

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

12-27-11
12:03 PM
CLERK OF COURT

-----)	Chapter 11
In re:)	
)	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC., et al., ¹)	
)	Jointly Administered
Debtors.)	
)	Re: Docket No: 9193
-----)	

**OBJECTION OF DAVID SHUTVET TO THE MONTHLY FEE AND SERVICE
REPORT OF ALVAREZ & MARSAL AS RESTRUCTURING ADVISORS FOR THE
DEBTORS IN POSSESSION FOR ALLOWANCE OF COMPENSATION FOR THE
PERIOD FROM OCTOBER 1, 2011 THROUGH OCTOBER 31, 2011**

Now comes before this honorable court that I, David Shutvet, pro se, being an ‘interested party’ to this case with basis from my ownership of shares in WMI Common Securities and WMI Preferred Securities. I submit this objection, pursuant to the guidelines of Sections 330 and 331 of the Bankruptcy Code, Local Rule 2016-2, and the Guidelines and Administrative Order provided by the Bankruptcy Reform Act of 1994.

This objection is submitted to this court, as it holds the final authority to award compensation and reimbursement – this power is fully vested, and solely, with the Court.

However, I also reference the parallel role and concurrent *responsibility* of the United States Trustee, under 28 U.S.C. 586(a)(3)(A), to provide that, whenever they deem appropriate, that the United States Trustee will also *review* applications for compensation and reimbursement of expenses.

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



However, this court must, as the final authority, take notice of my objections herein, and must ultimately and solely, apply conscience and law to the application for compensation.

Pursuant to the Alvarez & Marsal as Restructuring Advisors for the Debtors and Debtors in possession, "Notice of October 1, 2011 through October 31, 2011 Fee Application", I am submitting this objection on a timely basis, and to the parties required, before the established Objection Deadline of 1/3/12 at 4:00pm (EST).

As elaborated further here, I object to the abusive allowances and request for compensation, for professional service charges that have been submitted by the Debtors Alvarez & Marsal.

I. Pursuant to Laffey v. Northwest Airlines, Inc.,² that District Court ruled that hourly rates for attorneys practicing civil law in the Washington, DC metropolitan area could be categorized by years in practice and adjusted yearly for inflation. Please note that Alvarez & Marsal have attempted to bill at top rate attorney fees. They are not litigation attorneys that support higher fees such as the Adjusted Laffey Matrix.

The Third Circuit Court of Federal Appeals adopted the Adjusted Laffey Matrix.³ The Court of Appeals noted that the District Court "reviewed both indices [the DOJ Matrix and the Adjusted Laffey Matrix] and decided that [the Adjusted Laffey Matrix] represented a better measure of prevailing rates in Washington, DC.

In re HPL Technologies, Inc. Securities Litigation,⁴ that court noted -- "It is the practice of the undersigned judge, however, to rely on official data to determine appropriate hourly rates, **not on an attorney's self-proclaimed rates or declarations regarding hourly rates charged**

² 572 F. Supp. 354, 371 (D.D.C. 1983)

³ Interfaith Community Organization v. Honeywell International, Inc., 426 F.3d 694 (3rd Cir. 2005)

⁴ 366 F.Supp.2d 912, 921 (N. Dist. Cal. 2005)

by law firms. One reliable official source for rates that vary by experience levels is the Laffey matrix used in the District of Columbia.” (emphasis added) - Garnes v. Barnhardt.⁵

Current Laffey Matrix

Year	Adjustment Factor	Paralegal/Law Clerk	Years Out of Law School				
			1-3	4-7	8-10	11-19	20 +
6/01/11 – 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10 – 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09 – 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08 – 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671

This matrix is based on the hourly rates allowed by the District Court in Laffey v. Northwest Airlines, Inc.⁶ It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix."

The recently updated matrix, supra, identifies the prevailing rates – adjusted for years of service – for the period of 6/1/11 through 5/31/12.

This objection questions this Court of the reasonableness of the fees being charged to the estate by Alvarez & Marsal (A&M), and specifically their filing of the October Monthly Application for reimbursement of fees.

In the filing for compensation, A&M’s have been billing the estate at hourly rates up to \$775 - rates reserved for high profile litigation firms, yet Alvarez & Marsal are not trained as litigation attorneys and have charged the estate excessively.

A review of biographies provided by A&M indicates certain employees within the billings as having less than 10 years of service. The incongruity of billing the estate in excess of the Laffey range, at a cost-per-hour further in excess of experience, is obviously excessive.

⁵ 2006 U.S. Dist. LEXIS 5938 (N. Dist. Cal. 2006)

⁶ 572 F. Supp. 354 (D.D.C. 1983)

I object to any billing by any A&M Partner, counsel, or any other internal or external resource that exceeds the adjusted Laffey guidelines.

II. In the alternative to the Laffey Matrix, this court may instead, turn to the Lodestar approach.

The “Lodestar” approach assesses the reasonableness of requested compensation by comparing it to the court’s estimates of necessary time and reasonable rates. In re McMullen⁷ – “In arriving at a reasonable number of hours and a reasonable rate, courts will consider the evidence presented and by the court’s own experience and knowledge of customary fees and costs charged in comparable cases.”⁸ “Under this approach, if the requested fee amount is less than the Lodestar baseline, it typically will be allowed in full; if greater than the baseline, the fee may be reduced to the baseline amount.”⁹

III. I object to Alvarez & Marsal billing the estate for researching, preparing and supporting multiple and hopelessly unconfirmable plans and approving a Global Settlement Agreement that blatantly gave away estate assets as if it had no value.

Bankruptcy courts have denied compensation for services found to be unnecessary when compensation was sought for preparing and defending a hopelessly unconfirmable plan (In re Rusty Jones, Inc.),¹⁰ and for prosecuting a preference claim after it became apparent that the claim would not yield a net gain to the estate (In re Taxman Clothing Co.)¹¹

⁷ 273 B.R. 558, 562 (Bankr. C.D. Ill. 2002)

⁸ Id.

⁹ Id.

¹⁰ 134 B.R. 321, 339 – 340 (Bankr. N.D. Ill. 1991)

¹¹ 49 F.3d 310, 315 – 316 (7th Cir. 1995)

It is now exceptionally clear that the Debtors, ALVAREZ & MARSAL have created, filed and modified numerous Joint Plan and Global Settlement Agreements and have then subsequently made modifications and amendments to their further changed and updated plans. None of which has been remotely successful. The Debtors, ALVAREZ & MARSAL, continue to file and solicit unconfirmable plans which only increase a new flood of objections and increase estate cost. This abused practice has been grossly wasteful of the time and efforts, both of the court and of other counsel, involved in this case, and thus continue the unnecessary and wasteful expenses to the estate.

With the court's opinion to deny the Debtors' Modified Sixth Amended Joint Plan the Debtor's practice of repetitive billings for proffering fatally flawed plans and their modifications which should - in fact must - be addressed by this court will continue. ALVAREZ & MARSAL continue to be 'rewarded' by preparing and submitting to this court multiple, and hopelessly unconfirmable plans, yet 'reaping' the benefits for more reimbursed billings, at the further detriment of the very same estate that A&M is duty-bound to protect.

IV. I object to Alvarez & Marsal billing practice which demonstrates true Block-Billing entries that fail to comply with Guidelines as per 11 U.S.C. 330.

FEES AND EXPENSES INCURRED FROM OCTOBER 1, 2011 THROUGH OCTOBER 31, 2011. These fees prove a trend of abuse and must be ruled by your Honor as excessive and a clawback of those fees to the estate. Debtors failed to follow required Guidelines as per 11 U.S.C. 330.

As an equity holder of Washington Mutual, using the guidelines provided by the Bankruptcy Reform Act final authority to award compensation and reimbursement under Order, these guidelines require that time entries must be recorded and services should be noted in detail with each service showing a separate time entry and not combined or "lumped" together.

All descriptions from Debtors are true Block-Billing entries that fail to comply with Guidelines as per 11 U.S.C. 330. This practice has gone on for over two years and the court or US Trustee must stop this abused practice.

Repetitive Block-Billing that do not follow the guidelines as per 11 U.S.C. 330. (v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

This goes on and on; it only takes a quick review to see their repetitive Bill-padding and Block-Billings that has taken place month after month.

FEES AND EXPENSES INCURRED FROM October 1, 2011 THROUGH October 31, 2011. These fees prove a trend of abuse and must be ruled by your Honor as excessive and a clawback of those fees to the estate. Debtors failed to follow required Guidelines as per 11 U.S.C. 330.

As an equity holder of Washington Mutual, using the guidelines provided by the Bankruptcy Reform Act final authority to award compensation and reimbursement under Sections 330 and 331 of the Code, and Local Rule 2016-2, the Guidelines and the Administrative Order; I object to these abusive allowances of compensation for professional service charges for ALVAREZ & MARSAL AS RESTRUCTURING ADVISORS FOR DEBTORS IN POSSESSION. The Guidelines require that time entries must be recorded and services should be noted in detail with each service showing a separate time entry and not combined or "lumped" together.

V. I object to Alvarez & Marsal (A&M) billing the estate for \$41,570 for expenses with no detail as required AS PER GUIDELINES 11 U.S.C. 330 and 331 of the Code, and Local Rule 2016-2, the Guidelines and the Administrative Order.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

- (i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.
- (ii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred.



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**Expense Detail
Period Covering
10/1 - 10/31/2011**

Airfare	\$	17,930.06
Ground Transportation		4,882.68
Meals		3,919.90
Hotel		14,198.89
Telecom		611.46
Miscellaneous		<u>27.20</u>
Total Out-of-Pocket Expenses	\$	<u>41,570.19</u>

The repetitive practice of billing for expenses with no detailed as required per the guidelines such as: cost of meals, the cost of travel, both air and local limo, hotels and meals expenses. Debtors again failed to follow guidelines and rules for claiming expense:

ALL EXPENSE MUST BE DENIED UNTIL THE REQUIRED DETAIL AS PER the GUIDELINES IS PROVIDED!

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

- (iii) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.
- (iv) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred.

VI. I object to the use of Luxury Hotel accommodations, by Alvarez & Marsal personnel, paid by the estate \$14,199 with NO DETAIL to these expenses as required by the "Guidelines".

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

- (v) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(vi) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred.

VII. I object to the expensing of Airfares of \$17,930 by Alvarez & Marsal personnel, with NO DETAIL to these expenses as required by the "Guidelines".

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(vii) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(viii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred.

VIII. I object to the expensing of ground transportation of \$4,883 by Alvarez & Marsal personnel with NO DETAIL to these expenses as required by the "Guidelines".

IX. I object to the use of Meals, by Alvarez & Marsal personnel, paid by the estate - \$3,920 With NO DETAIL of these expenses as required by the "Guidelines".

X. I object to the use of Telecom by Alvarez & Marsal personnel paid by the estate - \$611 With NO DETAIL for these expenses as required by the "Guidelines".

In Summary, I, David Shutvet, object to the cavalier billings reflecting unnecessary, inflated, arbitrary and/or exorbitant fees and expenses charged or seeking reimbursement from the estate by Alvarez & Marsal.

In re Busy Beaver Bldg. Centers, Inc.,¹² - "the court should review a fee application to ensure the applicant exercises the same "billing judgment" as do non-bankruptcy attorneys by writing off unproductive research time, duplicative services, and redundant costs precipitated by overstaffing."

The effective and judicious use of multiple highly paid professionals should be closely scrutinized by this court.

In re Bonneville Pacific Corp.,¹³ - "The ultimate determination that all requirements of the statute have been met rests with the Court".

In re TAK Communications, Inc.,¹⁴ the United States Bankruptcy Court for the Western District of Wisconsin noted "Whatever its responsibility may be in the absence of any objection, once an objection has been made and evidence and argument have been presented in support of the objection, a court may not adopt the ostrich's fabled position, but rather must assess the reasonableness of the fee application".

David Shutvet

December 20, 2011

David Shutvet

cc: Office of the United State Trustee Delaware, Jane Leamy, Esq.
Office of the United State Trustee, Robert A. DeAngelis
Attorney General Eric Holder, Department of Justice
The Debtors, Washington Mutual, Inc., John Maciel, Esq.
Weil Gotshal & Manges LLP, Brian S. Rosen, Esq.
Susman Godfrey LLP, Justin Nelson Esq.
Richard Layton & Finger P.A., Mark D. Collins, Esq.

¹² 19 F.3d 833, 856 (3rd Cir. 1994)

¹³ 147 BR 803, 805 (Bankr D Utah 1992)