UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

WRITTEN OBJECTION TO THE
MODIFIED SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS
PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

STANDING

WMI is owned by its equity holders and given historical and recent events related to tax issues, assets are currently above liabilities despite the best efforts of debtor's counsel to maintain the appearance of insolvency. You have recognized the right of WMI shareholders to appear as parties in interest. As a party in interest, I am entitled to a full accounting of assets under 11 U.S.c. § 101 et seq. (the "Bankruptcy Code"). These assets include values of the claims to be released.

Accordingly, concealment of asset information injures us as shareholders as it prohibits us from determining if the Global Settlement is reasonable and has already impaired our ability to make an informed vote. This concealment has been conducted by conflicted counsel and restructuring firm, rendering the plan unconfirmable.

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, Suite 2500, Seattle, Washington 98104.

II Basis for Objection and Request

11 U.S.C. § 1107(a) provides that a debtor-in-possession (DIP) shall have the rights and duties of a trustee. The duties of a trustee include the right and responsibility to " employ one or more attorneys, . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons." Consequently, § 327(a) also applies to lawyers hired by DIPs.

A "disinterested person" is defined at § 101(14) as follows " does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

Alvarez & Marsal and Weil, Gotshal & Manges, serving as chief restructuring firm and lead counsel for the debtors respectively, are not disinterested persons due to multiple conflicts with adversarial parties in this case.

Alvarez & Marsal's conflicted role

Second confirmation hearing testimony:

Mr. Kosturos: *I would say I was the lead negotiator. I would say that Weil Gotshal drafted a lot of the documents, as well as Quinn Emanuel after they were hired also had input in the documents as well.*

Considering Alvarez and Marsal's role as "lead negotiator" and the board's replacement of multiple departing board members with A&M employees without a vote, A&M's role as a "disinterested person" is even more concerning. Please note the following:

Alvarez & Marsal's relationship with JP Morgan Chase (source material: Docket number 63)

	Creditors A&M is currently advising or has previously advised	**Clients of A&M and/or its Affiliate** (A & M is currently providing or has previously provided certain consulting services)	**Significant equity holder of A&M's client** (These parties or their affiliates are significant equity holders of other clients of A&M or its affiliates in wholly unrelated matters)	**Member of Noteholders Group** (A&M is currently advising or has previously advised various official or unofficial noteholders' committees)	**Holds or has held economic interest in this case/has voted as a creditor in this case**
JP Morgan Chase	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**

This suggests a firm that is in business with a primary adversary **on every possible level**.

The Business Tort Claims

Kosturos deposition: page 262, line 22:

Question: *During settlement discussions did you discuss the business tort claim with JPMC?*
Answer: *Not in any detail, no.*

This claim (breach of contract) represents the largest claim of the estate, and Mr. Kosturos did not bother to discuss it in any detail with the primary adversarial party. When JP Morgan Chase breached contract and purchased Washington Mutual from the FDIC, they became liable for the difference between what the estate received as a purchase price and what the estate would have received had JP Morgan's bid not existed. This claim may approach 100 billion dollars in value. It is obvious that Mr. Kosturos as representative of A&M had no intention to pursue any real recovery from JP Morgan Chase.

The Third Parties

In the initial POR, the debtors attempted to release all third parties for no estate consideration.

Following the court's statement that the releases were "overbroad" and that there would be no releases to the third parties without value, the debtors then began parsing language. While it appears obvious the court's intention was to express that if given third parties do not contribute unique value to the estate there would be no releases, the debtors then rewrote the POR and decided *any value* received from the estate's current assets would somehow indemnify third parties that in no way contributed to that value. Thus, retail shareholders would have to decide if the remaining basic estate assets (largely consisting of tax refunds and deposits) would be sufficient to give releases to third parties that had contributed nothing to either pool.

Now the debtors state that since there is potential value of the claims in the liquidating trust, these will be retained and pursued by the very same professionals that attempted to twice give them away for no consideration and have not bothered to even evaluate them for potential return (see Kosturos testimony, July 21, 2011: *"I'm not in the business of valuing litigation"*).

As a brief reminder of the massive and interconnected nature of third party claims and A&M's conflicted nature with these third parties, the following examples are drawn from Alvarez & Marsal's initial employment authorization filed on October 2, 2008 (docket number 63). It is in this filing that A&M represented themselves as "disinterested persons." Goldman Sachs and Morgan Stanley were chosen as examples for illustrative purposes. Goldman Sachs was engaged in multiple transactions with Washington Mutual prior to seizure and while retained by them for various business purposes, issued a rare "short" recommendation (as opposed to sell).

Example 1:

Alvarez & Marsal's relationships with Goldman Sachs

	Creditor (A&M is currently advising or has previously advised these parties or their affiliates as creditors or various official creditors' committees in which these parties or their affiliates were members or which represented the interests of these parties or their affiliates.)	**Client of A&M and/or its Affiliate** (A & M and/ or an affiliate is currently providing or has previously provided certain consulting services to these parties or their affiliates in wholly unrelated matters)	**Significant equity holder of A&M's client** (These parties or their affiliates are significant equity holders of other clients of A&M or its affiliates in wholly unrelated matters)	**Member of Noteholders Group** (A&M is currently advising or has previously advised various official or unofficial noteholders' committees in which these parties or their affiliates were members or which represented the interests of these parties or their affiliates)	**Significant Joint Venture Partners**	**Holds or has held economic interest in this case/ has voted as a creditor in this case**
Goldman Sachs	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes***

*Cleary Gottlieb (counsel for Goldman) filed requests with court to trade in Washington Mutual securities on May 15, 2009 and GS has held multiple billions in WMi equity interests at points in this case

Example 2 Morgan Stanley

Morgan Stanley was expressly mentioned on multiple occasions in JP Morgan's internal Project West e-mails. This information alone suggests Morgan Stanley is a potential target for third-party claims. While it is difficult to say the extent of their involvement without further discovery, awareness of JP Morgan's plan and conversations with federal regulators could allow for large potential claims if purchases or short sales were conducted during this period of time. The following are the relationships of A&M, Quinn Emmanuel, and Weil Gotshal.

Alvarez & Marsal's relationship with Morgan Stanley

	Professionals and Advisors (These professionals have represented clients in matters where A&M was also an advisor (or provided crisis management) to the same client. In certain cases, these professionals may have engaged A&M on behalf of such client)	Clients of A&M and/or its Affiliate (A & M and/ or an affiliate is currently providing or has previously provided certain consulting services to these parties or their affiliates in wholly unrelated matters)	Significant equity holder of A&M's client (These parties or their affiliates are significant equity holders of other clients of A&M or its affiliates in wholly unrelated matters)	Holds or has held economic interest in this case/has voted as a creditor in this case
Morgan Stanley	**Yes**	**Yes**	**Yes**	**Yes**

Again, we are to believe that the board, consisting largely of Alvarez & Marsal's employees, are not hopelessly conflicted with a major party of interest and potential source of recovery.

Additionally, the following conflicts have been disclosed.

Quinn Emanuel *Weil, Gotshal & Manges*

Morgan Stanley	***Current client****	***Current client***

*Despite the aforementioned references to Morgan Stanley in Project West communications, they were left off the request for expanded discovery filed by Quinn Emanuel.

Breach of fiduciary duty

From Mr. Kosturos' testimony, December 2, 2010

Q. *Your goal during this negotiation period was to pay off your creditors, is that right?*
A. *No. My goal was the debtor was to maximize the value of the estates.*

This idea of estate maximization was also discussed indirectly by Mr. Kosturos in the same hearing.

" One of the things about the fraudulent conveyance is that it has real tension with the business courts. In the fraudulent conveyance, you are trying to prove insolvency as you look back to try to recover potential capital contributions. In the business torts, we would be trying to do the opposite. So there is a natural tension between these, and it makes it very difficult to really proceed with both of them. The likelihood, if we were to proceed with litigation, we would have to choose one or the other."

This argument, restated in the court's rejection of the first confirmation, was only partly true. While the value of the tortious interference may be impacted by the solvency of the holding company, the breach of contract by JP Morgan is not affected at all, **if** it can be shown that their breach prevented a second, nonconforming bid from being accepted **and** that bid was superior to JP Morgan Chase's. In this case, solvency of the debtor would be immaterial.

However, these details can easily obfuscate the big picture, which is that the claims to both sets of actions are being entirely dismissed for little to no value. Other than the deposits (apparently known by all settling parties to be uncontested at a very early stage in this bankruptcy), none of the transferred assets have been returned. As a brief demonstrative, here are a sample of the claims were filed early in this bankruptcy and their current status is listed.

Claim	Ascribed value	Status
Capital contributions	6.5B	Released to JPM for no consideration
Visa shares	140M	Sold to JPM at a significant discount to market price
TPS	4B	Released to JPM for no consideration
TPS asset pool	6B+	Released to JPM for no consideration

Boli/Coli	5.2B	Majority released to JPM for no consideration
Intellectual property	6B	Released to JPM for no consideration

As the only value received from the unliquidated claims against the FDIC is the ability to walk away with a percentage of the company's tax refunds, it appears that we are giving up over 36B in conveyed assets and claims (including tax refunds) for the right not to sue the FDIC or JP Morgan Chase.

Additionally, while Alvarez & Marsal's conflicts do not extend to the FDIC directly, the FDIC may amend the sales price at its discretion to include any damages recovered by the estate. Therefore, any conflict A&M has with JPM extends to the FDIC as well.

Alvarez & Marsal allowed the SNHs undue influence

Despite the debtor's knowledge that JP Morgan Chase had suggested the four hedge funds (Appaloosa, Aurelius, Owl Creek and Centerbridge) had accumulated WMI securities after settlement discussions had begun (page 4 of JP Morgan's request for 2019 disclosure), A&M allowed them to lead settlement discussions and even craft the final term sheet.

Notwithstanding any ethical obligations A&M may have ignored or the potential for the SNH group to direct recovery to specific areas of accumulation, *this was a very real threat by JP Morgan Chase.* Even if the SNHs had engaged in no questionable trading, the mere accusation of improper trading by an adversary as powerful as JP Morgan Chase could result in significant client redemptions.

It is perhaps coincidental that settlement negotiations were reignited within six weeks of the 2019 hearing on August 24, 2009 and the motion to compel JP Morgan Chase to produce an asset list was dropped. While we have spent much time discussing the multi-billion dollar NOLs as the carrot in these settlement negotiations, this stick was never mentioned. Given the threat this accusation represented to the SNH group, A&M should have never allowed the SNH group such control over negotiations.

The GSA renewal

It is unclear who renewed the GSA after the settling noteholders withdrew, but it appears A&M made that decision.
From the Goulding deposition:

Q. *Was that an Alvarez & Marsal decision to renew the GSA?*
A. *I mean, I think it's a decision that's made by the team, the debtors themselves, as well as the board making an approval of that.*
Q. *So that was a board decision that was voted on?*

A. *You know, I attend some of the board meetings, but I'm not familiar with all the resolutions that are associated with it, so I think that that's what happened, but I really couldn't say for sure.*

My request for redacted board minutes was refused unless I signed a 41 page-long confidentiality agreement. Having seen the uneven (and at times, precarious) impact of signing confidentiality agreements in this case, I narrowed my request to merely a list of attendees and dates, which the debtors refused as being overly burdensome. It is unclear, but appears to be the case, that A&M simply renewed the GSA despite their conflicted status with JPM as well as the cases that have occurred in the interim limiting the FDIC's power to claim tax refunds or deposits of failed banks (Colonial and Meritor).

Quinn Emmanuel's presentation to the debtors

Quinn Emmanuel presented claims information to the formal and ad hoc noteholders in 2009. This presentation was described as a "discussion" by Weil Gotshal. However, claims and potential values as well as likelihood of success of those claims were discussed per filings by A&M as well as Quinn Emmanuel.* *This is the same information Mr. Kosturos refused to offer in the confirmation hearings, citing attorney-client privilege.*

*My request from the debtors for any slides or powerpoint presented in that meeting resulted in an unproductive yet entertaining string of e-mails that is available at the court's request

Weil Gotshal's conflicted status

While the meaning of "interest adverse to the estate" has not been expressly defined within the code, the most obvious and direct example of an adverse interest is a repeated attempt to minimize rather than maximize estate value. JPMorgan Chase retained Weil Gotshal on March 19, 2008 (examiner's materials).

Weil Gotshal was retained by Washington Mutual in the week preceding bankruptcy filing. While it is uncertain what estate value was obtained for these services, the following actions have occurred post-retention.

1. JP Morgan Chase breached contract by purchasing WMB from the FDIC receivership.
2. Between four and ten billion dollars in estate collateral was transferred unchallenged to JP Morgan Chase in the TPS transaction immediately post-filing.
3. While item 1 was discussed in court filings, this transfer of estate assets was never part of any term sheet proposed (see Kosturos testimony, July 21, 2011). This is important, as Weil Gotshal presented the first term sheet on March 5, 2009 (again, see Kosturos testimony) despite their conflicted status with JPM and a full four months before one discovery document was turned over.
4. The time period in which the DIP could challenge the seizure and sale expired without even a halfhearted attempt to do so. This inaction is stark given the sale itself was in violation of contract.
5. No asset list was ever produced.
6. No depositions of senior FDIC or JP Morgan Chase employees were ever conducted.
7. The breach of contract claim was never discussed *in any detail* in court.
8. The largest nontax asset (the deposits) was not ruled upon by request of WG&M.
9. No third party claims have ever been pursued or valued until very recently, more than two and a half years post-filing.
10. When settlement talks with the equity committee broke down, Mr. Rosen referenced the Marta claim as potentially returning if funds were to flow to equity. I can only assume this threat was not presented when settlement talks were progressing. This again suggests the desire to prevent recovery for junior classes as an intent and goal of the POR.
11. Weil has never addressed the derivative nature of the entirety of JP Morgan's 27B claim. Instead, their claim has been left almost entirely unchallenged. Unfortunately, this supports the illusion that JPM is contributing any real value to the estate.

Intentional obfuscation of estate assets

I. Real Estate

At the March 21st hearing the court stated:

" Information given by the debtor should also include any real estate owned by WMI Investments or any of the nondebtor subs. "

The debtors have stated that there was only *de minimus* real estate in the estate and cited JP Morgan Chase's 10K as evidence real estate subsidiaries were now owned by JP Morgan Chase in response to Joe Schorpf's court objection (see docket # 6811).

Notwithstanding the absurdity of citing JP Morgan's 10K as evidence of asset conveyance, JP Morgan Chase has objected to the inclusion of their own 10Ks as evidence in this case (filed on July 12th, 2011). Given their own admission that estate assets were accidentally conveyed in e-mails requesting indemnification from the FDIC (examiners materials), this is unsurprising.

It is my belief that the debtors have relinquished large and valuable claims to property and parsing language when they respond that we do not "own" any real estate. Hundreds of properties have gone unclaimed since filing, and these properties may be reclaimed within specific time frames post-bankruptcy (state laws differ on this point). However, one example is as follows:

On August 8, 2011, utilizing the California State Controller's Office website,

http://scoweb.sco.ca.gov/UCP/Default.aspx, a search was conducted the using the terms "Washington Mutual". Upon input and selection, the return is over 2,900 hits. Unfortunately, the State Controller's Office will only release the first 500 returns via the public website. Upon written request through their help desk, to obtain the remainder would involve written request through the State Controller's Legal Department even though the first 500 are publically available. California lists unclaimed property as

- Bank accounts and safe deposit box contents
- Stocks, mutual funds, bonds, and dividends
- Uncashed cashier's checks or money orders
- Certificates of deposit
- Matured or terminated insurance policies
- Estates
- Mineral interests and royalty payments, trust funds, and escrow accounts.

Anything unclaimed that is reported to the state with the name associated to "Washington Mutual" fits into the above categories and belongs to the estate. Yet these items do not appear on any asset listing

and they still remain with the CA State Controller. These categories represent assets of the estate and are under the auspices and protection of this court and are fully deserving of a full and proper accounting. As such, the Debtors', their Restructuring Agents, and their counsel are compelled to produce a listing of not just these "unclaimed properties", but of any and all business combinations of the estate that sit unclaimed. It would be troubling if this property could be reclaimed by the estate post-emergence but these assets were left unvalued.

My request on July 28th for information from Mr. Kosturos and Mr. Rosen regarding information about these properties and their treatment went unanswered.

II. **NOLs**

From the March 21st Disclosure statement hearing

A) The court stated, *"I also agree with the objectors who said that there has to be a disclosure as to the ranges of value of the NOLs. I don't think it's sufficient to limit it to what the debtor is projecting will be the use of the NOLs."*

This was not done by the debtors. As multiple tax firms have been retained for many months, it is difficult to find any reason to hide this value other than to insure the waterfall does not reach junior classes—a breach of the "good faith provision."

B) The court continued " *And since you're doing an analysis which includes the range of values of the NOLs, I think that would include any tax consequences of the capital contribution with respect to the WMB tax refund issue."*

After this was also not completed by the debtors, I contacted them directly in order to gain this information. They refused to provide this information, citing the approval of the disclosure statement as evidence of sufficient disclosure.

And later: From Mr. Zelin's testimony on July 13th, 2011 (emphasis added)

" Based on our diligence I understand there are, and this may have been disclosed as well, but there is some potential for those net operating losses to increase from two primary facts; one, is that ***there may be payments to be made pursuant to the plan that have not factored into the calculation of the five-and-a-half billion dollars; and there also might be an increase, if you will, in that operating losses resulting from the global settlement agreement.***

The combination of those two buckets ***may add another four billion <u>or so</u>*** *of potential net operating loss available to reorganized WMI."*

This four billion in the first bucket likely represents the contribution of the TPS assets to WMB, I requested at the disclosure statement hearing. One wonders if this disclosure would not have been made otherwise.

The second "bucket" likely includes other assets conveyed, a number that expands the "<u>or so</u>" component of Mr. Zelin's testimony significantly. This number may include the cash conveyed to JP Morgan Chase via the plan.

This conveyance is an attempted end-run around the carryback provision's mandates that somehow travels through time and contributes billions of dollars that were created by the seizure and made accessible by a law passed over a year later, to the bank *before the seizure*. There have been no attempts by the debtors to obtain a private letter ruling regarding the legality of such an action. This is critical, as the *legality of this act determines the availability of a tax asset of more than 3 billion.* Nevertheless, debtors' counsel appears confident that the parties' agreement to simply consider it such a contribution is sufficient.

This decision to avoid *even attempting* to determine JPM's ability to claim the refunds directly is another indicator that WG&M are attempting to benefit one client at another's expense.

Relief Requested

1) That the Court refuse to confirm the Debtors' Plan as it violates the "Good Faith" requirement of 1129(a)(3) of the Bankruptcy Code because the Debtors have not attempted to maximize the value of the estate on multiple occasions.

2) That the Court remove lead counsel and chief restructuring firm from the case due to disabling conflicts of interest that have wasted significant court time and estate expense.

3) That if it is the case that any claims have expired due to inaction by the firms discussed in this filing, that the release language be modified to exclude damages resulting from any inaction.

In addition to being a party in interest I am (a) member of the public, and (b) injured by the conflicts of interest in this case. The information contained suggests the negotiations and the settlement have been undertaken in bad faith.

If oral arguments are to be heard, I or a representative will be present in person to address them with the court.

Thank you for your time and attention to this matter.

Sincerely,

Ben Mason