

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

IN RE:	§	
	§	CASE NO. 08-12229-MFW
WASHINGTON MUTUAL, INC., <i>et al.</i> ,	§	
	§	CHAPTER 11
DEBTOR	§	(Jointly Administered)

**ANICO PLAINTIFFS' POST-HEARING WRITTEN SUBMISSION
WITH RESPECT TO CONFIRMATION OF THE
MODIFIED SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS**

AMERICAN NATIONAL INSURANCE COMPANY, AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, FARM FAMILY LIFE INSURANCE COMPANY, and FARM FAMILY CASUALTY INSURANCE COMPANY, and NATIONAL WESTERN LIFE INSURANCE COMPANY (the “ANICO Plaintiffs”), parties-in-interest, submit the following with respect to confirmation of the *Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (as amended, the “Plan”):

1. The ANICO Plaintiffs are plaintiffs in a lawsuit pending before the United States Court of Appeals for the District of Columbia Circuit, styled *American National Insurance Company, et. al. v. JPMorgan Chase & Co., et. al.*, Case No. 10-5245 (D.C. Cir., appeal filed July 19, 2010) (the “ANICO Litigation”). The defendants in the ANICO Litigation are JPMorgan Chase & Co. and JPMorgan Chase, NA (collectively “JPMC”). The FDIC, as receiver for Washington Mutual Bank, intervened as a party-defendant.

2. At the first confirmation hearing in the instant Bankruptcy cases, held by this Court in December, 2010, the ANICO Plaintiffs objected to, among other things, broad releases contained in the Debtors’ then-existing plan of reorganization.

3. This Court, in an Opinion dated January 7, 2011 [Docket No. 6528], rejected JPMC's attempt to use the Bankruptcy Court to impede the ANICO Litigation, and concluded:

[T]here is no release being provided under the Plan or the Global Settlement by the ANICO Plaintiffs of their direct claims against any party (other than the Debtors) and that the Court is making no determination as to who owns the claims in the ANICO Litigation. Further, any stipulation of dismissal that the Debtors file in the ANICO Litigation must expressly state that they are dismissing only claims which they own.¹

4. The Debtors later modified and amended their plan of reorganization (as defined above as the "Plan"), and made clear that nothing in the Plan, the confirmation order, or related documents affected the ANICO Plaintiffs' claims against JPMC in the ANICO Litigation.² This Court later clarified that "the disclosure statement can be amended to say that I am not deciding whether the debtor or the FDIC has any claims to that litigation."³ Counsel for JPMC agreed with the Court's suggestion and the Debtors did not object.⁴

5. On June 24, 2011, the United States Court of Appeals for the District of Columbia Circuit (the "Court of Appeals") issued an opinion reversing and remanding a dismissal of the ANICO Litigation. *American Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 2011 U.S. App. LEXIS 12787 (D.C. Cir. June 24, 2011).

6. In its opinion, the Court of Appeals noted that JPMC and the FDIC had previously asked the United States District Court for the District of Columbia (the "District

¹ Opinion denying confirmation, *In re: Washington Mutual, Inc.*, Case No. 08-12229 (MFW), entered January 7, 2011, pp. 80-81.

² See Plan, Section 43.6(g), p. 88; see also, *In re: Washington Mutual, Inc.*, Case No. 08-12229 (MFW), transcript of disclosure statement hearing held on March 21, 2011 (the "DS Hearing Trans."), p. 124 (Statement of JPMC's attorney, "If these people have direct claims in that action, the stipulation isn't going to affect that one bit. There is nothing Your Honor is doing in this action that affects that one bit.").

³ DS Hearing Trans., p. 125.

⁴ *Id.*

Court”) to dismiss the ANICO Litigation on grounds related to the ANICO Plaintiffs’ standing, but the District Court had not ruled on that issue. *Id.* at *14. The Court of Appeals recognized the complexity of the standing issue and outlined “several layers of inquiry” required in resolving the issue. *Id.* The Court of Appeals deferred answering these “knotty questions,” however, and instead remanded to the District Court to consider the issues “in the first instance.” *Id.*

7. At the Confirmation Hearing held before this Court from July 13, 2011 through July 21, 2011, no evidence was presented that changes the previous rulings of this Court relating to the ANICO Litigation or that affects the ANICO Plaintiffs’ rights to pursue the ANICO Litigation.

8. Accordingly, the ANICO Plaintiffs do not object to confirmation of the Plan so long as any order entered by this Court confirming the Plan is consistent with this Court’s January 7, 2011 Opinion as well as rulings from the bench relating to the ANICO Litigation such that any confirmation order provides that:

- a. There is no release being provided under the Plan, the Confirmation Order, or the Global Settlement by the ANICO Plaintiffs of their direct claims against any party;
- b. The Court is making no determination as to whether the Debtors or the FDIC own, have any right to pursue, or have any right to seek dismissal of the claims in the ANICO Litigation;
- c. Any stipulation of dismissal that the Debtors or the FDIC file in the ANICO Litigation must expressly state that they are dismissing only claims that they own;

d. Nothing in the Confirmation Order, the Plan, the Global Settlement or related documents has any bearing on the determination of any question of law or fact identified by the Court of Appeals for the District of Columbia in *American Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 2011 U.S. App. LEXIS 12787, *14-15 (D.C. Cir. June 24, 2011) that may be considered by the United States District Court for the District of Columbia upon remand of the ANICO Litigation.

9. By filing this submission and by not responding directly to any filing made by any party in these Bankruptcy cases, the ANICO Plaintiffs do not waive, and expressly reserve, their rights in the ANICO Litigation, including but not limited to the right to assert sole ownership and control of the claims asserted in the ANICO Litigation, the right to oppose intervention by any entity, and the right to oppose any argument raised by JPMC or the FDIC in the ANICO Litigation.

Dated: August 10, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael P. Migliore, hereby certify that, on this 10th day of August, 2011, I caused true and correct copies of the ANICO PLAINTIFFS' POST-HEARING WRITTEN SUBMISSION WITH RESPECT TO CONFIRMATION OF THE MODIFIED SIXTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS to be served on the parties listed below via U.S. first class mail:

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