

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
WASHINGTON MUTUAL, INC., .
et al., . Case No. 08-12229 (MFW)
Debtors. . (Jointly Administered)
. Dec. 30, 2008 (10:30 a.m.)
. (Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise. You may be seated.

2 THE COURT: Good morning.

3 MR. BERZ: Good morning, Your Honor. Your Honor,
4 David Berz, Weil, Gotshal & Manges for the debtors,
5 Washington Mutual, Inc. Let me just pull out the agenda for
6 today, Your Honor. We have five matters that I think need to
7 be taken up today. We have three matters that are continued
8 or resolved. The first matter was a motion of debtors
9 pursuant to 105(a), 361, 362, 542(b) of the Code seeking
10 approval of a stipulation agreement concerning deposit
11 accounts at JP Morgan Chase Bank, and that matter is going to
12 be carried over to the next omnibus hearing scheduled for
13 January 29th.

14 THE COURT: Okay.

15 MR. BERZ: There was a motion outstanding by the
16 debtors for an order pursuant to 365(a) approving rejection
17 of transfer agent agreement. That was before you even the
18 last time. I was here. Mercifully, we've withdrawn that
19 motion as of December 23rd, and the last matter was a
20 supplemental motion of debtors for extension of time to
21 comply with § 345(b) of the Bankruptcy Code, and we filed a
22 notice of withdrawal with respect to that motion as well on
23 December 23rd.

24 THE COURT: Okay.

25 MR. BERZ: And happy holidays, by the way.

1 THE COURT: Thank you.

2 MR. BERZ: The first matter that I have on the
3 agenda for today, and yours as well, I believe, is a motion
4 by the debtor for the retention of Robert Williams to serve
5 as president of WMI. This is a motion that is uncontested,
6 at least as far as I know based on having not received any
7 filings. Mr. Williams is an experienced banker. He's been
8 in the industry for over 20 years. He served at other banks
9 prior to joining WMI as treasurer in 2005. In that capacity,
10 Your Honor, he did not only financial planning, cash
11 management, and overseeing investments, he was also
12 responsible for oversight on various pension plans and other
13 retirement programs. The conclusion of our business advisors
14 is that he's needed to effectively administer this estate.
15 Among other things, Your Honor, we've got to desegregate the
16 WMI and the WMB businesses' assets, liabilities, and we
17 believe that he can provide the help we need to do that,
18 particularly given the circumstances under which WMI found
19 itself when it went into receivership precipitously. We
20 consulted with the Creditors Committee and others and there
21 seems to be no objection, as I indicated earlier. The
22 details of his retention are in the motion. Essentially, his
23 employment would be divided into three different periods of
24 time, November 13th to March 12th of 2009. Then he would serve
25 in a part-time capacity from March 13th to November 13th of

1 2009, and then, as needed, he could serve as a consultant
2 from November 14th '09 to March 14th, 2010, and there's
3 compensation set forth for him with respect to each of those
4 periods in the motion. With respect to that last period of
5 consulting time, that's our best understanding and sense of
6 what we'll need from him. At the end of the day, Your Honor,
7 we think this is a business judgment matter, and we
8 determined that whether or not it's in the normal course, it
9 was important to come before the Court and seek your approval
10 for this motion, and we move that the motion and the order we
11 provided be granted.

12 THE COURT: Well, does anybody else wish to be heard
13 on that?

14 MR. HODARA: Good morning, Your Honor. Fred Hodara,
15 Akin, Gump, Strauss, Hauer & Feld on behalf of the Official
16 Committee of Unsecured Creditors. Your Honor, the Committee
17 is fully supportive of this application. I should start by
18 saying that. We have had the opportunity to meet with Mr.
19 Williams on a number of occasions and believe that he will
20 provide value to the estate. We have had some discussion
21 with the debtor about the structure of the contract. I think
22 that what I'm about to say is a remote possibility, but I
23 would like to mention it anyway. We are supportive of the
24 compensation structure in the agreement. We think that it
25 might benefit the estate further if there was an incentive

1 component of the compensation because of the nature of this
2 estate and the fact that it's obviously, for the most part at
3 least, a wind-down operation. And so, it could happen that
4 there'd be discussions with Mr. Williams about restructuring
5 the compensation not in our view simply to add on an
6 additional bonus component but to restructure it away from
7 the straight compensation that it has to a mixture of
8 straight compensation and an incentive component. But, as I
9 said, I think that's remote at this point. I did want to
10 just bring that potential to the Court's attention.

11 THE COURT: Okay.

12 MR. HODARA: Thank you.

13 MR. McMAHON: Your Honor, good morning. Joseph
14 McMahan for the Acting U.S. Trustee. Only in response to the
15 Committee's comments I rise just simply to note that it's our
16 expectation that any restructuring of Mr. Williams' contract
17 be put out on further notice.

18 THE COURT: Okay.

19 MR. BERZ: We certainly don't have a problem with
20 that, Your Honor. I have an order. Should I approach?

21 THE COURT: You may. Just one question I had, and
22 that is whether Mr. Williams has been named in any derivative
23 or other security suit to date?

24 MR. BERZ: Not that I'm aware of, Your Honor, he's
25 not.

1 THE COURT: All right. All right, I will enter the
2 order as unopposed then.

3 MR. BERZ: Your Honor, the second matter before the
4 Court is to approve some modified procedures for the sale of
5 debtors' interests and certain other investments without
6 further Court approval. This was an order that was approved
7 with certain modifications at the last hearing, including
8 some issues raised by the Court. In that regard, Your Honor,
9 we filed the supplemental motion and an order to shorten
10 time, which the Court approved. And essentially what caused
11 us some concern after the hearing, our last hearing, was the
12 possibility or the reality at that point that in the notices
13 that would go out to the service list, for the entire 2002
14 list, the financial details, particularly pricing of the sale
15 of the assets would be included in those notices, and that
16 has created some serious concern because the business
17 advisors believe and I think their concern is well-taken,
18 that putting the pricing out on some of these assets as
19 broadly as would occur if we went out with the price to the
20 entire service list, could chill future transactions, the
21 sale of other investments and assets of the estate. So what
22 we've proposed in the revised order that we submitted to the
23 Court is that a complete detailed description of the
24 transaction, including the economic terms, would be included
25 and provided to the Creditors Committee, the bondholders, and

1 certainly the U.S. Trustee where we have confidentiality
2 agreements or confidence that confidentiality could be
3 maintained, and that we send out a redacted notice to the
4 entire service list but notice that would allow someone, if
5 they wanted to, to come and object or inquire about the
6 price, and we could have a proceeding with respect to that
7 issue as to whether or not that information should be
8 maintained as confidential. I suppose it's conceivable that
9 if someone objected, we could also come to the Court and
10 perhaps have a discussion about disclosing that information
11 to a particularly interested recipient of the notice, subject
12 to certain confidentiality requirements, but the fundamental
13 issue here is that we're really concerned about the chilling
14 effect that might occur if the pricing on some of these
15 investments in particular went out. Now, one of the examples
16 I can give you, I think, of how this issue could affect the
17 value that the estate might get for a particular investment
18 that might be put up for sale or interest is that in many of
19 these cases there are still financial commitments that are
20 owed by WMI to meet whatever investment it was committed to,
21 and so, sometimes without paying those amounts, the price on
22 a particular asset or investment might be discounted so that
23 the party taking over the investment might pick up that cost.
24 I think that that's just one example of where this issue of
25 keeping the pricing to a limited group of people has the

1 potential to benefit the estate. But that's essentially our
2 point and we've submitted -

3 THE COURT: I understand your position. Let me hear
4 from any other interested party.

5 MR. McMAHON: Your Honor, good morning again.
6 Joseph McMahon for the Acting U.S. Trustee, and there's a
7 single issue presented by the supplement to the motion and
8 whether the purchase price for these, what was described at
9 the last hearing as *de minimis* non-core assets or
10 confidential commercial information under § 107(b) of the
11 Bankruptcy Code, and whenever I get to one of these
12 situations, I always look to Your Honor's opinion in Altera
13 to guide the analysis, and what the Altera opinion says at
14 pages 75-76 of the decision is that, Confidential commercial
15 information is information that would result in - there's a
16 quotation to another source - an unfair advantage to
17 competitors by providing them information as to the
18 commercial operations of the debtor. And the Court goes on,
19 Moreover the Court must find that the information contained
20 in the items sought to be sealed is so critical to the
21 operations of the entity seeking the protective order that
22 its disclosure will unfairly benefit that entity's
23 competitors. You know, a couple of points here. First is,
24 relevant market. The Court in Altera was dealing with an
25 entity that was in fact reorganizing and defined the market

1 for analyzing whether or not there is an anti-competitive
2 effect as the ordinary course business outside of bankruptcy
3 such that in the Altera case, the Court recognized that the
4 debtor was in the business of providing assisted living
5 arrangements and healthcare to elderly residents. This is a
6 bit of a unique situation, Your Honor, because we're dealing
7 with a bank holding company with no bank. Essentially, to
8 the extent that it has operations, certainly its ordinary
9 course operations are no longer its own, and with respect to
10 the assets at issue, they're certainly not part of its core
11 operations. With respect to the argument, Your Honor, that
12 disclosure of the purchase price is somehow going to chill
13 the bidding or the value that the debtors' estates get for
14 the assets, a couple of observations there. First is,
15 there's no record before the Court to support the idea that
16 somehow taking debtors' counsel's argument, a discount on one
17 asset is necessarily applicable to the other. Each asset in
18 its own right is unique. Certainly, the debtors' estates and
19 the debtors are quite capable of marketing the assets on a
20 standalone basis and making the argument to a potential
21 purchaser that, Look, this one was different than the other
22 and here's why, in the course of negotiations. And getting
23 back to the point of the definition of confidential
24 commercial information, I don't think that that's the type of
25 harm that we're talking about when we're talking about

1 unfairly benefitting a competitor. Furthermore, Your Honor,
2 an equally equitable argument can be made in the other
3 direction, meaning that actually the disclosure of the
4 purchase price may have the added benefit of attracting a
5 higher or better offer that frankly was not willing to be
6 advanced in the context of a closed process. How are those
7 bidders going to know what the sale price is if they look to
8 the docket and they get a sale notice with a mark across the
9 purchase price? I don't know how that is, and to analogize
10 that, Your Honor, to the situation that Your Honor addressed
11 in Altera with respect to the amount of tort settlements,
12 Your Honor rejected the argument there that disclosure of the
13 tort settlement amounts will - I'm sorry, would be harmful to
14 the estate. I think that we could make generally the same
15 point here, which is that there's an equally applicable
16 argument that disclosure of the amounts may have a benefit to
17 the estate, and I think, underscore that point, Your Honor.
18 I think it's implicit in the Altera decision that some type
19 of generic harm to the estate argument doesn't carry the day.
20 In other words, I think the way I read Your Honor's opinion
21 in Altera, it was closely tied to the competitive aspect of
22 the analysis, the statutory language, and that's really where
23 the rubber meets the road on this issue. So, a couple of
24 points, Your Honor, again to reiterate. First, what the
25 relevant market is, whether there truly is an anti-

1 competitive effect hasn't been established based on counsel's
2 arguments, certainly. And then second, generalized notions
3 of harm to the estate based upon, We're afraid that this
4 might happen, doesn't do it.

5 THE COURT: Thank you. Does the Committee wish to
6 be heard?

7 MR. HODARA: Your Honor, Fred Hodara for the
8 Official Committee. The only point I would make is that the
9 Committee's financial advisor, FTI, has worked with us in
10 analyzing this matter and this issue and has advised us that
11 in their view, understanding the basis of these particular
12 assets and in consultation with the company, they do believe
13 that there is a risk to the estate of diminished value for
14 the assets upon sale if this information is made public.

15 MR. BERZ: Your Honor, I don't take issue with the
16 discussion from the U.S. Trustee on the Altera decision. I
17 think our issue is, these particular assets concern all of
18 the financial people involved from the estate and the
19 Creditors Committee in the sense that putting out these
20 numbers will cap and, therefore, diminish the recovery that
21 the estate might get. As I said, I think there's a process
22 out there contemplated in this order that to the extent there
23 needed to be a further discussion or an interested party that
24 was concerned about what the details were on the purchase
25 price and the economics generally that we could have a

1 process to resolve that, but this is a concern that's been a
2 concern. We talked about it at the last hearing, and we
3 think we've come up with a procedure that sort of takes care
4 of both the U.S. Trustee's concern and our concern.

5 THE COURT: Well, I disagree. I can't conceive that
6 a sale of assets of the estate in a bankruptcy outside of the
7 ordinary course of business is something that would be
8 conducive to sealing any information about it. I agree with
9 the U.S. Trustee. A sale of assets outside of the ordinary
10 course of business has to be revealed because otherwise,
11 quite frankly, I don't know how the Court could possibly
12 approve any sale without knowing what the economic terms are,
13 and it doesn't help the Court if other parties in interest
14 are not given that same information, and thirdly, the
15 possibility that another party may be interested in bidding
16 on those assets. I think that 363 contemplates that even
17 though the debtor has the authority to sell assets in a
18 private sale, I think the notice aspect of 363 contemplates
19 that others who may also be interested in those assets could
20 submit a counterbid, at a minimum to allow the Judge to
21 determine whether the sale price is the highest and best
22 price which I have to decide. I mean I think this simply
23 isn't a § 107 confidential commercial information. I agree
24 with the U.S. Trustee on that analysis, so I don't think that
25 helps the debtor.

1 MR. BERZ: All right, Your Honor.

2 THE COURT: So, I'll deny the supplemental motion.
3 Did I ever enter an order on the revised procedures?

4 MR. BERZ: No.

5 THE COURT: All right you can submit that under
6 certification of counsel.

7 MR. BERZ: I'll make those adjustments to the order
8 and bring it to you this afternoon.

9 THE COURT: All right.

10 MR. BERZ: Okay, thank you. Your Honor, the next
11 issue was actually also dealt with at the last hearing and
12 approved, subject to further work on the proposed order, and
13 this was the motion of the debtors for approval of a
14 stipulation by and between the debtors and JP Morgan Chase
15 concerning vendor contracts and the use of confidential
16 information or contract information that might be necessary
17 for the estate in terms of dealing with claims from vendors
18 and mitigating losses. In this respect, Your Honor, what we
19 have - the original order basically assumed that we could go
20 ahead and assume confidentiality and keeping everything under
21 seal. This proposed order which we have for you sets up a
22 process, if you will, by which we have to come and explain
23 why the information should be kept confidential. Notice goes
24 out to the various parties, and at that point the Court rules
25 on whether or not to keep the information confidential or

1 not.

2 THE COURT: All right, and it's been shared with
3 those parties who had objected?

4 MR. BERZ: It has, and I think everybody's onboard,
5 but the I know the U.S. Trustee has a - by the way, let me
6 just - the order we're going to give you includes all of the
7 adjustments that were made both at the last hearing about
8 vendors retaining and reserving their rights as well, and I
9 know the U.S. Trustee has a comment that he wants to make on
10 the record with respect to this motion.

11 THE COURT: All right. Do you want hand up the
12 revised order -

13 MR. BERZ: Yes.

14 THE COURT: - so I have it? Thank you.

15 MR. McMAHON: Your Honor, good morning again.
16 Joseph McMahon for the Acting U.S. Trustee. Your Honor,
17 there's a post-ruling on a motion to seal overlay with
18 respect to providing JP Morgan and the effected vendor notice
19 in order to take action as a protective matter with respect
20 to the information, and I rise simply to make a comment for
21 the record that it's our view that to the extent that the
22 Court rules upon and denies a motion to seal where the
23 debtors, JP Morgan, and/or the effective vendor were noticed
24 and/or a party to that, there's an order entered. To the
25 extent that there is, I guess, further notice with respect to

1 protective action and our rights to object on grounds that
2 the prior denial of the motion to seal limits the relief that
3 the Court can grant by means of a preclusive doctrine or
4 effectively reserve.

5 THE COURT: I'm not sure I understand.

6 MR. McMAHON: Sure.

7 THE COURT: Looking at the last -

8 MR. McMAHON: I'm looking at the last section of
9 page 6. So, there's a procedure whereby if the Court
10 previously denied a motion to seal, the debtors are obligated
11 to give JP Morgan Chase and the effected vendor notice so
12 that they can take protective action, and my point is, I
13 don't know what that protective action may be at that point,
14 but certainly our office is not waiving its rights to assert
15 that the prior denial of the motion to seal has whatever
16 preclusive effect it has under law.

17 THE COURT: I see. Well, as I understand it, in the
18 event the Court denies the motion to seal the debtors and
19 Committee may elect not to prosecute the objection, may elect
20 to prosecute the objection without revealing the terms of the
21 contract or may elect to prosecute the objection and use the
22 terms of the contract in which event they would - or JP
23 Morgan and the vendor who can take whatever action they want.
24 Well, don't you think that the last phrase, "without
25 prejudice to the rights of other parties in interest who

1 object to protective relief on any grounds" is sufficient?

2 MR. McMAHON: Your Honor, that language was inserted
3 at my request. I had additional language addressing the
4 point that I just made on the record. The resolution was,
5 the reservation stays in. I just want to make that point
6 clear because it is kind of a bit of a convoluted procedure.

7 THE COURT: Okay. Well, with that - I'm sorry.

8 MR. BROWN: Good morning, Your Honor. Charlie Brown
9 on behalf of AT&T. You may recall that AT&T filed a limited
10 objection to this, and at the last hearing the debtor made
11 certain representations, as did the Committee both on behalf
12 of the Committee and on behalf of Verizon, that AT&T
13 contracts would not be subject to being produced to Verizon,
14 and I just wanted to confirm that that was - because no order
15 got entered after that, I assume, to address the U.S.
16 Trustee's concerns, so I just rise to confirm that those
17 statements that were made on the record at the last hearing
18 still apply with respect to this motion and order. Thank
19 you.

20 THE COURT: Okay. That wasn't included in the
21 order?

22 MR. BROWN: No, Your Honor, there were certain
23 statements that were read into - or representations made on
24 the record at the last hearing. There was a provision that
25 AT&T requested that was more general but there was something

1 specific that Verizon was not going to have access to those
2 contracts.

3 MR. HODARA: The Committee reconfirms the
4 representations that were made at the prior hearing.

5 THE COURT: All right, then, I guess the order is
6 acceptable to -

7 MR. BROWN: Thank you, Your Honor.

8 THE COURT: - what, one more party?

9 MR. HUGGETT: Your Honor, Jim Huggett, Oracle
10 Corporation. I apologize for not getting in touch with the
11 debtors before, but I'm filling in for someone and found out
12 about this about six o'clock last night. As it turns out, we
13 do have an issue or something that may simply be able to be
14 resolved here. We didn't file an objection, but the issue is
15 this, Oracle is, of course a software corporation, does
16 extensive business dealings with JP Morgan Chase and has a
17 variety of contracts and documents and bylaws going with it
18 at any particular time. It's our understanding that - and I
19 just read through this stipulation now. I didn't see what
20 was handed to you, and I don't know how that differs, but
21 it's my understanding that the stipulation and order that
22 Your Honor is considering and is going to enter would not
23 affect the flow of any of that information. The debtors -
24 well, excuse me, JP Morgan Chase would not be required to or
25 intended to be providing any of those documents or

1 information to anyone at all, to the debtors. This is all
2 about past business dealings between Oracle and JP Morgan
3 Chase. If I could just confirm that that - I think that's
4 implicit in what's written there, but if I could just ask the
5 debtors to confirm that. In other words, if it doesn't
6 directly relate to the debtor here and Oracle's a vendor of
7 the debtor, of course as well, if it doesn't directly relate
8 to Washington Mutual, then it's not included in the
9 stipulation and order. I believe that is the case, but if I
10 could ask.

11 MR. BERZ: The stipulation and order is intended to
12 govern the communication information related to contracts
13 that WMI had which will be assumed, taken over or somehow
14 involve JP Morgan Chase in the transfer of a bank, and I
15 don't mean to be elliptical, but that's the answer I want to
16 give you. We're not going to talk about - this is not about
17 unrelated contracts, unrelated to WMI or the bank.

18 MR. HUGGETT: That is the answer we're looking for,
19 Your Honor. Thank you for that.

20 THE COURT: All right. Then with those two
21 clarifications, I will enter the order as modified.

22 MR. HUGGETT: Thank you, Your Honor.

23 MR. BERZ: I believe the next motion is not ours.

24 MR. McDANIEL: Good morning, Your Honor. Garvin
25 McDaniel, Bifferato, Gentilotti. Agenda item number 7. It's

1 our motion pursuant to 11 U.S.C. 554(b) for an order to the
2 debtor in possession to abandon certain multi-district pre-
3 petition derivative claims. Your Honor, I represent the
4 derivative claimants. Your Honor, Clinton Krislov from
5 Krislov & Associates is here to argue the motion today and
6 Your Honor has granted his application.

7 THE COURT: All right, thank you.

8 MR. KRISLOV: Good morning, Your Honor. I haven't
9 had the pleasure with you, but I've been spending so much
10 time in Delaware, we were before Judge Gross recently and
11 been spending so much time in Delaware on other cases that my
12 wife believes that with the turmoil presently in Illinois,
13 she suggests we move, but I'll take this one step at a time.
14 We represent the derivative plaintiffs in the WaMu actions in
15 the Western District of Washington, and the abandonment
16 motion really is to essentially authorize us to proceed on
17 behalf of the estate. We have - while the proceeding there
18 are moving ahead quickly, the Judge, Judge Peckman
19 (phonetical) has authorized discovery to proceed ahead on the
20 ERISA cases stayed hours only till a determination of who
21 among the derivative plaintiffs would be authorized to
22 proceed ahead for the benefit of the corporation and stayed
23 the securities cases access to that discovery only until the
24 securities fraud cases surmount their statutory stay and
25 motion to dismiss period. In short, we'd like to get going,

1 if we can, on behalf of the corporation of the estate to
2 proceed against the individuals that we've all sued among the
3 cases anticipating or seeing the objections. The concept
4 that we would pursue is that we would pursue the case in the
5 same way that we generally these, on a purely contingent
6 basis. We advance all the costs, and if there is a recovery
7 in the case, it goes to the benefit of the corporation or in
8 this case, it would be the estate, and it would not cost
9 anything in fees except out of the recovery and anticipating
10 the question if there is a settlement, that would be -
11 depending on how Your Honor chooses to have this authorized.
12 It certainly would be approved or subject to the approval by
13 Judge Peckman there. It could also be subject to your
14 approval as well. In a case that we did in the Northern
15 District of Illinois some years ago in Mercury Finance,
16 actually the District Judge and the Bankruptcy Judge sat on
17 the bench at the same hearing to approve the settlement in
18 both cases. It doesn't necessarily have to be that way. You
19 could relinquish this and let Judge Peckman decide that
20 including certainly whatever fees were awarded out of the
21 recovery. That is certainly in your discretion. The bottom
22 line though is we would be proceeding for the benefit of the
23 corporation, in this case the estate, and it would not cost
24 anybody anything except us to pursue this. Indeed, we think
25 that while we don't have the full amount of D&O insurance, it

1 has not been revealed yet. Our understanding is that there's
2 something of or at least \$45 million which unfortunately
3 probably could get eaten up by legal fees of defense faster
4 than anyone could imagine. Which, actually works to
5 encourage the Court to approve this motion, we think, because
6 having all the three sets of cases proceeding before the
7 Western District of Washington, together on a simultaneous
8 track, usually makes it easier to get to a resolution rather
9 than having them proceed potentially in different courts at
10 different paces and by the time that any of this would get
11 going, most of the money would be either used up and any
12 settlement there would probably wipe out the assets available
13 for the case that we would be pursuing. Indeed, we were
14 diligent as soon as the bankruptcy filing took place. We
15 very shortly after that, I believe the first week in October,
16 wrote a letter to the attorneys for the estate asking that we
17 be authorized to proceed on. They indicated at that point
18 that they would need some time to get back to us, hoped to
19 get back to us by November 2nd, which was one of this Court's
20 hearings. We have not heard. They have not made a decision
21 since then. While I'm not accusing them of delay, we
22 understand that we were not the first thing on their plate,
23 nonetheless, we believe it sort of adds to the impetus to
24 allow us to proceed ahead. If there is a settlement,
25 everyone would get notice, not just this Court, not just

1 every lawyer that's here today, but certainly all of the
2 shareholders, potentially all of the creditors, everyone
3 would have notice and an opportunity to object should someone
4 deem a settlement - knock on wood, that we would get, to be
5 inadequate and objectionable on some term. With that I would
6 be glad to answer any questions or deal with any objections
7 at this point.

8 THE COURT: Let me hear from the objecting parties.

9 MR. BERZ: Your Honor, I'll make a number of points,
10 but I group the - the fundamental issue is that this is
11 simply, from our point of view, it's premature at this point
12 in time. We're still gathering a lot of information. There
13 is a very cooperative relationship with respect to WMI and
14 the Creditors Committee and the bondholders, and these are
15 things that we think need to be evaluated. There's no
16 question, I don't believe, that the derivative action
17 proceeds are assets of the estate. As I said, we're in the
18 early stages here. There's no particular rush. I'm not
19 suggesting we can put this off forever. These kinds of
20 proceedings are common as you know in these cases, but I
21 would point out that the statute of limitations for these
22 underlying claims is tolled until September 26th of 2010, and
23 we're just not confident that - and it has nothing to do with
24 our view about counsel's expertise or experience in this
25 area, we're just not sure they're the right representatives

1 to be given the status of counsel in this matter, and we
2 can't overlook the fact that the Creditors Committee and the
3 bondholders have a particular interest in these matters, and
4 I believe as of last night you had filings from both of those
5 groups objecting to counsel's motion. I guess as a matter of
6 law, I'm a little concerned about the premise that this is
7 somehow an abandonment motion under 554. I mean, we tend to
8 think of abandonment as something that's burdensome to the
9 estate and of no value. That's certainly not the case here.
10 So, as sort of a fundament legal matter, I'm not quite sure
11 that the appropriate predicate for a proceeding or
12 establishing the basis for this motion is appropriate. The
13 other point I would make is, there's a lot going on. There
14 are investigations going on. There are government
15 investigations going on. There is cooperation between the
16 estate and a lot of those activities, and they have the
17 potential to impact the nature, quality, and timing of
18 proceeding with these derivative actions. I would also point
19 out, although I won't hold myself out as an expert, that the
20 proceedings are at a fairly early stage. So that the case is
21 not very far along, certainly nowhere near disposition. So,
22 there's no sort of pending opinion or dispositive motion or
23 series of motions here that are being held at the abyss as a
24 result of the filing of this Chapter 11 proceeding. So, with
25 that, Your Honor, we oppose counsel's motion.

1 THE COURT: Thank you.

2 MR. HODARA: Your Honor, Fred Hodara for the
3 Official Committee. We agree with each of the points that
4 debtors' counsel has made and so rather than belabor the
5 record, let me just say that we emphatically agree with each
6 of those points. I don't think that there is any animus or
7 hostility whatever toward the movants here, and in fact, I
8 think that there are things that should be discussed with
9 them over time, but in keeping with the comments of debtors'
10 counsel of this being premature, we're simply at a stage in
11 these proceedings where the Creditors Committee is first
12 looking at these matters. So we take them quite seriously.
13 We think the estate should take them seriously, but we think
14 they need to be looked at over time.

15 MR. STARNER: Good morning, Your Honor. Greg
16 Starner of White & Case on behalf of the bondholders of WMI.
17 We just want to reiterate both the comments made by the
18 debtors' counsel and the Committee's counsel that in fact the
19 noteholders would also like the - they basically feel it's
20 premature to rule on this right now. Also wish to have an
21 opportunity to review the potential pursuing of this
22 litigation and decide how best to either pursue it, if not,
23 or to pursue it certainly to maximize the value of the
24 estate. And so just wish to join in the objection made by
25 the debtors.

1 THE COURT: Thank you. Well, let me say this, this
2 is an unusual procedure, I agree. It's not the typical
3 abandonment motion that's filed by the debtor to eliminate
4 the debtor's obligation to deal with an asset of the estate
5 that may be burdensome and of little value to the estate. I
6 think all the parties agree, it's an asset of the estate.
7 The parties may share a belief that it has substantial value
8 or could have substantial value to the estate. It's clear
9 that the plaintiffs do not currently have standing to pursue
10 the derivative action since the bankruptcy case has been
11 filed. The plaintiffs are shareholders not creditors of the
12 estate. The asset is an asset that in the first instance the
13 debtor and in the second instance the creditors have a
14 substantial interest in. Quite frankly, the debtor has the
15 right to decide what to do with it. The debtor has not made
16 that decision. The bankruptcy case is in an early stage. It
17 is not typical at this stage for a debtor to have to deal
18 with whether or not - the decision of whether or not to
19 pursue litigation. I'm satisfied that the litigation itself
20 is at an early stage, nowhere near disposition. There's no
21 need for the debtors to act quickly because of a statute of
22 limitations or any other requirement of the litigation
23 itself. So, I'm not inclined to grant the motion to require
24 the debtors to make a decision at this time as to how to act.

25 MR. KRISLOV: Your Honor -

1 THE COURT: Yes.

2 MR. KRISLOV: I presume that's without prejudice to
3 bringing this again in the future.

4 THE COURT: It is without prejudice.

5 MR. KRISLOV: Because our concern is obviously once
6 the secured - sorry. Let me start again. Once the security
7 holders are proceeding ahead, since the ERISA people are
8 already proceeding, we don't want the estate to lose parts of
9 participation and discovery which is proceeding ahead. So,
10 we'd like the opportunity to perhaps make this again or to
11 discuss the matter with -

12 THE COURT: You're free to discuss it with the
13 debtors and the committees and the holders' representatives.

14 MR. KRISLOV: Okay.

15 THE COURT: All right.

16 MR. KRISLOV: Thank you, Your Honor.

17 THE COURT: Somebody will get me a form of order to
18 that effect denying the motion.

19 MR. BERZ: Thank you, Your Honor. The last matter
20 on the agenda is debtors' motion pursuant to 105(a) and 363
21 of the Code to modify the order authorizing debtors to employ
22 Alvarez & Marsal North America as advisors and counselors to
23 the estate. Essentially, Your Honor, the motion before you
24 requests that four individuals be added and retained out of
25 Alvarez, the Alvarez & Marsal firm to assist in the process

1 of unwinding this estate. Three of the individuals
2 identified in the motion are tax specialists, and the belief
3 is that these tax strategies regarding NOLs and other
4 complicated tax issues related to the wind-down of WMI
5 require this expertise, and those three individuals are
6 identified in the motion, and we respectfully ask that they
7 be included as part of the Alvarez & Marsal team. The fourth
8 employee -

9 THE COURT: Well, who are those three?

10 MR. BERZ: Let me give you the names.

11 THE COURT: Because I don't think the motion made
12 that clear.

13 MR. BERZ: Let's see, hang on. These tax people are
14 Brian Peterson, James Kerryon, and Kelly Green (all
15 phonetical), and they're all tax specialist with Alvarez.
16 They have experience in the banking world in tax-related
17 issues to regulate industry in general. I don't have the
18 resumes with me, Your Honor. I can provide them to you, but
19 they are - they will be Alvarez and Marsal employees.

20 THE COURT: All right. Anything else you want to -

21 MR. BERZ: The fourth person added to the list is
22 Chris Wells who is an employee of Alvarez and Marsal, and you
23 may recall, Your Honor, at the hearing before the last one,
24 we proffered extensive testimony regarding the reinsurance
25 subsidiary of WMI, the Wimerick (phonetical) Company, and

1 what has emerged is that there are substantial issues
2 affecting the estate related to the whole issue of mortgage
3 insurance and reinsurance, and Mr. Wells, who I think, if you
4 recall, and you may not, it was long and extended, is someone
5 who has experience in this particular area and a decision's
6 been made that we'd like to add him to the team because his
7 expertise is going to be required on a going-forward basis as
8 we work through the various insurance issues that the estate
9 faces including the issue of the value of the reinsurance
10 business that's held by WMI.

11 THE COURT: All right, let me hear from the U.S.
12 Trustee's Office.

13 MR. McMAHON: Your Honor, good morning again.
14 Joseph McMahon for the Acting U.S. Trustee. We did have some
15 informal discussions with the debtors' representatives and a
16 representative of Alvarez & Marsal with respect to the
17 motion, and the information we received addresses our
18 concerns with respect to what's being requested in the
19 motion. I would note for the record though that our rights
20 with respect to the fee statements consistent with the prior
21 employment order were fully reserved as we will be monitoring
22 how these professionals are used, whether they're traveling
23 in a group or whether they're performing unique and distinct
24 services.

25 THE COURT: All right, then. Anybody else wish to

1 be heard? All right, the objection being resolved then I
2 will approve it. Thank you.

3 MR. BERZ: I think that does it for us today, Your
4 Honor, unless you have anything else.

5 THE COURT: I do not.

6 MR. BERZ: Thank you very much. Happy New Year.

7 THE COURT: All right. Happy New Year, we'll stand
8 adjourned.

9 (Whereupon at 11:23 a.m., the hearing in this
10 matter was concluded for this date.)

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18 I, Elaine M. Ryan, approved transcriber for the
19 United States Courts, certify that the foregoing is a correct
20 transcript from the electronic sound recording of the
21 proceedings in the above-entitled matter.

22

23 /s/ Elaine M. Ryan January 6, 2009
Elaine M. Ryan
2801 Faulkland Road
Wilmington, DE 19808
(302) 683-0221