

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

In re:) Chapter 11
)
Washington Mutual, Inc., et al.,) Case No. 08-12229 (MFW)
)
Debtors.) (Jointly Administered)
)
) Re: D.I. 10507
)

**RESPONSE OF SCOTT SHAW TO WMI LIQUIDATING TRUST'S EIGHTY-SECOND
OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS**

Scott Shaw ("Claimant"), by his undersigned counsel, files his response to the Eighty-Second Omnibus (Substantive) Objection To Claims (the "Objection") filed by WMI Liquidating Trust ("WMILT"), and in support thereof states as follows:

BACKGROUND

I. General Background.

1. Washington Mutual, Inc. ("WMI") and a related entity, WMI Investment Corp. (collectively with WMI, the "Debtors") each filed voluntary petitions under Chapter 11 of title 11, United States Code (the "Bankruptcy Code") and commenced the above-captioned cases on September 26, 2008 (the "Petition Date"). The Debtors remained in possession and control of their assets until they confirmed their Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (the "Plan") by Order dated February 23, 2012. Upon information and belief, the effective date of the Plan was March 19, 2012. On the effective date, certain of the Debtors' assets were transferred to WMILT for administration under the Plan.



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2. At all relevant times prior to September 25, 2008, WMI owned Washington Mutual Bank (“WMB”) and through its ownership of WMB, indirectly owned WMB’s subsidiaries including Washington Mutual Bank.

3. On September 25, 2008, the director of the Office of Thrift Supervision directed the FDIC to take immediate possession of the assets of WMB as receiver. The FDIC in its role as receiver then sold substantially all of the assets of WMB to JPMorgan Chase Bank, National Association. The assets of WMB constituted, indirectly, substantially all of the operating banking assets of WMI.

II. Claimant’s Claim.

4. Prior to September 25, 2008, Claimant was employed by WMB. Prior to the Petition Date, WMI maintained a severance plan for the benefit of eligible employees of WMI and its designated affiliates (the “Severance Plan”). Pursuant to the Severance Plan, Claimant, as a Level 6 employee, was entitled to 1.5 times his salary in the event that there was a “Change in Control” and he was terminated within 18 months for a reason other than “cause.”

5. For the purposes of his CIC, a “change in control” was defined in the Severance Plan as “an acquisition of the Company by merger, consolidation, asset acquisition or stock purchase.” Claimant believes, and therefore avers, that the FDIC seizure and subsequent sale of assets to assets was a “change in control” pursuant to the terms of the Severance Plan.

6. On January 30, 2009, Claimant’s position was eliminated and Claimant was terminated, thus triggering his right to severance compensation. Pursuant to the Severance Plan, Claimant, as a Level 6 employee, is entitled to 1.5 times his total compensation because he was terminated following a “change in control.” In 2008, Claimant’s gross annual compensation was approximately \$228,046 for severance compensation purposes.

7. On April 28, 2011, Claimant filed Proof of Claim number 3975 in the amount of \$342,069 with respect to the compensation due to him under the Severance Plan (the "Claim").

III. Claim Objection.

8. On or about August 15, 2012, the WMILT filed the WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Claims (the "Objection"). (D.I. 10507) The Claim is identified on Exhibit A to the Objection.

9. Pursuant to the Objection, WMILT has objected to the Claim on the grounds that no "change in control" occurred. As set forth below, a "change in control" under the Severance Plan did occur and Claimant is entitled to compensation pursuant to the terms of the Severance Plan. Accordingly, the Claim should be allowed.

RESPONSE

10. The Objection should be denied. A "change in control" under the Severance Plan did occur and Claimant is entitled to compensation pursuant to the plain terms of the Severance Plan.

I. A "Change in Control" Occurred.

11. The WMILT has objected to the Claim on the basis that no "change in control" occurred. Because the FDIC's seizure and subsequent sale of assets to JPMC constituted substantially all of the operating assets of WMI, Claimant submits that a "change in control" occurred under the express language of the Severance Plan.

12. WMILT's contention that a "Change in Control" did not occur with the FDIC's seizure and sale of WMB is incorrect. Because the FDIC seizure and subsequent sale of assets to JPMC constituted substantially all of the operating banking assets of WMI, Claimant submits that a "Change in Control" occurred pursuant to the language quoted above.

13. WMILT argues that since the assets of WMB were seized and sold, and WMI's ownership was indirect, no change in control occurred under the operative agreements since WMI's assets weren't sold because it retained its stock in WMB. However, WMILT's argument disregards the reality that the seizure and sale significantly diminished the value of the asset that WMI did own – 100% of the WMB stock. Upon information and belief, WMI was a holding company and its ownership interest in WMB constituted its principal asset. As a result, the seizure and sale of WMB was a sale of substantially all of the assets of WMI.

14. The sale and seizure of WMB and its assets clearly meets the definition of a “change in control”. Moreover, upon information and belief, upon the FDIC’s seizure of the assets of WMB, WMI’s board of directors resolved that a “change of control” occurred. Consequently, Claimant's claims for compensation under the Severance Plan should be allowed.

II. Joinder.

15. Claimant joins in any other responses filed by other claimants with respect to the Objection.

WHEREFORE, for the reasons set forth above, Claimant believes that his claim must be allowed in the amount of \$342,069.

Date: December 17, 2012
Wilmington, Delaware

Respectfully submitted,



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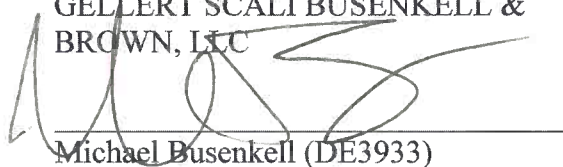
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CERTIFICATE OF SERVICE

I, Michael Busenkell, Esquire, hereby certify that on December 17, 2012, a true and correct copy of the *Response of Scott Shaw to WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Claims* was caused to be served upon the parties listed on the attached service list via U.S. First Class Mail, postage pre-paid.

Date: December 17, 2012

GELLERT SCALI BUSENKELL &
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