the FDIC's conduct in connection with prosecuting a civil lawsuit to hold Mr. Hurwitz and other directors of the defunct United Savings of Texas personally responsible for $250 million in connection with the $1.6 billion loss resulting from the S&L's 1988 failure.

There is a lot of background to this saga. The FDIC sued Mr. Hurwitz -- the chairman and chief executive of Houston-based Maxxam Inc. -- and other United Savings directors (including the talented Barry Munitz) in 1995. Interestingly, the FDIC did not contend in the lawsuit that Mr. Hurwitz and Maxxam had looted United Savings; rather, the agency contended merely that Mr. Hurwitz and Maxxam had an obligation to invest more money in the sinking ship of United even after it was clear that the S&L was going down the tubes.

Meanwhile, Mr. Hurwitz and his attorneys smelled a rat, and they contended in a counterclaim that the lawsuit was simply a device to mollify environmentalists and pressure Maxxam subsidiary Pacific Lumber to give up 5,000 acres of redwood forests in Northern California. The FDIC denied any such political motivation, but discovery in the lawsuit revealed that the FDIC representatives had, in fact, consulted extensively with environmental groups on the so-called "debt-for-nature" swap before filing the lawsuit. Judge Hughes was not pleased when that evidence was revealed to him, and he reiterated that displeasure in his opinion:

> "The record shows that the swap was the only reason for this suit. It also shows that the FDIC knew that it had no factual or legal basis for its claims, and that its cases here and in Washington were shams."

At any rate, the lawsuit lagged on for years, and I had a running joke with Mr. Hurwitz's attorneys when I would see them at the federal courthouse that they were engaged in the legal equivalent of Bill Murray's plight in Groundhog Day. After imnumerable run-ins with Judge Hughes, the FDIC tried to just drop the whole mess in 2002, but Mr. Hurwitz refused to drop his counterclaim against the agency for improperly funding another government agency's investigation against Maxxam on the same subjet matter of the lawsuit. As a result of that investigation, the Office of Thrift Supervision filed a similar suit against Mr. Hurwitz and Maxxam for $821 million, but settled that lawsuit in 2002 for a paltry $200,000.

As usual, Judge Hughes is acerbic in his opinion regarding the FDIC's conduct, noting in particular that FDIC officials "lied about it all under oath" and they "discarded the mantle of the American Republic for the cloak of a secret society of extortionists." Another gem:

> "It's hard to find a word that captures the essence of the FDIC's bringing this action. Irresponsible is close. Arbitrary, dishonest, exploitative, extortionate, and abusive all fit."

Judge Hughes concluded that Hurwitz and Maxxam "will recover their costs because the record reveals corrupt individuals within a corrupt agency with corrupt influences on it, bringing this litigation." The $72.3 million awarded to Maxxam and Hurwitz covers attorneys costs and interest incurred in connection with the governmental investigations, which will be reduced to $15.3 million if the Fifth Circuit rules that Mr. Hurwitz and Maxxam can only recover costs from the FDIC.

Posted by Tom at August 24, 2005 5:21 AM |

Comments

Ugh. This is a scandal of the first degree. Heads will roll at the FDIC. Responsible reporters will be descending on Houston in droves to fully report this latest example of governmental abuse. And we the people will now be much more skeptical of the motives of those who serve us in the federal government. Right?

Posted by: Preston Tucker at August 24, 2005 6:55 AM

Post a comment

You are not signed in. You need to be registered to comment on this site. Sign in

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

- - - - - - - - - - - - - - - - - x

In the Matter of:

WASHINGTON MUTUAL, INC., et al., Case No. 08-12229 (MFW)

Debtors. (Jointly Administered)

- - - - - - - - - - - - - - - - - x

- - - - - - - - - - - - - - - - - x

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.

- - - - - - - - - - - - - - - - - x

MR. ARD: I believe I neglected to admit EC-44 and 45, which were the redacted waterfall records.

MR. SHER: No objection, Your Honor.

THE COURT: They're admitted.

(Equity Committee's Exhibits 44 and 45, Redacted Waterfall records, were hereby received into evidence.)

MR. ARD: And I also believe I neglected to admit EC-35, which was -- I'll just put it up on the ELMO. An e-mail from Bill Kosturos to Brian Rosen in 28 2009 that attaches an e-mail from Mr. Bolin to Mr. Kosturos, I'd like to move to admit that, too.

MR. SHER: No objection, Your Honor.

THE COURT: It's admitted.

(Equity Committee Exhibit 35, E-mails between Bill Kosturos, Brian Rosen and Mr. Bolin, was hereby received into evidence.)

MR. ARD: No further questions, Your Honor.

THE COURT: Anybody else?

Redirect?

MR. BERG: Thank you, Your Honor. James Berg, pro se shareholder.

CROSS-EXAMINATION

BY MR. BERG:

Q. Mr. Bolin, in your earlier testimony you stated that Appaloosa owned all classes of WMI securities except commons, correct?

A. Correct.
Q. These included Series I, correct?
A. I'm not sure off the top of my head.
Q. Do you know about Series L?
A. This far from the filing, I don't refer to the securities as Series, other than the Series K, which I know specifically. I don't refer to Series I, Series L, so if you'll help me and tell me whether those were straight preferred or if they were trust preferred.
Q. Series I, L, M and N and K are the repreferred?
A. Repreferred, and I believe we owned all.
Q. You owned all of them?
A. I believe so, yes.
Q. Yes. You've stated that you owned Series K?
A. Yes. Which was not repreferred, that was separate preferred.
Q. What about Series R?
A. If memory serves, I believe R was a privately placed preferred stock, and we did not -- I don't believe we owned that.
Q. And the peers?
A. We did on the peers, yes.
Q. Is it your testimony that Appaloosa never owned or ever believed they owned any interest in Series R preferred?
A. I can't stand here and tell you today that we never owned

or didn't -- I don't believe we did. I believe the Series R was privately placed, and I don't think it was made available to the public. I don't believe we owned it.

Q. Are you aware of the trading restrictions that this Court has placed on the ownership of Washington Mutual Incorporated securities?

A. Yes.

Q. Were those restrictions intended to protect the NOLs?

A. Yes.

Q. One of the penalties for violation of these restrictions is the transfers of stock, and violations shall be null and avoid ab initio as an act in violation of the automatic stay. Was your firm ever in violation of any of these restrictions?

A. I don't believe we were. We had a disagreement on the interpretation of those terms with the debtor, rather than argue about it, we agreed with the debtor that we would dispose of those shares and donate the profits to charity.

Q. Were those shares Series R preferred?

A. I don't believe they were. They were the GPS preferred.

MR. BERG: Thank you, Mr. Bolin, no further questions.

THE COURT: All right. Redirect?

MR. SHER: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. SHER:

Q. How you doing, Mr. Bolin?

BY MR. DUKE:

Q. Sir, to your knowledge, did Appaloosa or the debtors ever attempt to obtain a private letter ruling from the IRS regarding this issue?

A. I'm not aware of it.

Q. And why not? Do you know why that was never attempted?

A. Well, it wasn't -- I don't know that Appaloosa would've had standing to do that. I don't know whether the debtor did that or not.

MR. DUKE: Thank you, sir.

RECROSS-EXAMINATION

BY MR. BERG:

Q. Mr. Bolin, James Berg again, pro se shareholder.

You just discussed the capital structure highlighting Series K within that structure, correct?

A. Yes.

Q. Is it your understanding that Series K is pari passu with Series R and repreferred, so that they're all at the same payout level with Series K?

A. Yes.

Q. Despite owning Series K and repreferred, and knowing that all these preferred are at the same level in the capital structure, you still can't remember any Series R purchases?

A. I don't remember any Series R purchases. If Series R is the privately placed preferred stock, then I don't know that I

would've had the opportunity to purchase it.

Q. Series -- it is my understanding that Series R is publicly traded. I personally --

THE COURT: Well, don't testify.

MR. BERG: I'm sorry, I'm sorry. No further questions. Thank you, Mr. Bolin.

THE COURT: All right. Any redirect?

MR. SHER: No, Your Honor, thank you.

THE COURT: All right. Thank you. You may step down. Let's take a few minutes, and then we'll start with your next one. We'll end at 6:30 today, okay.

MR. SHER: Your Honor, may Mr. Bolin be released?

MR. ARD: No objection, Your Honor.

THE COURT: He may.

MR. SHER: Thank you.

THE COURT: All right. Let's take five minutes.

(Recessed at 3:48 p.m.; reconvened at 3:57 p.m.)

THE CLERK: All rise. You may be seated.

THE COURT: All right.

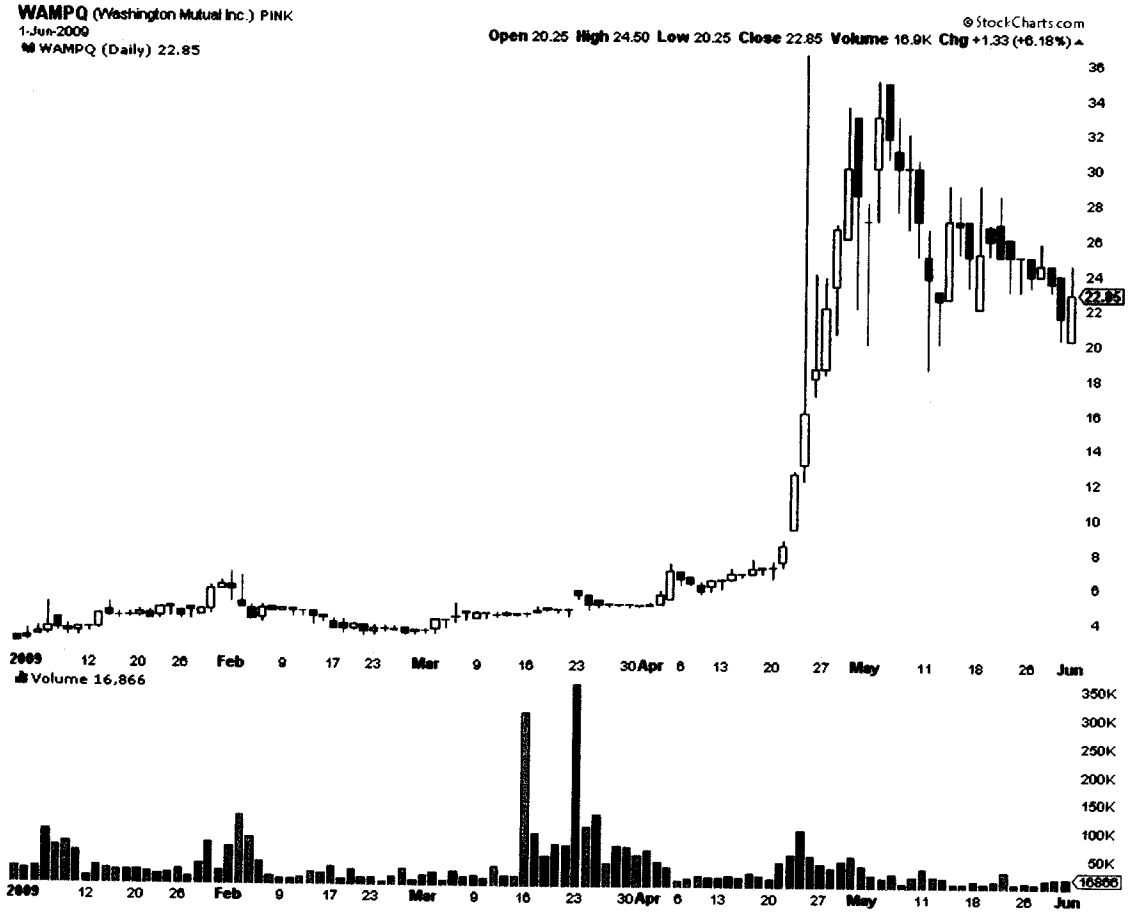
MR. OWENS: Good afternoon, Your Honor.

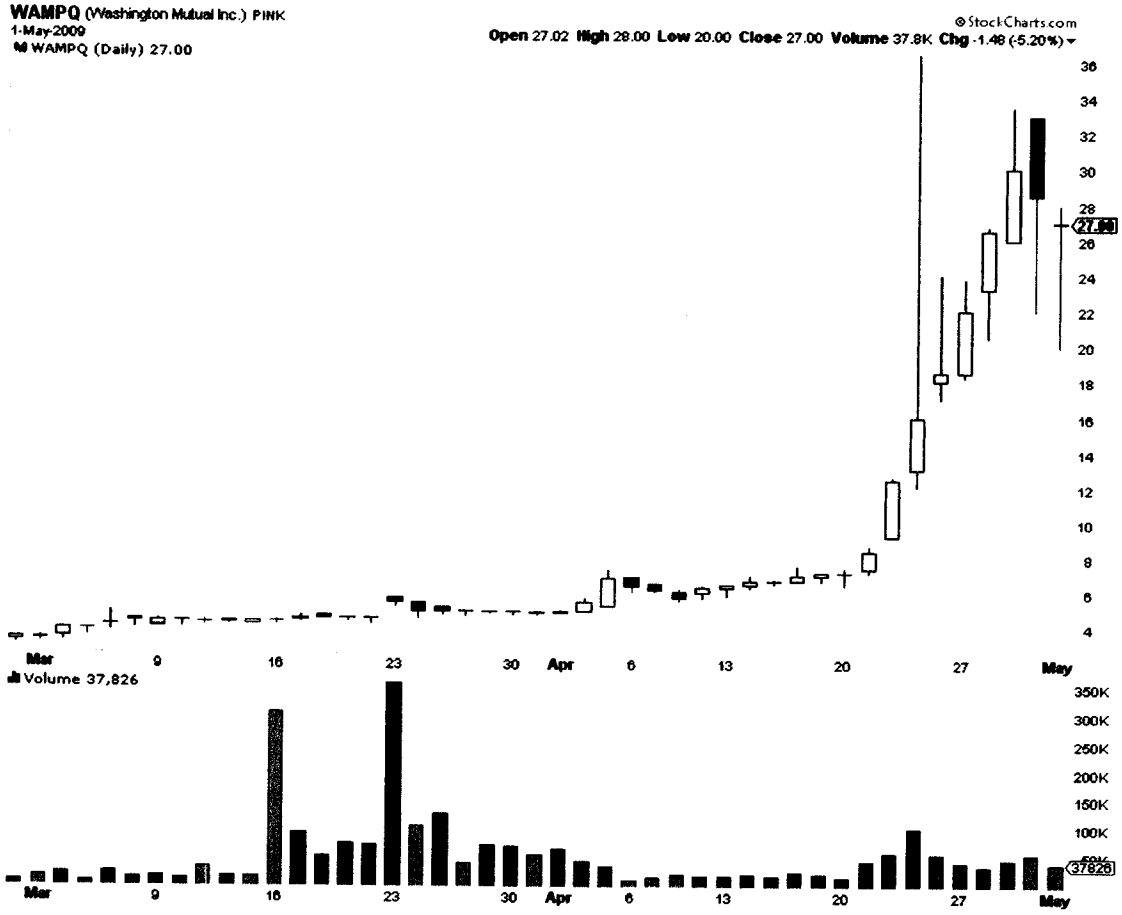
THE COURT: Good afternoon.

MR. OWENS: Richard Owens for Centerbridge. On behalf of Centerbridge I call Vivek Melwani to the stand.

THE COURT: All right. Would you remain standing so you can be sworn?

EXHIBIT G


WAMPQ (Washington Mutual Inc.) PINK
1-Jun-2009
WAMPQ (Daily) 22.85
©StockCharts.com
Open 20.25 High 24.50 Low 20.25 Close 22.85 Volume 16.9K Chg +1.33 (+6.18%)
36
34
32
30
28
26
24
22.85
22
20
18
16
14
12
10
8
6
4
2009 12 20 26 Feb 9 17 23 Mar 9 16 23 30 Apr 6 13 20 27 May 11 18 25 Jun
Volume 16,866
350K
300K
250K
200K
150K
100K
50K
16866
2009 12 20 26 Feb 9 17 23 Mar 9 16 23 30 Apr 6 13 20 27 May 11 18 25 Jun


WAMPQ (Washington Mutual Inc.) PINK
1-May-2009
WAMPQ (Daily) 27.00
©StockCharts.com
Open 27.02 High 28.00 Low 20.00 Close 27.00 Volume 37.8K Chg -1.48 (-5.20%)
36
34
32
30
28
27.00
26
24
22
20
18
16
14
12
10
8
6
4
Mar
9
16
23
30
Apr
6
13
20
27
May
Volume 37,826
350K
300K
250K
200K
150K
100K
37626

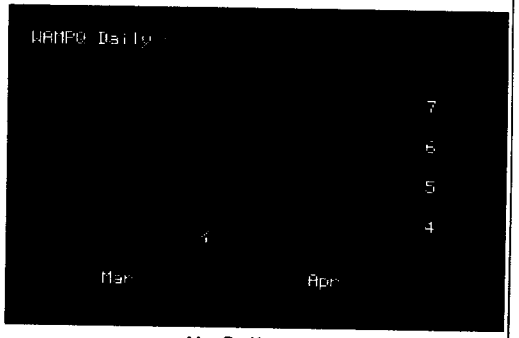
The Historical Exchange tool allows you to look up a security's exact closing price.
Simply type in the symbol and a historical date to view a quote and mini chart for that security.

Enter Symbol: WAMPQ EnterDate: 3/16/09

Washington Mutual Inc. Conv 7.75% Pfd. Series R

Mon, Mar 16, 2009

Close:	4.40
Open:	4.42
High:	4.50
Low:	4.27
Volume:	308,460



No Splits

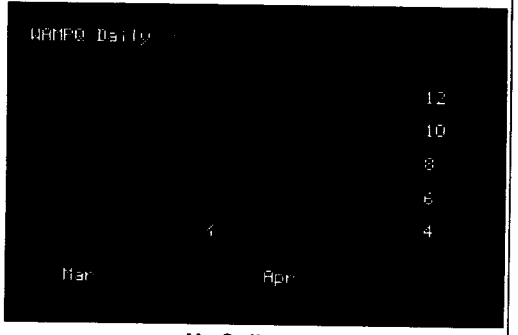
This Historical Quotes tool allows you to look up a security's exact closing price.
Simply type in the symbol and a historical date to view a quote and mini chart for that security.

Enter Symbol: WAMPQ EnterDate: 3/23/09

Washington Mutual Inc. Conv 7.75% Pfd. Series R

Mon, Mar 23, 2009

Closing Price:	5.50
Open:	5.70
High:	5.75
Low:	5.25
Volume:	359,460



No Splits

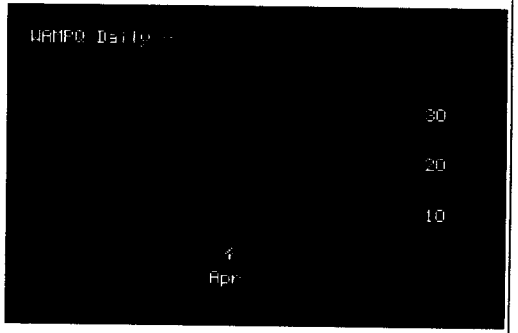
The Historical Quotes tool allows you to look up a security's exact closing price.
Simply type in the symbol and a historical date to view a quote and mini chart for that security.

Enter Symbol: WAMPQ EnterDate: 4/02/09 [illegible]

Washington Mutual Inc. Conv 7.75% Pfd. Series R

Thu, Apr 02, 2009

Closing Price:	5.50
Open:	4.95
High:	5.70
Low:	4.95
Volume:	41,136



No Splits

WAMPQ

BASIC CHART | ADVANCED CHART | INTERACTIVE CHART

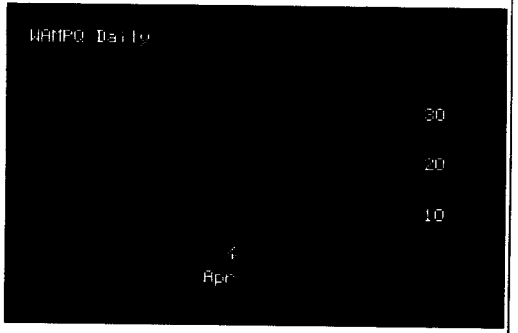
This Historical Quote tool allows you to look up a security's exact closing price.
Simply type in the symbol and a historical date to view a quote and mini chart for that security.

Enter Symbol: WAMPQ EnterDate: 4/03/09 GET

Washington Mutual Inc. Conv 7.75% Pfd. Series R

Thu, Apr 02, 2009

Close:	6.89
Open:	5.25
High:	7.30
Low:	5.25
Volume:	32,035



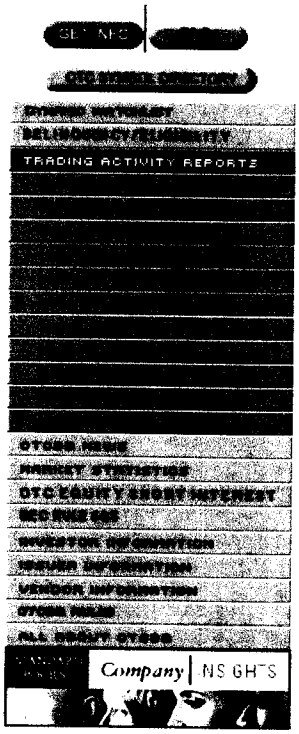
No Splits

EXHIBIT H

August 9, 2011

Symbol:

Quote



Monthly Share Volume Report

Select a different report by entering an issue or MPID: WAMPQ

Sort By: Volume

Report Date: Jul 2011

VIEW

WAMPQ - WASHINGTON MUTUAL PF

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	December 2008 Volume	Rank	%	November 2008 Volume	Rank	%	Year-to-Date Volume	Rank	%
Total Share Volume	**671,009**								
NITE									
Knight Capital Americas, L.P.	279,405	1	41	390,498	2	23	1,070,134	1	25
SBSH									
Citigroup Global Markets Inc.	115,409	2	17	500,140	1	29	864,299	2	20
UBSS									
UBS Securities LLC	77,536	3	11	60,594	7	3	155,396	7	3
ETMM									
E*Trade Capital Markets Llc	70,163	4	10	81,605	6	4	151,768	8	3
HDSN									
RODMAN & RENSHAW, LLC	69,887	5	10	120,387	3	7	395,162	3	9
BNCH									
The Benchmark Company, LLC	22,306	6	3	-	-	-	22,306	23	<1
ABLE									
Natixis Bleichroeder LLC	8,492	7	1	115,767	4	6	133,334	10	3
PERT									
Pershing LLC	7,981	8	1	28,145	12	1	38,790	18	<1
NOBL									
Noble International Invest.	6,000	9	<1	18,803	16	1	24,803	21	<1
JEFF									
Jefferies & Company, Inc.	5,730	10	<1	19,650	15	1	59,056	15	1
ARCA									
Archipelago Trading Services	3,799	11	<1	-	-	-	3,799	26	<1
CRTC									
CRT CAPITAL GROUP LLC	1,857	12	<1	35,678	10	2	37,535	19	<1
DOMS									
Domestic Securities, Inc.	900	13	<1	25,412	14	1	33,047	20	<1
HILL									
Hill, Thompson, Magid and Co.	874	14	<1	6,270	19	<1	60,093	14	1
VFIN									
vFinance Investments, Inc.	500	15	<1	2,150	20	<1	2,650	28	<1
KBWI									
Keefe, Bruyette & Woods, Inc.	120	16	<1	-	-	-	120	35	<1
VERT									
The Vertical Trading Group	50	17	<1	-	-	-	121,842	12	2

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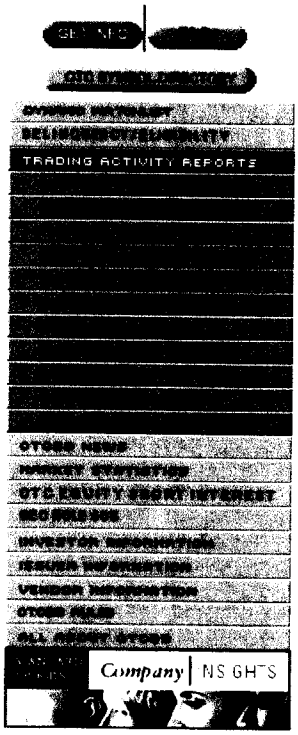
August 9, 2011

Symbol:

Quote



Monthly Share Volume Report

Select a different report by entering an issue or MPID: Issue / Market Participant — WAMPQ

Sort By: Volume / Issue/MPID

Report Date: Jul 2011 — VIEW

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	January 2009 Volume	Rank	%	December 2008 Volume	Rank	%	Year-to-Date Volume	Rank	%
Total Share Volume	**699,216**								
NITE Knight Capital Americas, L.P.	270,616	1	38	279,405	1	41	270,616	1	38
SBSH Citigroup Global Markets Inc.	191,721	2	27	115,409	2	17	191,721	2	27
ETMM E*Trade Capital Markets Llc	93,782	3	13	70,163	4	10	93,782	3	13
HDSN RODMAN & RENSHAW, LLC	54,702	4	7	69,887	5	10	54,702	4	7
UBSS UBS Securities LLC	33,614	5	4	77,536	3	11	33,614	5	4
FBCO Credit Suisse Securities USA	19,230	6	2	-	-	-	19,230	6	2
JEFF Jefferies & Company, Inc.	18,710	7	2	5,730	10	<1	18,710	7	2
PERT Pershing LLC	4,882	8	<1	7,981	8	1	4,882	8	<1
ABLE Natixis Bleichroeder LLC	3,128	9	<1	8,492	7	1	3,128	9	<1
AUTO Automated Trading Desk	1,970	10	<1	-	-	-	1,970	10	<1
DOMS Domestic Securities, Inc.	1,850	11	<1	900	13	<1	1,850	11	<1
DBAB Deutsche Banc Alex Brown	1,289	12	<1	-	-	-	1,289	12	<1
ARCA Archipelago Trading Services	1,248	13	<1	3,799	11	<1	1,248	13	<1
CRTC CRT CAPITAL GROUP LLC	1,000	14	<1	1,857	12	<1	1,000	14	<1
HILL Hill, Thompson, Magid and Co.	974	15	<1	874	14	<1	974	15	<1
NOBL Noble International Invest.	500	16	<1	6,000	9	<1	500	16	<1

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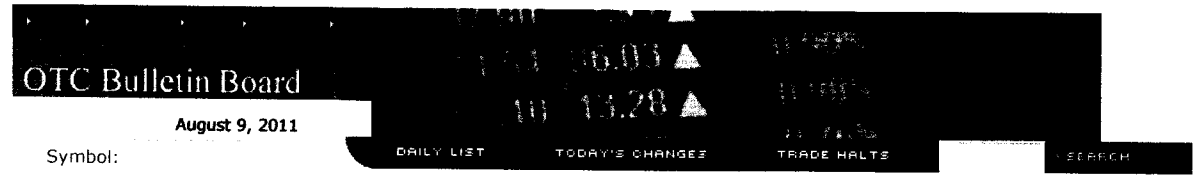

August 9, 2011

Symbol:

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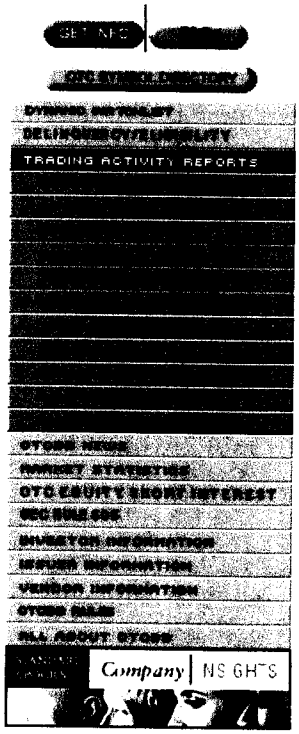

Monthly Share Volume Report

Select a different report by entering an issue or MPID: Sort By: Report Date:

Issue | Market Participant | WAMPQ | Volume | Issue/MPID | Jul 2011 | VIEW

WAMPQ - WASHINGTON MUTUAL PF

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	February 2009			January 2009			Year-to-Date		
	Volume	Rank	%	Volume	Rank	%	Volume	Rank	%
Total Share Volume	**527,265**								
NITE									
Knight Capital Americas, L.P.	166,640	1	31	270,616	1	38	437,256	1	35
MAXM									
Maxim Group LLC	100,687	2	19	-	-	-	100,687	4	8
DBAB									
Deutsche Banc Alex Brown	84,347	3	15	1,289	12	<1	85,636	5	6
UBSS									
UBS Securities LLC	41,457	4	7	33,614	5	4	75,071	7	6
ETMM									
E*Trade Capital Markets Llc	40,496	5	7	93,782	3	13	134,278	3	10
HDSN									
RODMAN & RENSHAW, LLC	29,749	6	5	54,702	4	7	84,451	6	6
ARCA									
Archipelago Trading Services	23,370	7	4	1,248	13	<1	24,618	8	2
MURF									
Murphy and Durieu	15,716	8	2	-	-	-	15,716	11	1
GSCO									
Goldman, Sachs & Co.	14,700	9	2	-	-	-	14,700	12	1
MSCO									
MORGAN STANLEY & CO. LLC	6,898	10	1	-	-	-	6,898	13	<1
DOMS									
Domestic Securities, Inc.	1,200	11	<1	1,850	11	<1	3,050	16	<1
ABLE									
Natixis Bleichroeder LLC	1,005	12	<1	3,128	9	<1	4,133	15	<1
HILL									
Hill, Thompson, Magid and Co.	550	13	<1	974	15	<1	1,524	18	<1
PERT									
Pershing LLC	450	14	<1	4,882	8	<1	5,332	14	<1

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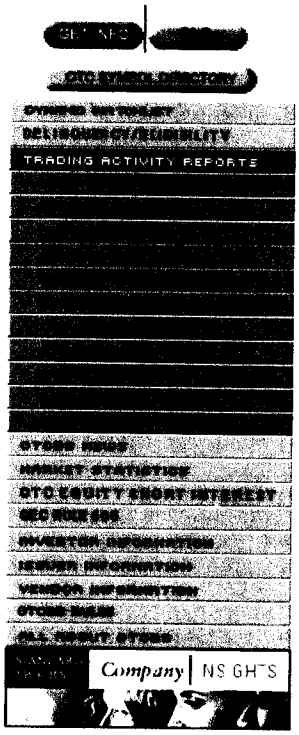
August 9, 2011

Symbol:

Quote



Monthly Share Volume Report

Select a different report by entering an issue or MPID: Issue / Market Participant WAMPQ | Sort By: Volume / Issue/MPID | Report Date: Jul 2011 | VIEW

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	March 2009			February 2009			Year-to-Date		
	Volume	Rank	%	Volume	Rank	%	Volume	Rank	%
Total Share Volume	**1,587,353**								
STXG									
Stockcross Financial Services	721,340	1	45	-	-	-	721,340	2	25
NITE									
Knight Capital Americas, L.P.	619,265	2	39	166,640	1	31	1,056,521	1	37
ETMM									
E*Trade Capital Markets Llc	80,826	3	5	40,496	5	7	215,104	3	7
HDSN									
RODMAN & RENSHAW, LLC	66,131	4	4	29,749	6	5	150,582	5	5
UBSS									
UBS Securities LLC	46,710	5	2	41,457	4	7	121,781	6	4
LABS									
LABRANCHE CAPITAL, LLC	18,375	6	1	-	-	-	18,375	12	<1
ARCA									
Archipelago Trading Services	7,500	7	<1	23,370	7	4	32,118	9	1
MITR									
Miller Tabak Roberts Sec	6,500	8	<1	-	-	-	6,500	18	<1
SBSH									
Citigroup Global Markets Inc.	5,487	9	<1	-	-	-	197,208	4	7
VFIN									
vFinance Investments, Inc.	4,000	10	<1	-	-	-	4,000	20	<1
ABLE									
Natixis Bleichroeder LLC	3,435	11	<1	1,005	12	<1	7,568	16	<1
PERT									
Pershing LLC	2,525	12	<1	450	14	<1	7,857	15	<1
LAMP									
Lampost Capital, L.C.	2,000	13	<1	-	-	-	2,000	22	<1
AUTO									
Automated Trading Desk	1,760	14	<1	-	-	-	3,730	21	<1
DOMS									
Domestic Securities, Inc.	1,462	15	<1	1,200	11	<1	4,512	19	<1
HILL									
Hill, Thompson, Magid and Co.	37	16	<1	550	13	<1	1,561	23	<1

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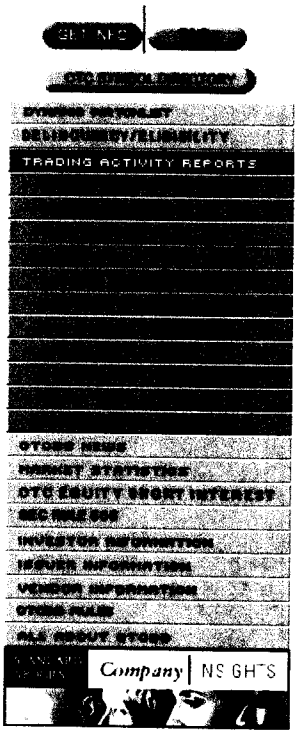
August 9, 2011

Symbol:

Quote



Monthly Share Volume Report

Select a different report by entering an issue or MPID: Sort By: Report Date:

(•) Issue ( ) Market Participant WAMPQ | (•) Volume ( ) Issue/MPID | Jul 2011 | VIEW

WAMPQ - WASHINGTON MUTUAL PF

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	April 2009			March 2009			Year-to-Date		
	Volume	Rank	%	Volume	Rank	%	Volume	Rank	%
Total Share Volume	**715,304**								
NITE									
Knight Capital Americas, L.P.	368,794	1	51	619,265	2	39	1,425,315	1	40
ETMM									
E*Trade Capital Markets Llc	99,287	2	13	80,826	3	5	314,391	3	8
HDSN									
RODMAN & RENSHAW, LLC	77,115	3	10	66,131	4	4	227,697	4	6
UBSS									
UBS Securities LLC	50,515	4	7	46,710	5	2	172,296	6	4
STXG									
Stockcross Financial Services	44,946	5	6	721,340	1	45	766,286	2	21
SBSH									
Citigroup Global Markets Inc.	21,385	6	2	5,487	9	<1	218,593	5	6
PERT									
Pershing LLC	15,642	7	2	2,525	12	<1	23,499	10	<1
ABLE									
Natixis Bleichroeder LLC	8,824	8	1	3,435	11	<1	16,392	14	<1
DOMS									
Domestic Securities, Inc.	7,051	9	<1	1,462	15	<1	11,563	17	<1
NOBL									
Noble International Invest.	6,200	10	<1	-	-	-	6,700	21	<1
AUTO									
Automated Trading Desk	3,592	11	<1	1,760	14	<1	7,322	18	<1
CRTC									
CRT CAPITAL GROUP LLC	3,300	12	<1	-	-	-	4,300	23	<1
ARCA									
Archipelago Trading Services	2,938	13	<1	7,500	7	<1	35,056	9	<1
LABS									
LABRANCHE CAPITAL, LLC	1,500	14	<1	18,375	6	1	19,875	11	<1
LAMP									
Lampost Capital, L.C.	1,000	15	<1	2,000	13	<1	3,000	24	<1
VFIN									
vFinance Investments, Inc.	800	16	<1	4,000	10	<1	4,800	22	<1
PUMA									
Puma Capital, Llc	600	17	<1	-	-	-	600	26	<1
MITR									
Miller Tabak Roberts Sec	550	18	<1	6,500	8	<1	7,050	19	<1
JEFF									
Jefferies & Company, Inc.	500	19	<1	-	-	-	19,210	13	<1
BMAS									
Burt Martin Arnold Securities	400	20	<1	-	-	-	400	27	<1
MAXM									
Maxim Group LLC	200	21	<1	-	-	-	100,887	7	2
VERT									
The Vertical Trading Group	165	22	<1	-	-	-	165	28	<1

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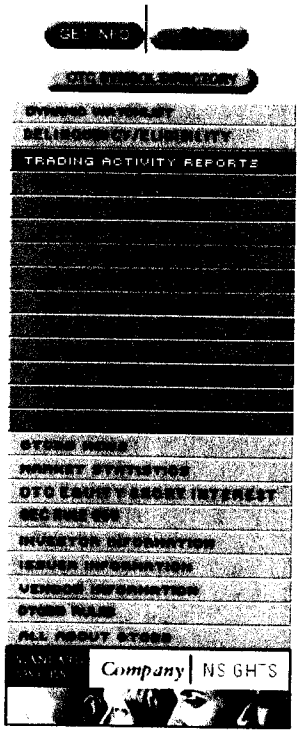
August 9, 2011

Symbol:

Quote



Monthly Share Volume Report

Select a different report by entering an issue or MPID: Issue / Market Participant WAMPQ

Sort By: Volume / Issue/MPID

Report Date: Jul 2011

VIEW

WAMPQ - WASHINGTON MUTUAL PF

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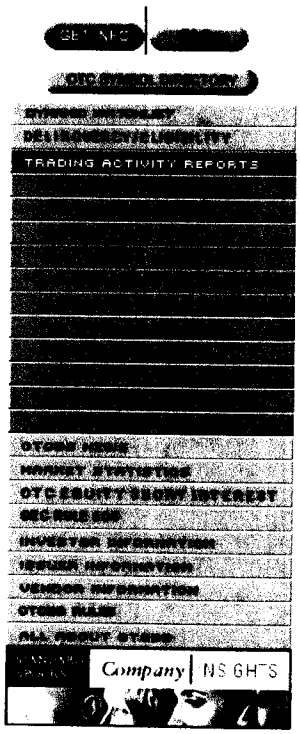
	December 2009 Volume	Rank	%	November 2009 Volume	Rank	%	Year-to-Date Volume	Rank	%
Total Share Volume	**394,570**								
NITE									
Knight Capital Americas, L.P.	271,163	1	68	66,300	1	50	2,808,551	1	49
UBSS									
UBS Securities LLC	40,554	2	10	9,451	5	7	391,327	4	6
CRTC									
CRT CAPITAL GROUP LLC	25,850	3	6	10,000	4	7	49,350	13	<1
JONE									
JonesTrading	17,154	4	4	-	-	-	17,154	20	<1
PERT									
Pershing LLC	9,253	5	2	2,093	6	1	58,587	10	1
MAXM									
Maxim Group LLC	6,500	6	1	10,027	3	7	193,803	7	3
DOMS									
Domestic Securities, Inc.	6,020	7	1	100	9	<1	38,064	15	<1
ABLE									
Natixis Bleichroeder LLC	4,314	8	1	1,170	7	<1	36,653	16	<1
IMPC									
Imperial Capital, LLC	4,119	9	1	-	-	-	4,119	27	<1
MURF									
Murphy and Durieu	2,585	10	<1	32,416	2	24	50,717	11	<1
ARCA									
Archipelago Trading Services	2,559	11	<1	-	-	-	58,768	9	1
STFL									
Stifel Nicolaus & Co.	1,680	12	<1	-	-	-	49,807	12	<1
NOBL									
Noble International Invest.	900	13	<1	-	-	-	7,710	24	<1
LFCM									
Lighthouse Financial Group, L	700	14	<1	-	-	-	47,839	14	<1
ETMM									
E*Trade Capital Markets Llc	529	15	<1	55	10	<1	412,268	3	7
INTL									
INTL Trading, Inc.	400	16	<1	-	-	-	2,697	29	<1
LABS									
LABRANCHE CAPITAL, LLC	200	17	<1	100	9	<1	21,525	17	<1
STXG									
Stockcross Financial Services	90	18	<1	486	8	<1	767,654	2	13

Page 1 of 1

August 9, 2011

Symbol:

Quote



Monthly Share Volume Report

Select a different report by entering an issue or MPID: Issue / Market Participant — WAMPQ

Sort By: Volume / Issue/MPID

Report Date: Dec 2010

VIEW

WAMPQ - WASHINGTON MUTUAL PF

Page 1 of 1

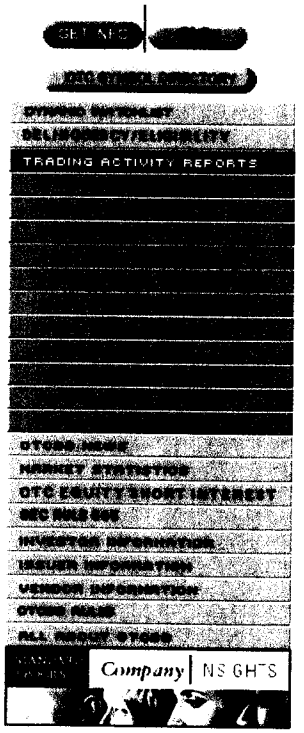
	December 2010			November 2010			Year-to-Date		
	Volume	Rank	%	Volume	Rank	%	Volume	Rank	%
Total Share Volume	**501,855**								
NITE									
Knight Capital Americas, L.P.	194,413	1	38	412,862	1	34	2,432,936	1	42
CSTI									
Collins Stewart LLC	129,405	2	25	311,139	2	25	832,856	2	14
ETMM									
E*Trade Capital Markets Llc	61,869	3	12	146,589	4	12	407,234	4	7
UBSS									
UBS Securities LLC	50,422	4	10	155,315	3	12	686,865	3	12
CRTC									
CRT CAPITAL GROUP LLC	32,782	5	6	20,259	7	1	187,205	6	3
AUTO									
Automated Trading Desk	6,930	6	1	12,860	11	1	110,501	7	1
CANT									
Cantor, Fitzgerald & Co.	4,409	7	<1	-	-	-	5,444	32	<1
VFIN									
vFinance Investments, Inc.	3,132	8	<1	250	21	<1	4,642	34	<1
MAXM									
Maxim Group LLC	3,050	9	<1	15,570	9	1	26,427	18	<1
DOMS									
Domestic Securities, Inc.	2,463	10	<1	7,058	13	<1	30,286	14	<1
ARCA									
Archipelago Trading Services	2,420	11	<1	13,870	10	1	78,719	8	1
FANC									
Finance 500, Inc.	2,200	12	<1	10,065	12	<1	12,265	26	<1
PERT									
Pershing LLC	2,157	13	<1	21,174	6	1	65,056	9	1
TEJS									
Tejas, Inc.	1,800	14	<1	17,910	8	1	346,372	5	6
RAFF									
Rafferty Capital Markets, LLC	1,344	15	<1	285	20	<1	2,621	36	<1
STXG									
Stockcross Financial Services	1,175	16	<1	1,715	16	<1	7,672	29	<1
ASEL									
Tradition Asiel Sec Inc	759	17	<1	39,910	5	3	40,669	12	<1
SBSH									
Citigroup Global Markets Inc.	500	18	<1	-	-	-	17,700	21	<1
LAMP									
Lampost Capital, L.C.	325	19	<1	375	19	<1	700	39	<1
VNDM									
Vandham Securities	200	20	<1	1,050	17	<1	7,420	30	<1
NOBL									
Noble International Invest.	100	21	<1	3,835	15	<1	9,499	27	<1

Page 1 of 1

August 9, 2011

Symbol:

Quote



Monthly Share Volume Report

Select a different report by entering an issue or MPID: Sort By: Report Date:

(•) Issue ( ) Market Participant WAMPQ | (•) Volume ( ) Issue/MPID | Jul 2011 | VIEW

WAMPQ - WASHINGTON MUTUAL PF

Page 1 of 1 Go

	July 2011			June 2011			Year-to-Date		
	Volume	Rank	%	Volume	Rank	%	Volume	Rank	%
Total Share Volume	**230,613**								
ETMM									
E*Trade Capital Markets Llc	72,657	1	31	47,546	3	17	254,604	3	15
NITE									
Knight Capital Americas, L.P.	63,531	2	27	86,350	1	32	612,596	1	37
CSTI									
Collins Stewart LLC	59,115	3	25	62,265	2	23	360,494	2	21
UBSS									
UBS Securities LLC	28,335	4	12	28,547	4	10	223,098	4	13
AUTO									
Automated Trading Desk	3,285	5	1	10,290	6	3	46,980	6	2
ARCA									
Archipelago Trading Services	1,590	6	<1	1,632	10	<1	4,059	14	<1
PERT									
Pershing LLC	850	7	<1	1,436	11	<1	5,186	13	<1
MAXM									
Maxim Group LLC	700	8	<1	3,175	9	1	17,509	8	1
STXG									
Stockcross Financial Services	350	9	<1	-	-	-	5,514	11	<1
RAFF									
Rafferty Capital Markets, LLC	200	10	<1	4,320	8	1	5,424	12	<1

Page 1 of 1 Go

EXHIBIT I

securities lawyers at Weil Gotshal on these issues. And I've actually worked with a lot of the securities lawyers at Weil Gotshal and frankly they're very smart guys and they know this area of the law as it pertains to bankruptcy cases very well.

So we had the debtor with a post-petition contractual obligation to make a determination. We had Mr. Rosen's affirmation that was, you know, most likely done in consultation with partners who are expert in this area of the law. And yes, I did understand that we had to make our own determination and we did, in fact, make our own determination that at the end of both confidentiality periods we were not in possession of any material non-public information.

Q. So the answer is yes?

A. I gave you my answer, I can do it --

THE COURT: He's answered. He's answered. Go ahead.

Q. Aurelius had a model that estimated the recoveries it would obtain from the Washington Mutual bankruptcy under certain assumptions, correct?

A. Yes.

Q. And the model predicted how much would be obtained by the various classes of creditors in the waterfall, correct?

A. Yes.

Q. And that model was available to the traders and analysts within Aurelius, true?

A. Yes.

Q. Eleanor Chan was the person responsible, primarily responsible, for inputting data into the model, is that right?
A. Yes.
Q. And you communicated with her about the content of settlement discussions between Washington Mutual, the FDIC and JPMC, correct?
A. I'm not sure that's right.
Q. I'm sorry?
A. I said I'm not sure that's correct.
Q. Why are you not sure?
A. Well, because I said that, yesterday on direct, that I don't recall whether at the end of the first confidentiality period I communicated my knowledge as to the negotiations that had taken place during the time the wall was up because, in my view, the negotiations were meaningless. So I just don't have a recollection, one way or another, whether or not I communicated them.

And during the second confidentiality period Ms. Chan was involved in those discussions. So I don't know if there was a need for me to communicate to her something she already knew.
Q. Well, let's look at your deposition transcript at page 185. There's actually a question that begins at the bottom of 184 which is?
"Q. "Did you personally ever input data into the model?"

At the top of 185 you answered no. And then you were

A. Well sure, everyone in our firm did.
Q. And she made changes to the model based on that information, true?
A. I don't know that to be the case.
Q. Do you recall testifying in your deposition that you believe she did?
A. I don't.
Q. Let me ask you to look at page 187 of the deposition transcript. At line 6 you were asked;
"Q. What's another example of information about settlement communications that you shared with her?
"A. We, meaning the Fried Frank group, had formulated a proposal after receiving that and obviously we discussed that proposal and therefore she knew it, so I didn't have to communicate it to her.
"Q. Did she, to your knowledge, input anything related to that settlement proposal into the model?
"A. I believe she did. But again, that was our proposal.
"Q. What was the timeframe?
"A. December 2009."
Does that refresh your recollection?
A. It does and I'm sure that we had to model out a proposal that we were making in order to know whether it was an appropriate proposal to make. But whether or not that is used as an input to an investment decision, which it wasn't, is

totally independent of whether Eleanor actually knew it or input it into the model.

Q. Well, there's only one model, right? I mean, the model that's being discussed in your deposition here today, this is the model that is made available to traders and analysts at Aurelius, correct?

A. Yes.

Q. And we're talking about inputting information about the settlement communications into that model, right?

A. Yes. Because, again, in order to assess a settlement proposal you need to model it. You can't just do it on a sheet of paper.

Q. Well, the model that we've been talking about, that's available to people within Aurelius, including the people doing the trading, that model is a valuation model of some sort?

A. That question implies that somehow the analysts and traders are looking at it and making investment decisions?

Q. Well, I'm not asking you that question.

A. Well, but that's the implication of that question.

Q. Well --

A. And I don't want to leave the Court with a misimpression. We needed to model out the settlement proposal in order to determine whether in fact the settlement proposal made sense. You can't do that without putting in a model and you're not going to build a whole new model where you've got, like, the

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229(MFW)

- -x

In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- -x

U.S. Bankruptcy Court

824 North Market Street

Wilmington, Delaware

July 19, 2011

9:33 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

EXHIBIT J

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229(MFW)

- -x

In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- -x

U.S. Bankruptcy Court

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July 19, 2011

9:33 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

Q. In January, 2009, you were part of a group of creditors being represented by White & Case in connection with this bankruptcy, isn't that right?

A. Yes.

Q. Okay. And the -- if you flip to the attachment in this term sheet, referenced in Mr. Nichols' e-mail -- do you recognize that as a term sheet that was put together by the White & Case group?

A. From the e-mail, it, you know, I believe it is, I don't remember this exact document, but I remember generally that we prepared a term sheet, yes.

Q. And you believe that this term sheet here would be the one that you paired along with the other members of the White & Case group?

A. Yes.

Q. Okay.

MR. WALKER: Your Honor, I move to admit Exhibit 7.

MR. STRATTON: No objection, Your Honor.

THE COURT: It's admitted.

(E-mail from Mr. Nichols was hereby received as Equity Committee's Exhibit 7 for identification, as of this date.)

MR. WALKER: Can we switch the screen to this gentleman's computer over here; if you could pull up Exhibit 7?

Q. Briefly, if you'll turn to page 3 of Exhibit 7; page 3 of the attachment? You'll see that first bullet point under

'global settlement', it says "JPM and FDIC each shall waive and release all right, title, claim and interest in and to the accounts and the fund held therein." Do you see that?

A. Yes.

Q. And that would be the four billion dollars in deposits, correct? That we were discussing earlier?

A. Yes.

Q. Okay. And if you turn to the next page, under C -- part C -- you have point 1 -- part C is labeled 'treatment of tax refunds', and point 1 says "first to WMI, the first two billion dollars in the net tax refunds received", correct?

A. That's correct.

Q. Okay. And then you have point 2, "second to the FDIC, all net tax refunds received in excess of two billion dollars, up to the net aggregate of three billion dollars", correct?

A. That's correct.

Q. Okay. And there were other provisions in the settlement agreement to dispose of other assets that you believe might be in dispute between JPMorgan and WMI, correct?

A. I believe so, yeah.

Q. And to your knowledge, this settlement proposal was never made public, is that right?

A. That's correct.

Q. Mr. Krueger, do you recall that Owl Creek started buying heavily into the more junior debt securities in the days just

before this proposal was sent to the Fried Frank group?
A. I don't recall one way or the other.
Q. And Mr. Krueger, if you'll turn to Exhibit 131 -- and I believe I'm not going to put this up on the ELMO because --
THE COURT: Wait, give the number again; EC 131?
MR. WALKER: EC 131, yes Your Honor.
Q. These were admitted earlier, you recognize these as the Owl Creek trading records, correct?
A. Yes, I do.
Q. Okay. And we'll just go briefly through a few of the trades in this period, but on the first page, lines 3 through 6, "for the AsiaOne Fund" -- so I actually just want to take step back -- this document is arranged by fund, correct? And then by date and then by investment, correct? That's how this is organized?
A. That's correct.
Q. Okay, good. And so the first page here, we've got investments by the AsiaOne Fund, during this time period?
A. That's correct.
Q. Okay. And you see lines three, four, five, six, you've got a number of buys -- and what are the securities you're purchasing for the AsiaOne Fund on those days?
A. In rows three, four, five and six, the fund was buying subordinated bonds.
Q. And do you know what base numbers are, Mr. Krueger?

we -- it was important to us, you know, understanding that there was some chance that we might get material information during the meeting; knowing that there was that possibility, we wanted to make sure that we had a mechanism in a document signed by both sides, whereby that information would be cleansed at some point in the future, because we knew that we didn't want to get restricted from trading forever.

Q. And you think if you did receive information -- strike the question -- I believe you testified too, that during the period of the confidentiality agreement ran from March 10th to May 8th, is that correct?

A. Those dates sound correct.

Q. Okay. And I believe you also testified, right, that the duration of the confidentiality agreement during that time period, you had Washington Mutual on a restricted trading list at your firm, correct?

A. That's correct.

Q. Okay. And during this time period, did your firm implement an ethical wall between you and any other members of the firm to prevent you from sharing confidential information?

A. No.

Q. And as soon as the confidentiality period ended, Washington Mutual came off of the restricted list, isn't that right?

A. It came off at some point after the period ended.

Q. Okay, and you started trading Washington Mutual bonds pretty much as soon as the restriction was lifted, isn't that right?

A. I don't -- sitting here today, I don't recall.

Q. Okay. If we could look back at Exhibit 131 --

(Pause)

Q. Do you have that document in front of you, Mr. Krueger?

A. Yes, I do.

Q. Okay.

A. The dates you mentioned were May 10th, I believe, correct? I think there was a sell on May 11th, if that's your question.

Q. And then a week later there was a buy of PIERS, correct? Let's look, for example, Mr. Krueger, at the Owl One, that's one of your flagship funds, correct?

A. Yes.

Q. So that would be on page OWL 0 -- seven zeroes and a six; and in line 312, you're pointing out the May 11th trade of a sell, correct?

A. That's correct.

Q. And that's sell would be of what kind of security?

A. That's a senior bond.

Q. Right. And then we've got trades on the 18th, 19th, that are buying PIERS, correct?

A. That's correct.

Q. Okay. And then you've got a sell again of senior bonds on

the 20th, correct?

A. Correct.

Q. Okay. And you would expect that trading throughout the flagship funds would generally follow those lines, is that correct?

A. That's correct.

Q. Okay. And do you recall testifying at your deposition, Mr. Krueger, that one of the strategies you observed -- or one of the patterns you observed -- in looking at this, was that in that time period, you began to sell senior bonds to take some profit off the table and to reinvest a part of that money in junior securities that had more upside, correct?

A. That's correct.

Q. Okay. And the reason for that was that, mathematically, there was the same upside because there was little upside left in the senior bonds, correct?

A. I guess, that's fair; the senior bonds had more capital invested in them because they traded at higher dollar prices. I think it looks like from here, what I'm looking at, they were trading in the eighties at that point in time.

Q. And Mr. Krueger, when the confidentiality period ended, nothing prevented you from sharing what you had learned during the settlement negotiations with your coworkers at Owl Creek, isn't that right?

A. Well, I'm -- I never had to really answer that question

because at Owl Creek, we always were all in the same boat; it's not as though certain employees had information and others didn't. I mean, when we put something on the restricted list, it restricts every single employee of the firm.

Q. Okay; and you're testifying that during the March to mid-May -- mid-March to mid-May period -- in the course of the settlement negotiations, you had always been discussing these issues with the other investment professionals at Owl Creek?

A. I don't remember specifically, but I know it as a policy, we would have considered every Owl Creek employee to be restricted and would need to abide by, you know, the restrictions.

Q. Right, and I just asked you if there was anything that prevented you from sharing what you'd learned at the settlement negotiations with your coworkers at Owl Creek, either during or after the confidentiality period?

A. I don't believe that there was, from memory.

Q. Okay, Mr. Krueger, if you'll turn to Exhibits 142 and 143? I believe you testified about these earlier with your -- on direct -- with your attorneys.

A. Okay.

Q. And you see that the first e-mail in the chain is from Michael Walsh, at Weil Gotshal, forwarding a draft terms sheet, correct?

A. Correct.

MR. WALKER: I'll re-ask the question, Your Honor, thanks.

BY MR. WALKER:

Q. Do you believe that the terms of a settlement offer proposed as a group by the debtor and its major creditors, to its main adversary in a bankruptcy, would be information that would be important to a reasonable investor in the marketplace?

A. No.

Q. Mr. Krueger, I'd ask you to turn Exhibit AO-16 -- excuse me, AOC-16, I believe that is an exhibit that was admitted earlier, and that you discussed with your counsel on direct examination?

THE COURT: Give me that number again?

MR. WALKER: It's AOC-016.

MR. KRUEGER: Do you happen to know which tab it is in --

MR. GLICKMAN: Three.

MR. WALKER: Your Honor, may I approach, I can give him a copy of the --

MR. KRUEGER: I've got it.

THE COURT: Tab three.

MR. KRUEGER: Thank you.

BY MR. WALKER:

Q. And if you'll turn to Exhibit A, its Bates number is O-W-L 0010746.

A. Yes, I recall that.

Q. Okay. So Mr. Krueger, don't you think that a reasonable investor would consider the views expressed by JPMorgan Chase's lawyer and the counterproposal here to be important information to be considered in making his or her investment decision?

A. No.

Q. And I believe you testified earlier that you -- or excuse me, that Owl Creek left the White & Case group in October of 2009. Is that accurate?

MR. GLICKMAN: Your Honor, excuse me. I think there was a transcription error in response to that last question. It said yes, and the witness testified no. Kind of an important question. I just wanted to clear that up.

THE COURT: This is not just the official transcript, so I'm not going to get involved in that.

MR. GLICKMAN: Okay.

THE COURT: You deal with it -- the court reporter on that. What was the question?

Q. So the question was I was just trying to recall you testified earlier with your counsel that you left the JPMorgan group -- excuse me, that Owl Creek left the White & Case group and -- sometime in October of 2009. Is that correct?

A. Around then, yes.

Q. Do you recall the reasons why you left the White & Case group at that time?

Q. Is it honestly your position, sir, that settlement negotiations and settlement proposals never can be material non public information?

A. My belief is that when a deal is reached, that would be material non public information.

Q. Only when the deal is reached?

A. Correct.

Q. So you went into both of these agreements with the belief, sir, that settlement negotiations and settlement proposals, no matter how far along, could never be material non public information. Is that correct?

A. Absolutely.

Q. Thank you.

THE COURT: Anybody else?

MS. HAPER: Bettina Haper, pro se objector.

THE COURT: Okay.

CROSS EXAMINATION

BY MS. HAPER:

Q. You just said that no matter how far along, those negotiations could never be material. How far along exactly, because the GSA at that point, when it was announced, and it caused the market, the commons market to literally crash, had not been approved, the deal was not done, yet it appears that that was material, at least to investors? So would you say that that particular information was material, but that was an

exception?

A. No. I -- what I'm saying is that at that point in time, when Mr. Rosen was standing at that podium reading the terms into the record --

Q. Um-hum.

A. -- people had the belief that a deal had been reached. So that was newsworthy information.

Q. But it hadn't been confirmed. It could have been changed as easily as a term sheet. There was nothing carved in stone. So it was as mootable as air. There was -- there -- you can't have it both ways. Either negotiations --

THE COURT: Well --

Q. -- go all the way or --

THE COURT: Ask a question.

MS. HAPER: Right.

THE COURT: You can't make your argument now. I think you --

MS. HAPER: Yes.

THE COURT: -- he's --

MS. HAPER: Yes, Your Honor.

THE COURT: -- answered.

MS. HAPER: Yes, Your Honor. That's actually all I have.

THE COURT: Thank you.

Anybody else cross? Redirect?

EXHIBIT K

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

- - - - - - - - - - - - - - - - - x

In the Matter of:

WASHINGTON MUTUAL, INC., et al., Case No. 08-12229 (MFW)

Debtors. (Jointly Administered)

- - - - - - - - - - - - - - - - - x

- - - - - - - - - - - - - - - - - x

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.

- - - - - - - - - - - - - - - - - x

MR. MELWANI: Good afternoon.

THE CLERK: Good afternoon, sir. Can you please raise you right hand, place your left hand on the Bible?

VIVEK MELWANI, WITNESS, SWORN

THE CLERK: You can be seated. Can you please state your first and last name and spell it for the record please?

THE WITNESS: Vivek Melwani, V-i-v-e-k Melwani, M-e-l-w-a-n-i.

MR. OWENS: Your Honor, may I proceed?

THE COURT: You may.

MR. OWENS: Thank you.

DIRECT EXAMINATION

BY MR. OWENS:

Q. Mr. Melwani, where do you work?

A. Centerbridge Partners LP.

Q. What is your position at Centerbridge?

A. I am a senior managing director.

Q. How long have you worked at Centerbridge?

A. Three years.

Q. When did you start?

A. April 2008.

Q. And what are your duties and responsibilities at Centerbridge?

A. On certain investments I'm involved in analyzing the credit and making buy/sell recommendations. On other

investments, I'm more involved in helping the team analyze court pleadings, navigate through the bankruptcy and just give my views on the restructuring process.

Q. Mr. Melwani, let me ask you to keep your voice up, and if you could move the microphone perhaps a little close to you we can make sure that everyone hears you.

A. Okay.

Q. Do you have an ownership interest in Centerbridge?

A. I am a partner.

Q. How long have you been a partner?

A. As of March of this year.

Q. And where did you work before Centerbridge?

A. Fried Frank Harris Shriver & Jacobson.

Q. And what was your position at Fried Frank before you left for Centerbridge?

A. I was a partner.

Q. Did you specialize in any particular area of law?

A. I was a partner in the bankruptcy group.

Q. And how long did you work at Fried Frank?

A. Thirteen years.

Q. Going back to Centerbridge, can you give us a very brief description of Centerbridge's business?

A. Centerbridge has two primary businesses or two businesses. One is a private equity business, which is focused on buying companies. There's also a credit business or we call it a

credit business, but it's focused on buying securities such as Washington Mutual securities in companies as opposed to buying the entire company.

Q. And on whose behalf did Centerbridge make these investments?

A. Pension funds, endowments, various institutional investors.

Q. And how do its clients, pension funds, et cetera, invest in or through Centerbridge?

A. Typically we buy LP interests, interests in our limited partnership -- buy limited partnership interest in our funds.

Q. When did Centerbridge first invest in securities issued by Washington Mutual?

A. I believe it was in the month before bank -- month before Washington Mutual filed for bankruptcy.

Q. When did you first become involved in those investments?

A. Around the time of the bankruptcy.

Q. Who else at Centerbridge has been involved in managing Centerbridge's investments in the debtor?

A. Jed Hart, who is another senior managing director. There was always one associate on the team. At the start, it was Mina Kazanlieva. She left about two years ago. And then she was replaced by Stan Fedorenko. Jeff Aronson, who is a founder of the fund, is also involved.

Q. And are you familiar with the phrase in your current line

JPMorgan.

Q. And how was that proposal prepared?

A. Centerbridge and Appaloosa came up with a proposal together with Fried Frank.

Q. Let me ask you to take a look at -- I'm sorry, withdrawn. Was that proposal ever delivered to JPMorgan?

A. It as.

Q. When?

A. It was delivered, I believe it was July 28th or July 29th in a meeting.

Q. Where was the meeting?

A. At JPMorgan.

Q. Who was present?

A. To the best of my recollection, it was myself, Jed Hart and Jeff Aronson from Centerbridge; David Tepper and Jim Bolin from Appaloosa; Don McCree and Travis Epes from JPMorgan.

Q. And what was said during the meeting?

A. We made the proposal to them. They asked us a few questions, and they said thank you, we'll get back to you.

Q. And did you deliver a proposal in writing?

A. We did not.

Q. How was the proposal delivered?

A. Orally.

Q. And between the date of this meeting on July 29th or after the time of this meeting on July 29th, did Centerbridge

continue to trade?

A. We did.

Q. Why did you believe you were free to trade?

A. Because the proposal was our information. It was our proposal. We could have asked for part--

THE REPORTER: I'm sorry. Could you repeat your --

THE WITNESS: Sorry. I apologize. It was our proposal.

Q. Did JPMorgan ever respond to your proposal?

A. They did on I believe it was August 18th.

Q. How did they respond?

A. By e-mail from JPMorgan to Jeff Aronson and David Tepper.

Q. Let me ask you to turn now to Tab 115.

MR. OWENS: I believe this is already in evidence, Your Honor.

Q. But Mr. Melwani, can you tell us what this document is?

A. Yes. This is the response from JPMorgan to Jeff Aronson and David Tepper.

Q. And if you look at the second line on the first page of 115, what time was this received?

A. 4:43 p.m.

Q. Did Centerbridge restrict its trading in any way after receiving this?

A. We did.

Q. How?

A. We didn't -- I don't, we didn't believe we were legally restricted, but we -- until we had a chance to look at it we just stopped trading in Washington Mutual securities.

Q. Did you study the proposal?

A. We did.

Q. What conclusion did you come to with respect to this proposal?

A. That it was unacceptable.

Q. Why was the proposal unacceptable to Centerbridge?

A. We had proposed sixty/forty on the first tax split. They had changed that to seventy-five -- the main reason, one of the largest reasons was they had changed that to seventy-five/twenty-five and they had made Washington Mutual get the bulk of their recovery from the back end.

So where we had proposed fifty/fifty they had proposed ninety percent of the back -- when I say the back end, I mean the second refund going to Washington Mutual. At this point, the legislation, while there was talk about the legislation getting extended, the legislation hadn't even passed yet.

So that was one of the reasons. But there were a lot of other reasons. The -- we had wanted the entire deposit coming back. They wanted to take 200 million out of it.

I also think that there was a concept that whatever releases needed to be acquired the estate would pay for.

Q. Was there a follow-up meeting with JPMorgan?

throughout the remainder of, well, one day of November and the month of December in 2009?

A. I don't believe I was aware of it. I don't think it would have surprised me if the debtors continued to talk to JPMorgan during the confi period.

Q. Did the debtors share with you or did any other party share with you any subsequent term sheets prepared by any party to these negotiations after November 30th of 2009 until the expiration of the second confidentiality agreement on December 30th, 2009?

A. They did not.

Q. When you resumed trading on December 31st, 2009, did you believe that these proposals that had been exchanged in November were material nonpublic information?

A. We did not.

Q. What did you do to reach that conclusion?

A. Again, we looked to the fact that we had a confidentiality agreement that provided -- that the -- that required the debtors to disclose what they viewed as material nonpublic information. They did not disclose this. We confirmed through Fried Frank that the debtors did not view these as material, and then we also made our own independent assessment that these were not material.

Q. Earlier in your testimony you described a spectrum between no deal/deal. Where did you view these proposals from November

expected them to say every meeting we ever have with anyone you're going to be involved in.

Q. Had you heard about this time that the debtor was working on a settlement agreement, a draft settlement agreement with JPMC?

A. Again, I don't recall. I don't recall knowing that. I don't know if it would have shocked me. I wouldn't be surprised if I knew that they were talking just because I kind of assume that that's what they had to in this case. I mean, it's not a going concern business, it's a liquidation. They need to come to resolution. So just because we're not talking doesn't mean they're not talking.

Q. So you didn't have an understanding as of this point in time that settlement negotiations were dead; is that right?

A. The settlement negotiations we had seen, the November -- again, I forget the dates, but the two proposals we had seen, my understanding was that negotiation had failed, that they had reset the bookends, and I did not know to the best of my recollection that anything else was going on.

If the question is -- I forgot what the word you used was. Would I have been surprised? I don't think I would have been surprised because, again, that's what debtors do. They're supposed to talk to people. And just because they're not talking to me, I wouldn't be surprised to find out they were talking to people.

EXHIBIT L

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., *et al.*,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Re: Docket No. 8104**

NOTICE OF WITHDRAWAL OF CERTIFICATION OF NO OBJECTION 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 July 8, 2011, the above-captioned debtors and debtors in possession filed the *Certification of No Objection Regarding Debtors' Motion Pursuant to Section 554(a) of the Bankruptcy Code for Authorization to Abandon WMI's Equity Interests in Washington Mutual Bank* [Docket No. 8104] (the "Certification of No Objection").

PLEASE TAKE FURTHER NOTICE that Certification of No Objection is hereby withdrawn without prejudice.

[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.

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Dated: July 8, 2011
Wilmington, Delaware

By: _____

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ATTORNEYS TO THE DEBTORS AND
DEBTORS IN POSSESSION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
WASHINGTON MUTUAL, INC., et al.,[1]	:	**Case No. 08-12229 (MFW)**
Debtors.	:	**(Jointly Administered)**
	:	**Re: Docket No. 5885**

ORDER AUTHORIZING WASHINGTON MUTUAL, INC. TO ABANDON ITS EQUITY INTERESTS IN WASHINGTON MUTUAL BANK

Upon the motion, dated November 12, 2010 (the "Motion"),[2] of Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (together, the "Debtors"), for entry of an order, pursuant to section 554(a) of the Bankruptcy Code, authorizing, but not directing, WMI to abandon WMI's and WMI's estate's equity interests in Washington Mutual Bank ("WMB"), all as more fully set forth in 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 therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having

[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.

[2] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

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determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is granted; and it further

ORDERED that, pursuant to section 554(a) of the Bankruptcy Code, WMI and its chapter 11 estate are authorized, in their sole and absolute discretion, at any time, to abandon their equity interests in the WMB Stock; and it is further

ORDERED that, upon WMI's and its chapter 11 estate's abandonment of the WMB Stock, WMI and its estate shall automatically be deemed to have surrendered and relinquished all of their right, title and interest to the WMB Stock, including any recovery rights and/or litigation claims with respect thereto; provided, however, that such abandonment shall not constitute a withdrawal or release of any claims asserted by WMI as a creditor of WMB against the FDIC, in its capacity as receiver for WMB or in its corporate capacity on account of WMI's status as a creditor, and shall not constitute a withdrawal or release of any rights under the Global Settlement Agreement; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: July 11, 2011
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE