

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
WASHINGTON MUTUAL, INC.,) Case No. 08-12229 (MFW)
ET AL.,)
) Wilmington, Delaware
Debtor.) October 28, 2009
)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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I N D E XARGUMENT:

By: Mr. Rosen 3, 4, 7, 10

By: Mr. Landis 11

THE COURT:

Ruling 4, 7, 10, 11

1 CLERK: All rise. Please be seated.

2 THE COURT: Good afternoon.

3 MR. ROSEN: Good afternoon, Your Honor. Brian Rosen
4 and Matthew Curro, Weil, Gotshal & Manges, together with Mark
5 Collins from Richards, Layton & Finger, on behalf of Washington
6 Mutual, Inc. Your Honor, keeping with your help on my
7 calendar --

8 THE COURT: Uh-huh.

9 MR. ROSEN: -- and your statement to me about making
10 sure the calendar for Washington Mutual didn't exceed an
11 hour, --

12 THE COURT: You're going to fulfil your promise,
13 right?

14 MR. ROSEN: There is no doubt about it. We have very
15 few matters on. Actually, we think, if you go to page 5 of the
16 agenda, Your Honor, that is the first matter that is going
17 forward. And, there are two uncontested claims objections.

18 The first is what we refer to as the 11th claims
19 objection. It is non-substantive, Your Honor. It was filed to
20 deal with claims that were filed in the wrong Chapter 11 case
21 and that we were seeking to have recharacterized as claims
22 filed against the correct debtor.

23 THE COURT: Uh-huh.

24 MR. ROSEN: And, we have received no responses to
25 that objection.

1 THE COURT: And, that looked fine to me, so I will
2 sustain it.

3 MR. ROSEN: Thank you, Your Honor. The next was the
4 13th omnibus objection. And, this was with respect to what we
5 refer to as misclassified claims. And, specifically, Your
6 Honor, these were claims filed against the debtors by current
7 and former members of the board of directors.

8 And, the three claims that were objected to in the
9 13th omnibus are claims in which the debtors are in agreement as
10 to the total amount asserted, but which reflected an incorrect
11 amount that was entitled to the priority treatment. So, what
12 we were seeking to do was to reclassify the priority treatment
13 to reflect what is contained in the debtor's books and records.
14 Again, Your Honor, we received no responses to that.

15 THE COURT: We'll be discussing the non-substantive
16 nature of misclassified claims at the rules committee meeting.
17 But, --

18 MR. ROSEN: I -- I did hear about something that may
19 have occurred yesterday or the day before in that regard, Your
20 Honor. We do have the claims here, if the Court would like to
21 see them. And, we can certainly hand copies up to the Court.
22 We do also have Mr. Goulding --

23 THE COURT: Well, let me -- let me say one thing. I
24 mean, you say as the basis that it doesn't agree with the
25 debtor's books and records. But, your books and records don't

1 really talk about priorities under the code.

2 MR. ROSEN: Well, -- (pause). Okay. Your Honor, can
3 I hand you a set?

4 THE COURT: Of the proofs of claim?

5 MR. ROSEN: Yes.

6 THE COURT: Sure. Thank you.

7 MR. ROSEN: I don't which one is on top, Your Honor.

8 THE COURT: Let's see. Phillip Matthews (phonetic).

9 MR. ROSEN: Okay. Phillip Matthews, which is claim
10 1446, -- there actually was no amount specified in that
11 particular one, Your Honor. But, it was filed, Your Honor, as
12 a priority -- I'm sorry, it was, up top. I apologize.

13 THE COURT: As a --

14 MR. ROSEN: It was --

15 THE COURT: -- wage --

16 MR. ROSEN: The 19,022.35.

17 THE COURT: Yes.

18 MR. ROSEN: And, what we were trying to do there was
19 limit it to the statutory amount, Your Honor, --

20 THE COURT: Okay.

21 MR. ROSEN: -- and move the balance into the general
22 unsecured category. The second one, Your Honor, -- I'm not
23 sure which one you have. Do you want to do Thomas Leopard
24 (phonetic) or Charles Lillis?

25 THE COURT: Charles Lillis?

1 MR. ROSEN: Okay.

2 THE COURT: All right.

3 MR. ROSEN: Mr. Lillis' claim was in the amount of
4 \$203,387.26. Again, Your Honor, we're seeking to limit that
5 one to the statutory amount. The --

6 THE COURT: Well, it says 1500 on your exhibit.

7 MR. ROSEN: I apologize, Your Honor. I was talking
8 to the front piece, which had the 203, and I apologize.

9 THE COURT: Okay.

10 MR. ROSEN: And, then we were looking to have
11 reclassified to the 1500 and the balance of the 201
12 reclassified as a general unsecured claim.

13 THE COURT: Well, why 1500?

14 MR. ROSEN: Well, we do have, again, Mr. Goulding
15 here with us. And, Mr. Goulding would testify that the
16 documentation indicates that that was the only amount that was
17 entitled to the priority treatment with respect to the fees and
18 that were incurred during -- during the 180-day period.

19 THE COURT: Okay. Director's fees incurred during
20 the 180-day period.

21 MR. ROSEN: Exactly, Your Honor. And, when we --
22 and, then we get to the second one, which is the Leopard proof
23 of claim, similarly, Your Honor, although it was filed in the
24 amount of 43,000 and change, --

25 THE COURT: Well, go -- go back to the 1500.

1 MR. ROSEN: Sure.

2 THE COURT: How do you determine that?

3 MR. ROSEN: We -- again, Your Honor, based upon our
4 books and records that show the attendance at meetings and
5 other fees and expenses that were incurred for reimburs --
6 entitled for reimbursement. Mr. Goulding would testify that,
7 based upon the documentation that was provided by the board's
8 secretary that shows the attendance, as well as the fees and
9 expenses, that is how we got to the 1500 amount.

10 Likewise, the board's secretary would show, for the
11 next one, Your Honor, Leopard, that it was 4,973 and 51 cents
12 as associated with the period within the 180 days, and for
13 board fees and fees and expenses.

14 THE COURT: All right. It's not self evident from
15 the proof of claim, but I'll accept that proffered testimony.

16 MR. ROSEN: So, for that reason, Your Honor, we would
17 seek to have those three claims reclassified as we have laid
18 them out.

19 THE COURT: Okay.

20 MR. ROSEN: Your Honor, the -- the next objection is
21 the 10th omnibus objection. And, this was what we refer to as a
22 substantive objection, and it was several bases. One was for
23 municipal services and other claims.

24 So, the claims filed against the debtors on account
25 of what we were -- what we believe were municipal services

1 provided to WMB or fines assessed against WMB and not WMI,
2 vendor claims for claims filed against the debtors on account
3 of either WMB contracts or goods or services provided solely to
4 WMB, and various miscellaneous claims filed against the debtors
5 for which we believe we have no liability.

6 We did receive, Your Honor, one request and several
7 -- and two responses. One request was from Mann Realty, LLC to
8 adjourn with respect to their claim because they needed an
9 opportunity to review the situation. That was claim 2911, and
10 we agreed to that adjournment.

11 THE COURT: What was the name of the claimant?

12 MR. ROSEN: M-A-N-N Realty, LLC, claim number 2911.

13 THE COURT: Okay.

14 MR. ROSEN: A response was provided by Greenspoon
15 Marder, P.A., which is a law firm, alleging that they had
16 provided services to the debtor. We believed it was to
17 Washington Mutual Bank. Upon consultation with Greenspoon,
18 Greenspoon has agreed that they have no further response and
19 that they are okay with the objection going through with
20 respect to their claim.

21 And, that claim, I believe, was 572 -- (Pause). Just
22 to be clear, Your Honor, -- I apologize, you were right --
23 \$14,002.70. They do have no objection with respect to the --
24 they do have no response now, after further discussion, to the
25 objection that was interposed.

1 THE COURT: Well, part of their response simply says
2 they -- they don't think that they would have gotten a proof of
3 claim if they hadn't been a creditor. So, without anything
4 further, I will sus -- overrule that objection.

5 MR. ROSEN: Thank you, Your Honor. The other
6 response that we did receive was from a Ms. Joanne Taylor. Ms.
7 Taylor asserts a claim for \$14,000. And, this was on account
8 of trading losses that she incurred during the period of 1991
9 to 1995 as a result of investment advice that she received from
10 a broker at a group called Murphy Favre, Inc.

11 The attachments to the proof of claim, however,
12 indicate that her original claim was investigated by Murphy
13 Favre, and it was concluded that the investment vehicle in
14 which she had invested was appropriate for a portfolio and that
15 the losses were a result of market fluctuations. She has given
16 us nothing further in her proof of claim other than what she
17 included in that handwritten letter that was attached.

18 Your Honor, we have looked at this situation.
19 Obviously it was over 13 years ago, and presumably whatever
20 statute of limitations existed probably has passed. But, we
21 also looked at it from the context of Murphy Favre and tried to
22 figure out what Murphy Favre is.

23 In actuality, it is an indirect subsidiary of
24 Washington Mutual Bank and, through several names changes, is
25 now referred to as WaMu Investments, Inc. Thus, Your Honor, we

1 do not believe that there is an objection -- excuse me -- a
2 claim that would exist against the debtor's estates. Rather,
3 if one does exist, it would solely be against Washington Mutual
4 Bank indirectly through its subsidiary. So, we would ask the
5 Court to grant the objection that we have interposed to Ms.
6 Taylor's claim.

7 THE COURT: All right. I will sustain the debtor's
8 objection.

9 MR. ROSEN: Thank you, Your Honor. Lastly, Your
10 Honor, we have the 12th omnibus objection, and this was a non-
11 substantive one. We were objecting to amended and superceded
12 claims, unsupported claims, and duplicate claims.

13 We received two responses. One was from Ben Shiriak
14 -- and, this was the lawyer -- in the amount of \$527. We did
15 speak with Mr. Shiriak. And, after discussion with him, he has
16 agreed that he has no opposition to the claim objection.

17 The other objection -- or response that was -- that
18 was interposed was by Mr. Geoffrey Olsen. You may recall he
19 appeared before us with respect to the deferred comp plan. He
20 was mostly concerned that he had filed multiple claims against
21 the estate. And, while he didn't have a problem with us with
22 wiping out or expunging one of the earlier filed claims, he
23 just wanted to be clear that his other claim still had some
24 vitality.

25 We contacted Mr. Olsen, explained that we were not

1 objecting to that supplemental claim that he had filed, just
2 merely getting the original claim out of the way. And, he said
3 he had no further objections to the relief being sought.

4 THE COURT: Okay.

5 MR. ROSEN: So, with that, Your Honor, I believe
6 those are the four items which are on today's agenda.

7 THE COURT: Okay. I have no further comments with
8 respect to that. So, I'll sustain the objection.

9 MR. ROSEN: Your Honor, just -- Mr. Landis asked that
10 we just state for the record what we've done previously. There
11 is a reservation of rights in these with respect to J.P.
12 Morgan. The language is in here. It's the same language that
13 we've used in prior claims orders.

14 THE COURT: Okay.

15 MR. ROSEN: May I approach, Your Honor?

16 THE COURT: You may. Thank you. (Pause). All
17 right. I'll enter those orders then.

18 MR. ROSEN: Thank you, Your Honor.

19 MR. LANDIS: Your Honor, as you're doing so -- Adam
20 Landis for the record approaching on behalf of J.P. Morgan
21 Chase. The language with respect to the 10th omnibus claim
22 objection -- I just -- not to belabor it or burden the record
23 with it.

24 Mr. Rosen did speak to one of the claims potentially
25 being a claim against Washington Mutual Bank. Just to clarify

1 for the record, the language that reserves rights sets forth
2 and is clear that nothing in the order disallowing the claim
3 finds any liability on behalf of Washington Mutual Bank.

4 THE COURT: Understood.

5 MR. LANDIS: Thank you, Your Honor.

6 MR. ROSEN: Your Honor, that concludes the Washington
7 Mutual calendar.

8 THE COURT: All right. We'll stand adjourned then.

9 MR. ROSEN: Thank you.

10
11 * * * * *

12
13 C E R T I F I C A T I O N

14
15 I, Frances L. Maristch, court approved transcriber,
16 certify that the foregoing is a correct transcript from the
17 official electronic sound recording of the proceedings in the
18 above-entitled matter.

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UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

Washington Mutual, Inc.
1301 Second Avenue
Seattle, WA 98101
EIN: 91-1653725

Chapter: 11

Case No.: 08-12229-MFW

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