IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

POST-HEARING MEMORANDUM OF BEN MASON OPPOSING CONFIRMATION OF THE SIXTH AMENDED MODIFIED PLAN OF REORGANIZATION

As a holder of preferred equity and common equity of Washington Mutual subject to various Class treatment under the modified sixth amended plan [Docket Nos. 6696, 6964, and 7038] (the "Plan") filed by Chapter 11 debtors Washington Mutual Inc. ("WMI") and WMI Investment Corp. (the "Debtors"), I respectfully submit this post-trial memorandum, following this Court's seven-day hearing the "Hearing") on the Plan.

1 The Debtors in these Chapter 11 cases, along with the last four digits of each Debtors' federal tax identification number, are: Washington Mutual, Inc. (3725) and WMI Investment Corp. (5396). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

PRELIMINARY STATEMENT

1. The tax attributes, the value of the Net Operating Loss carry forwards ("NOLs) in the hands of the Reorganized Debtor, are material, understatedly disclosed and undervalued "assets" of the DEBTORS' ESTATE that (a) are being distributed to Creditors in excess of the values of their claims (b) via a Plan acquisition/ownership change with the primary purpose of tax avoidance under IRC Sec. 269 that is not proposed in good faith.

STATEMENT OF FACTS

2. The debtors, through their counsel Weil, Gotshal and Manges and their restructuring consultant Alvarez & Marsal (hereinafter referred to as "the debtors"), have made disclosures in the Plan of Reorganization and Disclosure Statement (originals as amended to current), that the NOLs are (a) $5.5 billion dollars, (b) generated almost entirely from the tax strategy of abandonment of the debtors' tax basis in its stock investment in wholly-owned subsidiary, Washington Mutual Bank {"WMB"}, that was seized by the FDIC on September 25, 2008, (c) in two layers of classification regarding the annual limitations of Internal Revenue Code Sec. 382 {an "unrestricted by IRC 382" layer resulting from the proration rule applied under the abandonment of WMB tax strategy before the effective date and the balance along with operating losses during the estate period being "restricted by IRC 382" and subject to annual use of the NOL limitations of approximately $7 million dollars per year.

3. The debtors provided the NOL calculation {the "amount of the NOL"} to Steven Zelin and the Blackstone Group for purposes of valuation of the NOLs as a component value of the reorganized debtor.

4. The debtors have supported the "Abandonment Motion" [D.I. 5885] inferring to the Court that it is required to maximize the tax attributes, "assets," of the debtor's estate. The debtors purport that the conversion of NOLs into a layer that would otherwise be "restricted by IRC 382" into "unrestricted by IRC 382" increases the value of the tax attributes, "assets" of the debtor's estate.

5. The debtors' Abandonment Motion, the trigger for the debtors' tax strategy to convert a portion of the NOLs into a layer that would otherwise be "restricted by IRC 382" into "unrestricted by IRC 382," does nothing to increase the value of the tax attributes, "assets" of the debtor's estate. The valuation of the tax attributes, "assets," without utilizing the debtor's tax strategy of abandonment and creating an NOL layer "unrestricted by IRC 382," is the same to the debtor's estate.

6. The debtors' Abandonment Motion, the trigger for the debtors tax strategy to convert NOLs into a layer that would otherwise be "restricted by IRC 382" into "unrestricted by IRC 382," serves the sole purpose to increase the value of the tax attributes, "assets" of the Reorganized Debtor, which under the Plan will be owned by Creditors after an ownership change (as opposed to continuing equity owners, in which the annual limitations of IRC 382 would not apply as there would be no ownership change).

7. The debtors' actions are for the sole benefit of the Creditors that are to become the owners of the Reorganized Debtor This represents a clear and obvious intended distribution of value materially in excess of each claim of each Creditor that

will become an owner of the Reorganized Debtor. The debtors' actions are a deceit to the Court.

8. The gross distribution value, the amount of the NOL layer created by the debtors for the selected Creditors in the Reorganized Debtor, based upon the $5.5 billion dollar NOL under the abandonment tax strategy, and under the proration method relative to the effective date (August 31, 2011 assumption; 122 {days after} divided by 365 days equals 33.4%), converts the $5.5 billion dollar NOL into a $1.8 billion dollar NOL layer that would otherwise be "restricted by IRC 382" into "unrestricted by IRC 382." This effort of the debtors is clearly to maximize the value, the tax attribute "assets," only for the benefit of the owners of the Reorganized Debtor; there is no corresponding value for the debtors' estate.

9. The debtors, in addition to the deceit to the Court of the underlying tax strategy of the Abandonment Motion, have not disclosed the potential range of NOLs, further hiding the materiality and intent, despite the request for such by the Court.

10. The purported $5.5 billion dollar NOL disclosed by the debtors, after accounting and recording post-POR implementation entries, will actually be approximately $14 billion dollars; which will be comprised of approximately $13.4 billion dollars of the post-POR implementation effects on the tax basis {to be recorded retroactive to 2008} and resulting loss on abandonment of WMB, and $600 million dollars of estate net operating losses unrelated to abandonment.

11. Shining the sunlight on (a) the debtors' actions for the sole benefit of the Creditors to maximize tax attributes, "assets," of the Reorganized Debtor on the $5.5 billion dollar NOL purported by the debtor, and (b) the real gross distribution

value, the amount of the NOL layer created by the debtor's for the selected Creditors in the Reorganized Debtor, based upon the $13.4 billion dollar NOL on abandonment, and under the proration method relative to the effective date (August 31, 2011 assumption; 122 {days after} divided by 365 days equals 33.4%) converts the $13.4 billion dollar NOL into a $4.5 billion dollar layer that would otherwise be "restricted by IRC 382" into "unrestricted by IRC 382."

ARGUMENT

I. THE AMOUNT OF THE NOL CARRYFORWARD IS UNDERSTATED

12. Subsequent to the Opinion of the Court on January 7, 2011 (in which the Court concluded "that the reorganized company has a value in excess of the enterprise value of $157.5 million set by the Debtors' expert. The expert acknowledged that his valuation was based only on cash flows expected to be generated by the runoff of the insurance assets currently held by the Reorganized Debtor and did not consider that the Reorganized Debtor might start or acquire another business (through the rights offering suggests otherwise). The Debtor's subsequently withdrew the rights offering from the Plan. The withdrawal of the rights offering does not withdraw the Court conclusion that the reorganized company has value in excess of the Debtors' expert, yet it does it shed light on the intent of the debtors to make a distribution of value in the reorganized debtor for the benefit of the creditors turned owners for amounts in "multiple factored" excess of the creditors' claims.

13. At a hearing held on February 8, 2011, numerous questions were raised by equity and individual shareholders as to the accuracy of the $5.5 billion dollar

NOL disclosed by the debtors and subject to valuation by the debtor's expert, Steven Zelin of the Blackstone Group.

> The Court stated "I also agree -- and I'm not sure who raised it, but 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." (2/8/11 Hearing Transcript Page 167). The Court also stated "and since you're doing an analysis which includes the range of values of the NOLs, I think that would include the tax consequences of the capital contribution with respect to the WMB tax refund issue." (2/8/11 Hearing Transcript Page 169).

The requests of the Court to (a) disclose the range of NOLs, (b) not limit the use of the NOLs by the debtors' projection and (c) to include the tax consequences of the WMB tax refund issue have all been devoutly and intentionally ignored by the debtor. The refusal of the debtors, through their counsel Weil, Gotshal and Manges and their restructuring consultant Alvarez & Marsal, to respond to the requests of the Court, is an insult to the Court.

14. During the recent second confirmation hearings, Mr. James Carreon, of Alvarez & Marsal, indicated that there would be an additional net "$600 million dollar would be in addition to the $5.4 billion dollar worthless stock loss...projecting an aggregate $6 billion dollar loss for the current year." (7/13/11 Hearing Transcript Page 106).

15. At that same hearing, Mr. Steven Zelin of the Blackstone Group, the debtors' expert witness, indicated in response to the question "And what is your understanding of potential net operating losses other than those listed in your report?" answered

> "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 made pursuant to the Plan that have not factored into 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 or so of potential net operating loss available to reorganized WMI." (7/13/11 Hearing Transcript Pages 272-273).

As a result statement, the $6 billion dollar NOLs disclosed by the debtors (per the POR/DS 6th amended plus the current year $600 million dollar loss per Carreon) is imputed to be $10 billion dollar NOL available to the Reorganized Debtor.

Although no narrative disclosure has been made by the debtor as to the composition of the additional $4 billion dollar NOL that was discovered by Mr. Zelin, a simple review of the global settlement agreement treatment of the tax refunds that will be paid to the debtor, then contributed to its wholly-owned subsidiary Washington Mutual Bank and then paid to JPMorgan Chase and the FDIC-R account for approximately $3.2 billion dollars of additional capital contributions and tax basis increase in WMB by WMI. Other settlement items, notably the $355 million dollar settlement with WMB bond holders, and other items are aggregated by Mr. Zelin at $4 billion dollars.

16. The "now" $10 billion dollar NOL, 40% larger than the amount disclosed by the debtor to the Court, in the amount of $4 billion dollars, is still understated. Disclosed by narrative in the Monthly Operating Reports ("MORs") of the debtors, it is clear and obvious that upon exhaustion from appeals, the TPS Conditional Exchange will be recorded as a $3.9 billion dollar capital contribution to WMB by WMI retroactive to September 26, 2008 and ultimately included in the tax basis for the worthless stock deduction (regardless of use of the abandonment strategy):

"Because the process and confirmation of the Modified Plan are pending, WMI has not yet reflected the Conditional and/or its attendant transactions on its financial statements, including any interests (direct or indirect, contingent or otherwise) in the Securities and the assets, as the case may be, of Washington Mutual Preferred Funding LLC. Assuming that the Conditional had been completed in accordance with the terms of the relevant documentation, on a pro forma basis, WMI's financial statements would reflect a credit to shareholders' equity of approximately $3.9

billion upon issuance of the new classes of preferred (b) an investment in subsidiary (i.e. WMB) of approximately $3.9 billion upon contribution of the Preferred Securities by WMI to WMB; and (c) an immediate and corresponding write-down of such investment in subsidiary." (MOR, May 31, 2011: Docket #8080 7/5/11 Page PDF 11/15).

By simple calculation, the addition of the $3.9 billion dollar NOL from the eventual recording of the Conditional Exchange event retroactive to September 26, 2008 to the $10 billion dollar NOL per the debtors' expert witness Mr. Zelin equals approximately $14 billion dollar NOL available to the Reorganized Debtor.

II. AN "UNRESTRICTED BY IRC 382" NOL LAYER IS NOT REQUIRED

17. The creation of a layer of "unrestricted by IRC 382" NOLS is not required in order for the tax burden of the reorganized to be "covered." The revised financial projections of Steven Zelin of the Blackstone Group incorporated in the Plan documents disclose an annual federal income tax amount during the "runoff" period of the reinsurance business of the reorganized debtor. Subject to the annual limitation under IRC 382 as calculated by James Carreon, of Alvarez & Marsal, in the amount of $7 million dollars per year {which are cumulative, net of amount used} completely offset the federal income tax amount in all years during the "runoff" period. The $7 million dollar annual limitation is based on the following statement per Mr. Carreon "So it's the 160 million multiplied by the 4.3 percent, which provides for an annual limitation of almost seven million dollars. And so what that means is that the tax group's ability to use its losses prior -- generated prior to an August 31st effective date is subject to a rate of seven million dollars per year." (July 13, 2011 Hearing Transcript - Page 104). Additionally, only an approximate amount of

just under $40 million dollars in NOLs is actually required to satisfy the tax burden of the reorganized debtor during the "runoff" period of the reinsurance business.

18. Of the $40 million dollars of gross NOLs required to satisfy the reorganized debtor's tax burden, the valuation leveraged to the debtor's estates of the NOLs as a component of the valuation of the reorganized debtor, by the debtor itself, is only $25 million dollars. The value leveraged for the benefit of the creditor claimant owners of the reorganized debtor, as calculated above in the gross amount of a $4.5 billion dollar "unrestricted by IRC 382 annual limitations" NOL layer, is purported by the debtors to be ZERO. To suggest that the creditor claimant owners of the reorganized debtor, including some of the most sophisticated investment and business managers in the world, with access to an unlimited amount of cash {including a not so inconsequential amount in the billions of dollars of profits from post-petition distressed purchases of the debtors debt instruments and resulting full recovery}, will not monetize the $4.5 billion dollar available "unrestricted by IRC 382 annual limitation" NOL layer is fundamental financial lunacy.

III. THE ACQUISITION/CHANGE IN OWNERSHIP PER THE PLAN IS TAX AVOIDANCE AND NOT PROPOSED IN GOOD FAITH

19. The debtor's, including their expert tax and valuation witnesses, have purported demonstrable fear of the charge of tax avoidance under IRC 269 as a "more likely than not" factor in the mere discussion of the difference between the NOL/reorganized debtor valuations of the debtors experts (Mr. Reinhold and Mr. Zelin) and equity's experts (Mr. Anderson and Mr. Maxwell). The valuation

difference between these competing experts is merely in the tens of millions of dollars.

20. The concern of tax avoidance under IRC 269 of the Plan creation of an "unrestricted by IRC 382" NOL layer of $4.5 billion dollars created by the Plan, which is not required to cover the tax burden of the Plan disclosed projections of the reorganized debtor during the reinsurance "runoff," is clearly, mathematically and unequivocally more pertinent and important than the tens of millions of dollars of difference in valuation due to the debtor's concern of tax avoidance evidenced by the days of court hearings with the debtors and equity's tax and valuation experts; the difference primarily based on the debtor's concern factor of IRC 269.

21. Since this transparency on the Plan has revealed that the debtors have proposed the ownership change control aspects of the Plan solely for the future tax benefit of the creditors, the primary purpose of the proposed acquisition of the reorganized debtor is clearly tax avoidance and, as such, the Plan has not proposed in good faith.

CONCLUSION

The tax attributes, the value of the NOL in the hands of the Reorganized Debtor are material, understatedly disclosed and undervalued "assets" of the DEBTOR'S ESTATE that (a) are being distributed to Creditors as an available tax attribute in the transparent amount of a $4.5 billion dollar "unrestricted by IRC 382 annual limitation" NOL layer, at a present value amount that "is mathematically infinite" in excess of the

values of their claims, (b) via a Plan acquisition/ownership change with the primary purpose of tax avoidance under IRC Sec. 269 that is not proposed in good faith. Condoning this subterfuge undermines the integrity of the bankruptcy system and entirely mitigates any regulatory protection afforded to retail investors and shareholders intended to preclude such in the stock shares of a public company.

Dated: August 20, 2011

Ben Mason, *Pro Se*

True and correct copies of this objection have been sent to the parties listed below in the manner indicated.

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