IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re WASHINGTON MUTUAL, INC., et al., Debtors.	Chapter 11 Case number 08-12229 (MFW) (Jointly Administered)

OBJECTION OF FLORIN MATACHE TO DEBTOR'S MOTION FOR APPROVAL OF THE DISCLOSURE STATEMENT FOR THE SEVENTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

I, Florin Matache, acting as a self-represented individual and a party of interest, hereby file this objection to the DISCLOSURE STATEMENT FOR THE SEVENTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE. [Docket Nos. 9178, 9179, 9181].

PRELIMINARY STATEMENT

The proposed Disclosure statement and Plan of Reorganization have serious flaws due to unfairness, inadequacy and contradictory statements and assumptions. The Disclosure Statement fails to provide the necessary information and detail and contains many unknowns and various estimations that can have a large impact on the plan.

ARGUMENT

The Plan and the Disclosure Statement, as proposed are in violation of the absolute priority rule by "gifting" a portion of senior creditor's recovery to a more junior class and skipping over an intermediate class. In 2005, the Third Circuit *In re Armstrong World Industries, Inc.*,[1] the court held that such an arrangement violated the absolute priority rule. In this case, the PIERS class is impaired and is the intermediate class that is being skipped over. The PIERS are higher in order than the preferred and common equity, are not paid in full, while at the same time the lower equity classes are receiving the creditor's recovery distribution. Again, according to the court's findings and section 1129(b)(2)(B) of the Bankruptcy Code, unless the general unsecured creditors consent to the plan, or their claims are satisfied in full, the plan can not be confirmed. For the avoidance of doubt, I, Florin Matache, am a holder of PIERS securities and I object and do not consent to the proposed plan.

On February 7, 2011, the Second Circuit Court of Appeals in *In re DBSD North America, Inc.*,[2] reaffirmed and reinforced the absolute priority rule. The court determined that a violation occurs when a portion of the senior creditor's recovery is "gifted" to a more junior class (skipping an intermediate class or classes) to gain the approval of stakeholders whose approval is strategically important, but who would otherwise receive no distribution under a plan.

Section XII(C)(2)(i) of the Disclosure Statement addresses the "fair and equitable" test for unsecured creditors:

> (i) Unsecured Creditors
> Either (i) each holder of an impaired unsecured Allowed Claim receives or retains under the Seventh Amended Plan property of a value equal to the amount of its Allowed Claim, or (ii) the holders of Claims and Equity Interests that are junior to the Claims of the dissenting class will not receive any property pursuant to the Seventh Amended Plan on account of such junior Claim or Equity Interest. The Seventh Amended Plan's provision for distribution of Reorganized Common Stock to Releasing Equity Interest Holders does not violate the "fair and equitable" test because such distributions are made to Releasing Equity Interest Holders on account of their respective releases of holders of Allowed Senior Notes Claims, Allowed Senior Subordinated Notes Claims and Allowed PIERS Claims.

However, unsecured creditors, or in this case the PIERS holders, also have to give the same releases mentioned above in section XII(C)(2)(i) of the Disclosure Statement and are not receiving any additional distributions that they would have otherwise received under the plan. Also, the PIERS are impaired and not paid in full, therefore the Plan and the Disclosure Statement fail to satisfy the "fair and equitable" test.

[1] In re Armstrong World Industries, Inc., 432 F.3d 507 (3rd Cir. 2005).
[2] In re DBSD North America, Inc., 2011 WL 350480 (2d Cir. Feb. 7, 2011).

PIERS as an impaired class, voting and the Plan Releases

The PIERS are not only impaired, but severely impaired to the extent that the estimated recovery amounts for Allowed PIERS Claims will be nine percent (9%) of such holders' Allowed PIERS Claims or approximately $74 million. At the same time approximately $145 million of value will be distributed to those of the Debtors' stakeholders that are junior to the holders of Allowed PIERS Claims. The words "estimated recovery" as they pertain to the PIERS Claims, have added importance when considering the relative small amount of projected recovery. The Plan and Disclosure Statement include large estimated values and there is no guarantee that such values will in fact turn out to be the final amounts.[3] It is entirely possible that, if the estimates are off by a certain amount, the PIERS recovery will in fact be equal to zero (0). Yet, at the same time, any holder of PIERS that votes on the Plan and Disclosure Statement would be deemed to grant the Plan Releases, unless such holder elects to opt-out of any distribution. A holder of PIERS securities cannot make an informed decision on granting or opting-out of the Plan Releases without knowing the value, if any, that would be received. In this case, the PIERS holder should not be deemed to grant the Plan Releases, or otherwise the PIERS holder's only option is to abstain from voting, resulting in an unfair and unreasonable restriction.

The alternative solution would be to adopt the same voting and release mechanics used for the holders of preferred equity interests (Class 20) in the Modified Sixth Amended Joint Plan of Affiliated Debtors. There, the holder could vote on the Plan and be given a choice on the Release Election, without being deemed to grant the Plan Releases (Exhibit A). Due to the fact that there was no guarantee of the value, if any, that could be received by a holder of preferred equity interests the Release Election section specifically provided that:

*If you are unsure as to whether to elect to grant the releases at this time, you may check neither box. However, you will not be eligible to receive a distribution on the Effective Date - you will be treated in accordance with Section 32.6(c) of the Modified Plan and will not be entitled to receive a distribution unless and until you execute and deliver the third party release provided in Section 43.6 of the Modified Plan within one year of the Effective Date of the Modified Plan as set forth in Section 32.6(c) of the Modified Plan and otherwise are entitled, pursuant to the Modified Plan, to receive a distribution.

[3] On page 45 of the Disclosure Statement, the footnote states: "The Debtors' Updated Liquidation Analysis assumes no Litigation Proceeds and an ultimate aggregate total of $375 million for Allowed General Unsecured Claims upon final determination of all Disputed Claims." However, on page 109 it is stated that: "The current estimate of the total Allowed General Unsecured Claims and disputed General Unsecured Claims is approximately $850.0 million."

RESERVATION OF RIGHTS

The Claimant, Florin Matache expressly reserves all of his rights to object to the Disclosure Statement and/or the Plan on any grounds, including by joining in the objection of other parties, even if not specifically addressed herein.

WHEREFORE, the Claimant requests that the Court deny approval of the Disclosure Statement as is currently proposed.

Respectfully submitted,

FMatache

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December 30, 2011

CERTIFICATE OF SERVICE

I, Florin Matache served a true and correct copy of the *OBJECTION OF FLORIN MATACHE TO DEBTOR'S MOTION FOR APPROVAL OF THE DISCLOSURE STATEMENT FOR THE SEVENTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE* upon the parties and in the manner listed below:

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EXHIBIT A

Excerpt from the *Beneficial Holder Ballot For Class 20 (Preferred Equity Interests)*, used for soliciting votes and certain elections with respect to the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code

ITEM 1. **Amount of Preferred Equity Interest Shares.** The number of shares held for voting purposes is: _____. If your Preferred Equity Interest shares are held by a Voting Nominee on your behalf and you do not know the face amount of the Preferred Equity Interest shares held, please contact your Voting Nominee immediately.

ITEM 2. **Vote on the Modified Plan.** The undersigned holder of Preferred Equity Interest shares in the amount identified in Item 1 above hereby votes to:

Check one box: ☐ Accept the Modified Plan

☐ Reject the Modified Plan

ITEM 3. **Release Election.** If you wish to submit a release election at this time, check one of the boxes below, to elect to either grant the releases or not grant the releases contained in Section 43.6 of the Modified Plan. **Please be advised that if you check the opt out box, you WILL NOT be entitled to a distribution under the Modified Plan.**

Check the box: ☐ Elect to opt in (and be eligible to receive a distribution)

☐ Elect to opt out (and receive **no distribution**)

Note: For the avoidance of doubt, the releases are only effective if holders of Preferred Equity Interests receive a distribution pursuant to the Modified Plan.

***If you are unsure as to whether to elect to grant the releases at this time, you may check neither box. However, you will not be eligible to receive a distribution on the Effective Date – you will be treated in accordance with Section 32.6(c) of the Modified Plan and will not be entitled to receive a distribution unless and until you execute and deliver the third party release provided in Section 43.6 of the Modified Plan within one year of the Effective Date of the Modified Plan as set forth in Section 32.6(c) of the Modified Plan and otherwise are entitled, pursuant to the Modified Plan, to receive a distribution.**

Additionally, if you opt in or opt out of granting the releases, the Voting Nominee holding your Preferred Equity shares must "tender" such shares into the appropriate election account established at The Depository Trust Company ("DTC") for this purpose. Failure to do so will render your election – either to opt in or to opt out – ineffective. Preferred Equity shares may NOT be withdrawn from the election account after your Voting Nominee has tendered them to the election account at DTC. Once Preferred Equity shares have been tendered, NO further trading will be permitted in the Preferred Equity shares held in the election account. If the Modified Plan is not confirmed, DTC will, in accordance with its customary practices and procedures, return all Preferred Equity shares held in the election account to the applicable Nominee for credit to the account of the applicable beneficial holder. If your Voting Nominee does not tender your Preferred Equity Interests, any vote or election made by you will not be counted , you will not be entitled to receive a distribution pursuant to the Modified Plan on the Effective Date, and you shall be treated in accordance with Section 32.6(c) of the Modified Plan. If you do not opt in or opt out of granting the releases, you will be able to trade your Preferred Equity shares.

ITEM 4. **Important Tax Information Required – Potential Withholding.** Distributions to holders of Claims by the Debtors or the Liquidating Trustee, and any subsequent amounts received by the Liquidating Trust allocable to a holder, are subject to any applicable tax withholding.

Under U.S. federal income tax law, interest and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable backup withholding rate (currently 28%). Backup withholding generally applies if the holder (a) fails to furnish its social security number or other taxpayer identification number ("***TIN***"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results