IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WASHINGTON MUTUAL, INC., et al.,[1]	)	Case No. 08-12229 (MFW)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	**Hrg. Date: October 6, 2011 at 9:00 a.m.**
	)	**Related Docket No. 8708**

RESPONSE OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS TO STATEMENT OF DEBTORS WITH RESPECT TO (A) SCOPE AND PARTICIPATION IN MEDIATION AND (B) CONFIRMATION OF MODIFIED PLAN.

The Official Committee of Equity Security Holders (the "Equity Committee"), by and through its undersigned counsel, respectfully submits this response (the "Response") to the *Statement of the Debtors With Respect to (A) Scope and Participation in Mediation and (B) Confirmation of Modified Plan* [Docket No. 8708] (the "Debtors' Statement" or the "Statement"). In support of this Response, the Equity Committee states as follows:

PRELMINARY STATEMENT

1. In the Statement, the Debtors attempt to shirk the Court's direction that the parties mediate all impediments to confirmation of a plan as well as the issues attendant to the Equity Committee's claims against the Settlement Note Holders. Rather, the Debtors seek to bypass entirely any mediation on the plan and instead propose to press forward immediately with an attempt to confirm yet another variation on the rejected plan of reorganization, a re-revised plan which the Debtors unjustifiably claim faces "no impediment" to confirmation. (Statement, ¶17). This high-handed and inflexible approach invites a third contested confirmation hearing.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's 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.

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In fact, much of the expense and delay complained of in the Debtors' Statement is of the Debtors' own making, traceable to the Debtors' willful refusal to accommodate – or even to acknowledge – the interests of many of its constituents.

2. The Equity Committee believes the Court envisioned that the parties might arrive at a consensual plan through mediation. Such a result is much more likely if all the key parties in this case are present and participate. By the same token, the mediation should address all outstanding issues related to plan confirmation. Limiting the mediation, as the Debtors' propose, only to the dispute between the Equity Committee and the Settlement Note Holders will take bargaining chips that could have been used in settlement talks off the negotiation table and move them into the courtroom. The Court should not accept the Debtors' implicit claim that mediation of these issues would be fruitless, or that mediation would be more expensive or time consuming than yet another round of litigation. In fact, it is quite likely that these estates will be burdened with significant cost in the event the plan annexed to the Debtors' Statement moves forward – cost that might be avoided if mediation is successful.

3. The Debtors' approach is rife with additional problems. First, the Debtors' proposed plan fails to address crucial issues for the Equity Committee's litigation against the Settlement Note Holders. For example, when and how will a reserve amount be established? How will the litigation be funded? Will it be held by the Liquidating Trust or some other entity? Will the Equity Committee have sole authority to manage the litigation and decide on settlement? Second, there are a number of unresolved matters concerning management of the Liquidating Trust that will be in dispute if the Debtors proceed immediately to a confirmation hearing on their revised plan, including the weak representation of equity on the Trust Advisory Board and the Liquidating Trust's control over potentially valuable claims that its proposed

management has already attempted to squelch. Finally, the Debtors cannot be permitted to seek confirmation without resoliciting impaired classes. The changes to the plan imposed by the Court, including the change to the federal judgment rate for post-petition interest, have a multi-hundred million dollar impact on the waterfall. Classes affected by these changes, including preferred equity, must have the opportunity to vote with an accurate understanding of the potential distribution they stand to receive.

I. THE MEDIATION SHOULD INVOLVE ALL MAJOR PARTIES AND ALL UNRESOLVED ISSUES.

4. The Equity Committee believes the mediation should involve all major parties in interest to this bankruptcy proceeding, including the Debtors, the Equity Committee, the Settlement Note Holders, the Creditors' Committee, JPMorgan Chase, the FDIC, the TPS holders, the LTW holders, and the indenture trustees for WMI's securities. The mediation should be completed before a revised plan is presented for confirmation so that maximum flexibility is maintained to make changes in the plan to accommodate a settlement. There is no need for this process to take an undue amount of time; indeed, the Equity Committee is prepared to mediate as soon as a mediator can be selected and it believes the process could be completed by the end of November if not sooner.[2]

5. The Debtors' proposal for a truncated mediation of only the dispute between the Equity Committee and the Settlement Note Holders will decidedly not clear away all

[2] The Equity Committee has proposed to the Debtors and each of the Settlement Note Holders four bankruptcy judges as candidates to serve as mediator. The Equity Committee believes the potentially complex bankruptcy-related issues required to structure a settlement in this case suggests a mediator with significant bankruptcy experience would be the best candidate. However, the Equity Committee understands that all four of the candidates it proposed are unacceptable to at least three of the Settlement Note Holders, each of whom prefers a district court judge with significant experience in securities matters. The Equity Committee has no objection to the appointment of a mediator who has experience in both complex chapter 11 proceedings and securities law issues.

unresolved issues in this case. Even apart from plan-related disputes, a number of parties have outstanding appeals or motions for leave to appeal prior Court rulings that would remain outstanding if these parties are excluded from the mediation. These include the Equity Committee's Motion for Leave to appeal the Court's finding in its January 6, 2011 opinion that the Global Settlement is fair and reasonable, currently pending in the District Court for the District of Delaware (C.A. No. 11-00158-GMS), the appeal by the holders of TPS securities of this Court's Order granting summary judgment in favor of the Debtors and JPMC regarding ownership of the $4 billion of TPS securities (C.A. No. 11-00124-GMS), and the appeals taken by Normandy Hill Capital, L.P. [Docket No. 8671] and the WMB Noteholders [Docket No. 8679].

6. Even more importantly, limiting the mediation as the Debtors propose and proceeding with a parallel confirmation of the Debtors' revised plan would restrict options for settlement. For example, a settlement that assigned interests in either the Liquidation Trust or the reorganized Debtor to equity holders would be difficult, if not impossible, to implement once the Debtors' plan has been confirmed and these non-monetary assets have been distributed to other creditors. Participation in the mediation by all parties with an economic interest in the estate, including JPMorgan Chase and the FDIC, also increases the chances of success by broadening the range of settlement options.

7. If, as the Equity Committee believes, the Court envisions a mediation geared toward the resolution of all or most of the material issues which currently permeate these cases, limiting the mediation to only the Equity Committee's disputes with the Settlement Note Holders while yet another plan is brought forward will lead to only additional expense and rancor.

Obviously, there can be no assurance that mediation will be completely or even partially successful, but the Equity Committee submits the cost of finding out will be well spent.

8. The Debtors exaggerate the delay and expense that is likely to be incurred by the Estates as a result of a more comprehensive mediation. The claims against the Settlement Note Holders have undergone preliminary discovery, briefing, and an evidentiary hearing giving the parties a substantial basis for evaluating potential litigation outcomes. Moreover, the open issues concerning the plan are complex, but are not so complicated that resolution is out of reach.

9. The Debtors rely on an overstated burn rate to justify skipping mediation of the entire plan. The $30 million per month figure cited by the Debtors is apparently derived from the accrual of post-petition claims at the *contract* rate. At the federal judgment rate, the interest accrued monthly is only approximately $11.4 million. Fees and expenses will be incurred in some amount in addition to this, but those fees would undoubtedly be much greater if teams of lawyers must gear-up for another contested confirmation hearing than they would for mediation.

10. There are also potential benefits to the estate from some delay, which are ignored by the Debtors. The billions in assets now held by the estate are earning interest, presumably, in an amount that should offset at least some of the interest expense. More significantly, postponing emergence until after January 1st will increase the size of the usable tax NOL held by the reorganized debtor by several billion dollars. Indeed, the increase in value of this NOL between a confirmation and emergence in December and one in January is so significant that at this point confirmation should be postponed until the new year regardless of any mediation.

II. THE DEBTORS ONCE AGAIN IGNORE IMPEDIMENTS TO A CONSENSUAL PLAN

11. Despite the Debtors' self-serving observations to the contrary, there exist a number of impediments to confirmation of the Plan that may be addressed and rectified through mediation. Insisting on confirmation of the Plan now may leave the parties without the means to implement a mediated global resolution. It is virtually certain that a mediated settlement of these cases will require resolicitation of the Plan. Indeed, the Debtors currently proposed plan should itself be resolicited to give impaired creditors and claimants an accurate view of their potential recoveries given the Court's ruling on the applicable interest rate. Thus, any hearing to consider confirmation of the Plan should be scheduled following completion of the current Court-ordered mediation.

A. Impediments Concerning The Claims Against The Settlement Note Holders.

12. The Debtors' proposed revised plan fails to address a number of questions that must be resolved for the Equity Committee to proceed with the litigation against the Settlement Note Holders for equitable disallowance.

13. It is not clear under the plan where the claim would reside or who would control the litigation. The Liquidating Trust to be established will hold claims of the estates not otherwise released under the plan. There is no carve-out in this provision for the litigation against the Settlement Note Holders. Read literally, this would seem to include the Equity Committee's claims against the Settlement Note Holders. The Debtors' expect that Mr. Kosturos will be the Liquidating Trustee of the Liquidating Trust (*see* Statement, Exhibit D at §§1.4, 6.1), and Mr. Kosturos is the representative of the estates who *opposed the Equity Committee's motion to obtain standing to pursue these claims and who personally participated in many of the*

communications that gave rise to the claims. Mr. Kosturos would then be vested with the authority to settle the very claims against the Settlement Note Holders these estates objected to being brought in the first instance. As the Liquidating Trust Agreement is now drafted, he would have authority to settle such claims without seeking this Court's approval.

14. If the Debtors intend that the Equity Committee will control the ongoing Settlement Note Holder litigation, the plan must be modified accordingly.[3] And provisions must be made for funding the case and determining settlement authority. None of these issues are addressed in the Debtors' proposal. Of course, the Debtors could have raised and discussed such issues with the Equity Committee before filing their Statement yesterday. As has been typical of the Debtors' high-handed and hostile treatment of equity, they made no effort to do so.

15. Additionally, because the claims of the Settlement Note Holders are disputed a substantial reserve for those claims must be established. (Plan at §27.3). Presumably the parties will differ significantly on the appropriate amount of the reserve, the amount of discovery that ought to be had in connection therewith, and potentially even on whether a reserve is necessary. Further, although the Plan authorizes the Liquidating Trustee to seek estimation of Disputed Claims (Plan § 27.2), Mr. Kosturos is not the proper individual to pursue estimation of the Settlement Note Holders' claims for the same reasons that he should not have prosecution and settlement authority over those same claims.

16. The Settlement Note Holders' anticipated recoveries are by a large measure the lion's share of the distributable assets from the Estate, and they will take the form of the

[3] In the proposed Fourth Plan Modification (Statement, Exhibit A), the Debtors advise of their intention to modify Section 35.2 of the Plan to delay dissolution of the Equity Committee until the conclusion of "any mediation, litigation or contested matter to which the Equity Committee is a party as of the Effective Date...." However, the Equity Committee's claims against the Settlement Note Holders have not been expressly carved out of the Liquidating Trust Assets, and thus it is entirely unclear how the Debtors propose to deal with those claims going forward.

significant majority of all of the Reorganized Common Stock, and Liquidating Trust Interests, as well as cash. Under the Debtors' plan, these assets would be held in reserve by the Liquidating Trustee for the benefit of the Settlement Note Holders during the pendency of the Equity Committee's litigation. (Plan § 27.3(a)). With respect to the Reorganized Common Stock, the Liquidating Trustee is given voting and consent rights. The Liquidating Trustee, Mr. Kosturos, has throughout these cases directed the Debtors to argue that the NOLs, which will be held by the Reorganized Debtor, have little, if any, value and even sought to have the Debtors emerge in late December 2010 thereby abandoning significantly all of the potentially usable portion of the NOLs. Mr. Kosturos' demonstrated animosity toward maximizing the value of the NOLs renders him unsuitable to exercise the rights attendant to the Reorganized Common Stock while those assets are held in reserve. And aside from that clearly unacceptable mechanism, there is no other means by which to preserve the value of the NOLs, which equity holders believe can be exploited but that the creditors have insisted they will disregard.

B. Impediments Concerning the Liquidating Trust.

17. Under the Debtors' proposal, all claims and causes of action of the Debtors shall be contributed to the Liquidating Trust and the Liquidating Trustee "shall have the exclusive right and power to litigate" those claims "and the Liquidating Trustee may compromise and settle such claims, upon approval of the Bankruptcy Court." (Plan §29.1). The draft WMI Liquidating Trust Agreement attached to the Statement, however, suggests that the Liquidating Trustee shall have the authority to settle, dispose or abandon any cause of action, claim or litigation with a value in excess of $500,000 with only Trust Advisory Board approval *and without Bankruptcy Court approval*. (*See* Statement, Exhibit D, §6.3(b)(ii)). This

inconsistency needs to be resolved and the Debtors must justify the decision to skirt bankruptcy court approval of settlements.

18. The Debtors proposed plan provides that on the effective date all claims held by the Debtors will be contributed to the Liquidation Trust. As discussed above, the Liquidation Trust and Mr. Kosturos simply cannot have any prosecution or settlement control with respect to the claims asserted by the Equity Committee against the Settlement Note Holders. Similarly, Mr. Kosturos should not have any authority with respect to the estates' potential claims and causes of action against the Debtors' former Officers and Directors – the same claims that the Debtors have ignored for over two years and then attempted to sweep under the rug by entering into tolling agreements *in the middle of the July confirmation hearing*. The Debtors conduct to date amply demonstrates a willingness to sacrifice estate value to further the interests of management and board members and thus the Debtors' current representatives, including Mr. Kosturos, cannot be relied upon to pursue these claims for the benefit of the Debtors creditors and equity holders.

19. The Equity Committee believes that after accounting for the modifications to the Plan imposed by the Court's September Opinion, the shortfall at the PIERS Class is less than $50 million. The Debtors state that they have not attempted to reconcile the claims comprising Class 18 Subordinated Claims – the class of claims immediately senior in priority under the Plan to holders of preferred equity interests and junior to the PIERS. Once reconciled, the Equity Committee believes the amount of claims comprising Class 18 will be greatly reduced. Thus, Classes 19 (REIT Series) (if the TPS Consortium's appeal of is unsuccessful) and 20 (Preferred Equity) are not far "out of the money," contrary to what the Plan supporters continue to insist, especially when one considers the significant assets of the estates that have not

been valued and will be contributed to the Liquidating Trust. Thus, the constituency most motivated to maximize the value of those assets is not the creditors, the majority of whom stand to be paid in full on or shortly following the Effective Date, but is the Debtors' equity holders. Accordingly, equity should choose a controlling majority the members of the Trust Advisory Board, not the creditors, as the Plan currently provides. Furthermore, the Liquidating Trustee should be chosen by the Trust Advisory Board, not by the Debtors' management (Mr. Kosturos) who, not surprisingly, has chosen *himself*.

C. Confirmation and the decision whether resolicitation is necessary should await conclusion of mediation.

20. During solicitation of the Plan, creditors and equity holders were told by the Debtors that they must agree to be bound by the Plan releases in order to receive any distribution. (Supplemental Disclosure Statement at 13, 15). According to the Debtors, a number of preferred equity holders elected to opt out of the Plan releases. (*See* Decl. of David M. Sharp [Docket No. 8108] at Exhibit C). At the time the Debtors solicited votes and release elections, they stated that it was very unlikely that preferred equity holders would see any recovery, which is a position they continued to assert through the July confirmation hearing. Thus, it was quite likely that preferred equity holders – at least those who opted out of the plan releases – expected to receive no recovery from the estate and on that basis elected to not grant the Plan releases, foregoing what they understood to be minimal, if any, recovery. Now, the prospects that preferred equity holders will see a recovery have increased and, perhaps, preferred equity holders would rather grant the Plan releases and avail themselves of the opportunity to receive their distributions.

D. Impediments concerning the Reorganized Debtor.

21. The Plan expressly carves out the equity interests in WMMRC from the assets comprising the Liquidating Trust Assets. (Plan §1.127). WMMRC is to be the principal

asset of the Reorganized Debtor and the entity around which the estates are supposedly "reorganizing." The Plan provides that the stock in the Reorganized Debtor will be distributed to those holders of claims who elected to receive such stock in lieu of cash or Liquidating Trust Interests, or will flow down the priority scheme and be distributed to the holders of the PIERS claims. (Plan §6.2, 7.2, 16.1(b), 18.219.2, 20.2 and 33.7). However, the draft WMI Liquidating Trust Agreement attached as an exhibit to the Statement appears to envision a scenario where the equity interest of WMMRC will be contributed to the Liquidating Trust:

> (vii) If the equity interest of WMMRC become Liquidating Trust Assets, any appointment of any directors of WMMRC and any determination to consent to, or withhold the consent to, any action requiring the consent or approval of the equity holders of WMMRC;

(Liquidating Trust Agreement at 22). If WMMRC's stock is now going to be contributed to the Liquidating Trust, that is a significant departure from the understood Plan structure.

22. In addition, following the July confirmation hearing, the Debtors for the first time asserted that it may not be necessary to abandon the WMB stock held by WMI until after the Effective Date. (August 12, 2011 Hrg. Transcript at 18: 5-17).[4] Again, the Debtors' about-face on this issue is a significant departure from their long-standing position and contrary to the evidence offered at the July confirmation hearings. As this Court well knows, the timing of the abandonment of the WMB stock could greatly impact the value of the NOLs held by the Reorganized Debtor as well as the valuation of the Reorganized Debtor. This is a significant issue that could impact any recoveries for the Debtors' equity holders and properly the topic of discussion and resolution for mediation.

[4] A copy of the relevant pages from the transcript of the August 12, 2011 omnibus hearing are attached hereto as Exhibit A.

CONCLUSION

The Equity Committee respectfully requests the Court to take the foregoing into consideration at the status conference on October 6, 2011 and direct the parties to schedule a mediation to be completed before November 30, 2011 addressing all unresolved issues related to the plan of reorganization in this case, and that parties required to participate in the mediation include at least the Debtors, the Equity Committee, the Creditors Committee, each of the Settlement Note Holders, holders of TPS securities who participated in the adversary proceeding, holders of litigation tracking warrants, the indenture trustees for WMI securities, JPMorgan Chase and the FDIC. The Equity Committee also respectfully requests that the Court defer consideration of any further revised plan pending the outcome of the mediation.

Dated: October 5, 2011

ASHBY & GEDDES, P.A.

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EXHIBIT A

[Relevant Pages from August 12, 2011 Omnibus Hearing]

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229(MFW)

Adv. Case No. 10-50911 (MFW)

Adv. Case No. 10-51297 (MFW)

Adv. Case No. 10-53420 (MFW)

- -x

In the Matter of:

WASHINGTON MUTUAL, INC., ET AL.,

Debtors.

- -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,

-against-

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

MICHAEL WILLINGHAM and ESOPUS CREEK VALUE LP,

Plaintiffs,

-against-

WASHINGTON MUTUAL, INC.,

Defendant.

- -x

WASHINGTON MUTUAL, INC. and WMI INVESTMENT CORP.

Plaintiff,

-against-

PETER J. AND CANDANCE R. ZAK LIVING TRUST OF 2001 U/D/O, August 31, 2001, ET AL.

Defendant.

- -x

U.S. Bankruptcy Court

824 North Market Street

Wilmington, Delaware

August 12, 2011

10:36 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

PROCEEDINGS

THE COURT: Good morning.

MR. ROSEN: Good morning, Your Honor. Brian Rosen, Weil, Gotshal & Manges on behalf of Washington Mutual, Inc., and with me is my partner Mr. Adam Strochak and my other partner Mr. Stuart Goldring.

Your Honor, we have three items -- or four items, actually, live on the agenda this morning, and the first one picks up on page 8 -- excuse me, 22, item 17.

Your Honor, maybe a little history is helpful for this one. This is the debtors' motion to abandon stock interests. And we filed, Your Honor, on July 29th, a notice that sort of set out the history of what has occurred here. But, excuse me, if I could just go through it and make it very clear, again, for the record because some people have alluded to it in their pleading.

On November 12, 2010, Your Honor, the debtors filed this motion to abandon the stock interests. And there was to be a hearing scheduled for December 1st; it was to coincide with the confirmation hearing that occurred last December. And we did receive at that time one response that was filed by the Tricadia folks. And the deadline for filing responses was November 29, 2010.

We worked out at the confirmation hearing some issues associated with it that Tricadia had raised, and Tricadia

withdrew with prejudice its objection to the motion. And as far as the debtors knew from the review of the docket, no other objections to the motion had ever been filed.

Because the debtors view the abandonment of the stock interest as something that is related to confirmation and consummation of the plan, and as the Court heard testimony about that several weeks ago from several witnesses, most particularly Mr. Carreon and Mr. Anderson, the debtors felt no need to move forward with that motion until such time as there was a little bit more clarity as to what was going to happen with a confirmed and consummated Chapter 11 plan.

As we got close, however, Your Honor, to that confirmation hearing, on July 8th, because the debtors had not seen any other objections to the motion and the relief requested, the debtors filed a certificate of no objection, docket number 8104, with the Court, and we asked the Court to enter the order.

Subsequent to the filing of that, however, Your Honor, certain shareholders notified the debtors, and we believe the United States Trustee, that other -- not those, but other certain pro se shareholders had objected to the motion.

The debtors did not believe anyone and still do not believe that anyone other than Tricadia did do that, but nevertheless, upon hearing that we immediately notified the Court that we had received this call. And that same day, out

of an --

THE COURT: Well, you notified the Court after hours. You filed it at 10:40.

MR. ROSEN: Okay.

THE COURT: And nobody got the notice of withdrawal over to us.

MR. ROSEN: Well, the notice of withdrawal, Your Honor, was filed on July 11th -- excuse me, that day, on July 8th.

THE COURT: At 10:40.

MR. ROSEN: And then on July 11th the Court entered the order.

THE COURT: Right. That Monday.

MR. ROSEN: I'm just laying out the time line, Your Honor.

THE COURT: Okay.

MR. ROSEN: Your Honor, since that time no one has filed a motion to vacate the order and the order still stands as is. Notwithstanding the fact that, Your Honor, we believe that everything was done appropriately, we did set this down for hearing today to give people an opportunity, to the extent that they do believe that they have an objection, even though we don't know of any in existence, give them the opportunity to come and ask questions if they so desire.

In the notice that we filed, Your Honor, on July 29th,

we suggested rather than having the Court run through all of the direct testimony that was done by Mr. Carreon at the confirmation hearing or even bringing back Mr. Anderson for the equity committee who said this was the right thing to do, on cross-examination, we said that we would attach those pieces of the transcript and make Mr. Carreon available for cross-examination here today if anybody so requested -- and requested to us by this past Monday, August 8th.

We did receive one phone call, Your Honor, that was from Mr. Thoma, and I don't know if Mr. Thoma is here. I did speak with him subsequently and Mr. Thoma at that time indicated to me that he would not have any additional questions, although he would put that in writing, subsequently, to me and he has not done so in writing. So as far as we know, Your Honor, there is no one who seeks to cross-examine Mr. Carreon.

On Wednesday, Your Honor, August 10th, when the post-trial submissions were due in connection with confirmation, we did take note in paragraph 37 of a pleading that was filed by Ms. Bettina Haper, a reference to the tax abandonment motion and the order. And she asked the Court at that time, in her prayer for relief, to revoke the order that had been entered. Again, Ms. Haper did not ask to cross-examine Mr. Carreon but she just asked that it be done.

The equity committee did file a limited objection to

the relief requested and Mr. Taylor is here as well and he can speak on behalf of that, but the equity committee's concern was that we not go ahead and abandon the stock interests in WMB until such time as there is a confirmed plan.

We had talked in our pleading, Your Honor, we had talked on the witness stand through Mr. Carreon and even Mr. Anderson that we would obviously use our judgment as to when that abandonment should occur. The debtors will not abandon the stock, Your Honor, until such time as there is a confirmed plan. The exact timing of the abandonment, however, whether it is immediately preceding the effective date or preceding it or subsequent depends upon when that effective date will actually occur. And so that's something, obviously, that the debtor, in consultation with the creditors' committee and even the equity committee, we're happy to have the discussion with them about because we only want to do what's in the best interest of the estate and to maximize what the tax benefits will be.

So I think with that representation the equity committee will be comfortable with the relief being entered again, if you will.

THE COURT: Well, do I need to enter it again or just not do anything?

MR. ROSEN: Well, Your Honor, my view is you don't have to do anything, with that representation made on the record, although Ms. Haper is here and she may want to address

the Court with respect to this motion itself.

THE COURT: Okay.

MR. ROSEN: But our view, Your Honor, is the order could stand as is with the representation that I made that we're not going to do it until such time as there is confirmation of the plan.

MR. TAYLOR: Good morning, Your Honor. Greg Taylor on behalf of the equity committee.

Your Honor, we did file that limited objection, just raising the concern that Mr. Rosen has addressed. Quite frankly, for purposes of clarity, it might be better to submit a revised order that clarifies the timing of that or so order the record here today as a modification of that order. I don't know how Your Honor would rather proceed. Or if Your Honor's simply comfortable proceeding on Mr. Rosen's representations, that's fine with us as well. We just want to all be on the same page that the abandonment will not occur prior to confirmation of any plan.

THE COURT: Okay.

MR. TAYLOR: Thank you, Your Honor.

THE COURT: Thank you.

Ms. Haper, you want to --

MS. HAPER: Your Honor, Ms. Haper, pro se objector.

I think my issue was procedurally that certain pro se objectors were not given the opportunity to heard. A hearing

time was never held on this matter and the person who filed the motion -- I believe it was Mr. Hoffman -- had not been notified of a hearing at the time. I'm not sure where Mr. Hoffman is at this time.

THE COURT: Well, what did Mr. Hoffman file?

MS. HAPER: He filed a motion regarding the abandonment of all WMB property or any of the property -- and it did include, I believe, the stock. The -- I did inform Mr. Rosen of the e-mail about this and it was revoked immediately and then the next thing I saw was that it had been signed. And my issue was procedurally it didn't seem to me that it was a valid order, considering that the entire motion had been revoked; it no longer existed.

THE COURT: Well, the motion wasn't revoked. All that was revoked was --

MS. HAPER: The certification of no objection. So I guess my issue is that it -- my request was that it be revoked and that we go through the proper channels of a hearing and give the objector the -- or any objectors the proper venue to raise arguments on the issue. And I realize that I guess that's what Mr. Rosen is attempting to do today, however, I think that there wasn't really much of an opportunity for many of the people who had raised -- or Mr. Hoffman who had raised the issue, I don't think he even knows what's going on right now.

THE COURT: Well, I presume he got the notice that the debtor sent out.

MS. HAPER: I'm not sure that he did. I --

THE COURT: Mr. Rosen?

MR. ROSEN: Your Honor, two things in that regard. First, we heard about Mr. Hoffman's motion subsequently and we don't read it the same way that Ms. Haper does. But with respect to your question, the notice was filed, it was served in accordance with the Court's guidelines and rules. KCC also served it out on all parties July 29th.

THE COURT: All right. Well, I'll note for the record that Mr. Hoffman has not filed anything further and that notice was apparently given appropriately.

MR. ROSEN: Your Honor, as to Mr. Taylor's comment, we'll do whatever the Court would like us to do. I'm okay with the Court so ordering the record, but if you would like us to submit a revised order we're happy to do that as well. And that could even reflect the subsequent procedural aspect if the Court would like us to do that.

THE COURT: Well, let's do that. I mean, I'm not sure it's necessary, but just to avoid any confusion.

MR. ROSEN: We'll do that, Your Honor.

THE COURT: Okay.

MR. ROSEN: Your Honor, the next item on the agenda is actually a motion by Ms. Haper in connection with Bankruptcy