

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: )  
 ) Chapter 11  
WASHINGTON MUTUAL, INC., )  
 ) Case No. 08-12229  
 )  
 ) December 18, 2009  
Debtors )

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

APPEARANCES:

For the Debtors: BRIAN S. ROSEN, ESQUIRE  
WEIL, GOTSHAL & MANGES  
767 Fifth Avenue  
New York, NY 10153

MARK D. COLLINS, ESQUIRE  
RICHARD, LAYTON & FINGER  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801

BENJAMIN I. FINESTONE, ESQUIRE  
QUINN, EMANUEL  
51 Madison Avenue  
22nd Floor  
New York, NY 10010

Audio Operator: BRANDON MCCARTHY

Transcribed by: DIANA DOMAN TRANSCRIBING  
P.O. Box 129  
Gibbsboro, New Jersey 08026-129  
(856) 435-7172  
FAX: (856) 435-7124  
Email: [Dianadoman@comcast.net](mailto:Dianadoman@comcast.net)

Proceedings recorded by electronic sound recording; transcript  
produced by transcription service.

(Appearances continued)

For the U.S. Trustee: JOSEPH J. MCMAHON, ESQUIRE  
OFFICE OF THE U.S. TRUSTEE  
844 King Street, Suite 2207  
Lockbox 35  
Wilmington, DE 19801

For Shearman & Sterling: STEVEN R. DIXON, ESQUIRE  
MILLER & CHEVALIER  
655 15th Street, NW  
Suite 900  
Washington, DC 20005-5701

For McKee Nelson: KEVIN OTERO, ESQUIRE  
BINGHAM, MCCUTCHEN, LLP  
2020 K Street Northwest  
Washington, DC 20006-1806

For Shearman & Sterling: ELIZABETH PIKE, ESQUIRE  
SHEARMAN & STERLING  
801 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20005-2634

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1 (Hearing in Session)

2 THE CLERK: All rise.

3 THE COURT: Good morning.

4 MR. ROSEN: Good morning, Your Honor. Brian Rosen,  
5 Weil, Gotshal & Manges on behalf of the debtor, Washington  
6 Mutual, Inc. With me is Mr. Mark Collins of Richards, Layton &  
7 Finger. Also, Mr. Ben Finestone is here from the Quinn,  
8 Emanuel firm.

9 Your Honor, we have several items on the agenda  
10 today, but the trustee -- the U.S. Trustee has asked us to take  
11 them out of order on the agenda because he has to relieve one  
12 of his colleagues in another courtroom. So Your Honor, we'll  
13 go all the way to the last item --

14 THE COURT: That's fine.

15 MR. ROSEN: -- on the agenda, number 14.

16 THE COURT: That's fine.

17 MR. MCMAHON: Your Honor, good morning. Joseph  
18 McMahon for the Acting United States Trustee. First, our  
19 thanks for the Court being willing to hear this relatively  
20 minor matter on short notice.

21 Your Honor, our office recently determined that the  
22 Acting U.S. Trustee's election to solicit interest in forming  
23 an official committee of equity security holders. Last week,  
24 we reached out to the debtors seeking a -- a list of their  
25 equity -- of the equity security holders at Washington Mutual,

1 Inc. so that we could begin to get that process underway. The  
2 response at that time was well, we have other matters, we will  
3 address it in -- you know, when we can.

4 I put a 48-hour deadline on my communication to  
5 debtor's counsel of December 8th. That came and went. We got  
6 to this week. Yesterday I received a communication from  
7 debtors' counsel with respect to timing, indicating that they  
8 anticipate being able to get us information early next week.

9 The problem we have, Your Honor, is that we would  
10 like to move forward with the solicitation by getting it at  
11 least started before we get to the holidays that are coming up,  
12 and we cannot afford to go bare on this issue into next week.  
13 We are asking for entry of a court order today that sets a  
14 deadline of December 21st for production of the list, and that  
15 concludes my presentation unless the Court has any questions.

16 THE COURT: I want to hear from the debtor.

17 MR. ROSEN: Your Honor, this is a little bit more  
18 than what was just relayed, and I do take a little bit of  
19 offense at the misrepresentation about we have other things to  
20 do, because that was not the answer that was given.

21 Your Honor, since this case filed last September, the  
22 U.S. Trustee on several occasions has asked us what our  
23 position is with respect to the formation of an equity  
24 committee. He reached out to us in writing, and we each of  
25 those instances formally replied, pointing out to the United

1 States Trustee the monthly operating reports, what the debtor's  
2 position is on assets and liabilities, and how -- and where  
3 things are with respect to the various litigations.

4 While that ultimately does not impact what the United  
5 States Trustee's position is, whether or not he will form an  
6 equity committee, it certainly established in our mind and in  
7 the mind of the creditors' committee and I believe other  
8 parties that the U.S. Trustee had solicited that the equity  
9 holders are not going to be in the money here, either the  
10 preferred or the common equity holders.

11 One of the things that the Trustee knows, because  
12 we've talked with him about it, is that there is a \$7.5 billion  
13 prefer -- three series of -- actually, more, but grouped into  
14 three groups -- \$7.5 billion of preferred equity before the  
15 common, and inasmuch as we don't even think that that strata of  
16 preferred will be reached by way of a distribution, we're a  
17 little bit surprised that the Trustee is going to be taking the  
18 time and the energy and certainly, the expense of seeking to  
19 form an equity committee.

20 When the Trustee reached out to me last week,  
21 Your Honor, I let him know that it does take time to do this,  
22 what he was requesting, and that we would make the effort and  
23 ask the transfer agent to provide the information that he  
24 sought. We do have, Your Honor, and we have here today a disk  
25 which sets forth the information as it was filed with the Court

1 over a year ago. The problem is that the Trustee has said he  
2 didn't want the information as of a year ago. He wants the  
3 information new. So it requires the transfer agent to collect  
4 the data again.

5 Your Honor, we would like to -- to provide this to  
6 the United States Trustee. We are not in possession of it. I  
7 can only give the Trustee what I have. We have told the  
8 Trustee as late as yesterday before he filed his motion that we  
9 thought we would get it to him probably Tuesday of next week.  
10 For some reason, he filed this motion saying give it to me on  
11 Monday of next week.

12 Again, Your Honor, we cannot give what we do not  
13 have. It is not in the debtor's possession to do it. If, in  
14 fact, we get raw data from the transfer agent, we're happy to  
15 give it to him, but that's not what the U.S. Trustee has asked  
16 for. He wants information in some sort of sortable format so  
17 that he may go through it. Your Honor --

18 THE COURT: Has the transfer agent told you that you  
19 will get it by Tuesday?

20 MR. ROSEN: Yes, Your Honor, and that's what we  
21 communicated to the Trustee. And so I -- I don't know why  
22 we're here honestly on this issue, because we can't be  
23 compelled to give something that we don't have. So,  
24 Your Honor, we will endeavor to give it to him on Tuesday, and  
25 if we don't have it from the transfer agent, all I can do,

1 Your Honor, is tell you and tell the U.S. Trustee that the  
2 transfer agent has not given it to us, but I am happy to give  
3 the U.S. Trustee the year-old information. I don't know how it  
4 has changed since that point in time, but I'm happy to give it  
5 to him. Something he already has, but I'm happy to give it to  
6 him in a disk format.

7 THE COURT: Okay. Thank you.

8 MR. MCMAHON: Your Honor, with respect to the matter,  
9 in light of debtor's counsel's comments, perhaps the way we  
10 should deal with this is in two formats. I will accept the --  
11 the disk that debtor's counsel has, and I suggest that we  
12 revise the order to provide that the information from the  
13 transfer agent be turned over by Tuesday in whatever form it  
14 is, and we'll address it, you know, in our -- on our end.

15 THE COURT: Well, I think I can only direct them to  
16 turn it over when they get it.

17 MR. MCMAHON: Understood, Your Honor. The  
18 representation that was made to us was that they would have it.  
19 At least that's the transfer agent's representation. So  
20 provided that debtor's counsel has no objection to revision of  
21 the form of order that would provide that, they will provide  
22 that information to us immediately upon receipt of same from  
23 the transfer agent, then -- then we will be fine.

24 THE COURT: All right. You can --

25 MR. ROSEN: Your Honor, I don't have a problem with



1 that. I just don't know whether or not it will be in the  
2 sortable form that he is requesting, but he did say he'd take  
3 it in whatever form. So I'll give him that form.

4 THE COURT: Well, you asked for it in sortable.

5 MR. ROSEN: He did. Yes.

6 THE COURT: Did you ask the transfer agent --

7 MR. ROSEN: They don't give it to you in that format.  
8 We had to -- when we created this disk a year ago, Your Honor,  
9 we had to do some work on it. It -- it's something that  
10 happens quickly, and -- but it takes us the day to do it. So I  
11 assume he wants it in an easily usable form.

12 MR. MCMAHON: Your Honor, at this point in the  
13 process, I gather that time is more important than utility. So  
14 consistent with my prior comments, we'll revise the form of and  
15 submit it to the debtors for their approval, and we will look  
16 for the information next week.

17 THE COURT: Okay.

18 MR. MCMAHON: Thank you.

19 THE COURT: I'll submit a revised form of order under  
20 certification of counsel.

21 MR. ROSEN: That's fine, and I just want to say one  
22 other thing. I appreciate the -- the trustee's efforts. I  
23 realize that there are forces to bear that may be asking him to  
24 do this, and as I told the U.S. Trustee and I'll say it again  
25 on the record, Your Honor, based upon the economics of this

1 case, if, in fact, the Trustee after his solicitation decides  
2 that he will form some sort of committee like he has suggested,  
3 the debtors will be taking -- exercising their rights with  
4 respect to that formation.

5 THE COURT: All right. You reserve your rights.

6 MR. ROSEN: Thank you. Thank you, Your Honor.  
7 Your Honor, I think that moves us now to the debtor's tenth  
8 Omnibus objection to claims.

9 THE COURT: Yes.

10 MR. ROSEN: Your Honor, there was only one objection  
11 to claim remaining outstanding, and that was that of Mann  
12 Realty (phonetic). They had previously asked for adjournments.  
13 They have at this point in time not moved forward at all. They  
14 have not asked for any additional adjournments. So at this  
15 point,  
16 Your Honor, we would ask the Court to enter the order that we  
17 have with respect to the Mann Realty claim and have that claim  
18 expunged from the debtor's registry.

19 THE COURT: Well, it's not going to be expunged. It  
20 may be disallowed.

21 MR. ROSEN: Excuse me, Your Honor. Then disallowed  
22 is fine.

23 THE COURT: Is there anybody here for Mann Realty?

24 (No verbal response)

25 THE COURT: All right. I will sustain the objection

1 and disallow it.

2 MR. ROSEN: Thank you, Your Honor.

3 THE COURT: Do you have a form of order?

4 MR. ROSEN: Your Honor, would you like to do one at a  
5 time or at the end?

6 THE COURT: You can hand it up now.

7 MR. ROSEN: Okay.

8 THE COURT: Thank you.

9 MR. ROSEN: Your Honor, moving now to the 15th  
10 Omnibus objection, this was a nonsubstantive objection to  
11 claims. The claims that were objected to were amended and  
12 superceded or unsupported or duplicate claims. We have not  
13 received any objections to the objection that we filed. In  
14 fact, there was one withdraw of claim that had been filed as a  
15 result of the objection, but that is all we have heard,  
16 Your Honor.

17 THE COURT: Well, on this, I had one question with  
18 respect to the unsupported, because I don't think I got the  
19 proof of claim, and that is claim number 3787, Mr. Abutollah  
20 (phonetic).

21 MR. ROSEN: I did see a certification that had been  
22 provided to Your Honor, but --

23 THE COURT: With respect to that?

24 MR. ROSEN: I thought so. This is the \$800 claim. I  
25 -- I can make sure that we that to Your Honor, and if you'd

1 like, we can reserve with respect to that one claim.

2 THE COURT: Okay.

3 MR. ROSEN: Okay. So we will remove that from the  
4 order and continue the -- the 15th with respect to that one,  
5 Your Honor.

6 THE COURT: Okay.

7 MR. ROSEN: With respect to the 16th Omnibus  
8 objection, Your Honor, this again, this was a substantive  
9 objection. We have set forth on exhibit A there the basis for  
10 each of those objections. We have received not objections in  
11 response. I do see that we -- as reflected on the agenda,  
12 there was the notice of the submission of the claims to the  
13 Court.

14 Your Honor, I would note that there were really only  
15 two on there. One of those is Relizen (phonetic) though, and  
16 late yesterday, we received a request to adjourn that. So  
17 there would only be one that would be left on there, Your  
18 Honor, which would be the claim of the auditor of the State of  
19 Arkansas, claim number 714, and that related to unclaimed  
20 property within the state, and again, we have received no  
21 objection with respect to that claim.

22 THE COURT: All right. I had no problem with respect  
23 to that one.

24 MR. ROSEN: So we will continue the Relizen.  
25 Your Honor, may I approach?

1 THE COURT: You may.

2 COUNSEL: Your Honor, (indiscernible) said  
3 (indiscernible) is still on there.

4 THE COURT: Still on exhibit B. Yeah. Should I just  
5 get rid of exhibit B?

6 COUNSEL: That's fine. Thank you.

7 THE COURT: And then let me see if I --

8 COUNSEL: Okay.

9 THE COURT -- need to strike out anything with  
10 respect to exhibit A.

11 MR. ROSEN: Thank you. Your Honor, the next claim  
12 objection is the --

13 THE COURT: Well, give that back to me, and I'll just  
14 say exhibit B is continued.

15 MR. ROSEN: Okay.

16 THE COURT: Oh, it does say it is continued.

17 MR. ROSEN: Oh, it did?

18 THE COURT: Better give that back. It says so in the  
19 form of order.

20 MR. ROSEN: Just give me the exhibit back.

21 (Pause)

22 THE COURT: All right. Let me enter that order  
23 before we go on.

24 MR. ROSEN: Okay.

25 (Pause)

1 THE COURT: Let me keep these together. Okay. Okay.

2 MR. ROSEN: The next, Your Honor, is the debtor's  
3 14th Omnibus objection, and that is a nonsubstantive objection.  
4 Your Honor, this relates to claims that were filed in  
5 connection with we referred to as the senior notes and the  
6 senior subordinated notes, and pursuant to the bar order,  
7 Your Honor, we had agreed that the indenture trustee claim  
8 would be sufficient and that there were no individual bond  
9 holders and note holders that were required to file a proof of  
10 claim. As is always the case, however, as an abundance of  
11 caution, everybody does file a proof of claim, and I think,  
12 Your Honor, as we reflected in the objection to the claim as  
13 well as in the declaration, approximately 180 note holders or  
14 bond holders filed proofs of claim.

15 We did receive several, I think four, Your Honor,  
16 objections to the relief requested. Really, they were just  
17 noting that they, in fact, owned a -- a bond, although one of  
18 them did note that they owned it and they sold it, and he  
19 wanted us to pay us the difference between the face and what he  
20 had sold it for.

21 Your Honor, we obviously don't believe that these  
22 objections have -- to the relief requested have any merit, and  
23 we would just ask the Court to overrule them so that we can  
24 forward. We have in the court I believe as of yesterday  
25 entered the orders with respect to the stipulations for these

1 claims themselves. So, Your Honor, it's our position that, of  
2 course, these people are now comforted by the fact that there  
3 was an overall order with respect to the principal and interest  
4 that was outstanding, which is what these people have claimed,  
5 and if the Court will recall with respect to those  
6 stipulations, there are some remaining or straggling claims  
7 associated with those trustee claims, but with respect to these  
8 four objections, Your Honor, we would ask the Court to overrule  
9 them as, in fact, they are covered by the indentured trustee's  
10 claims.

11 THE COURT: All right. Is there anybody here on  
12 behalf of Felix McCarthy, Glen Werner, Robert Helsom, or George  
13 Simpson Associates (phonetic)?

14 (No verbal response)

15 THE COURT: All right. I will overrule those  
16 objections. I agree they don't go to the point of the  
17 objection to claims. So I will grant the objection.

18 MR. ROSEN: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. ROSEN: Your Honor, that leaves on the agenda the  
21 interim fee applications. I didn't know if the Court wanted to  
22 go through those to express some positions or as we have done  
23 previously, reserve our rights to the final application.

24 THE COURT: I'd love to reserve everybody's rights,  
25 including mine. Let me see though if there are some comments

1 that may be helpful to counsel.

2 (Pause)

3 THE COURT: Just with respect to Quinn, Emanuel,  
4 there are a lot of research charges charged as expenses. Can  
5 you confirm that your firm charges the actual amount that you  
6 are billed for research service?

7 MR. FINESTONE: Yes. This is Ben Finestone with  
8 Quinn, Emanuel, Urquhart, Olive & -- Your Honor, Ben Finestone  
9 for Quinn, Emanuel, Urquhart, Olive & Hedges for the debtors in  
10 possession. I can confirm that the Lexus and the Westlaw  
11 charges on our fee applications are billed only at cost, pass  
12 through -- like a pass through line item, and there are --  
13 there is no mark up or --

14 THE COURT: Okay.

15 MR. FEINSTONE: -- or other net profit in there.

16 THE COURT: Okay. Let's see. One question. With  
17 respect to Miller Chevalier, remind me what are the terms of  
18 their compensation. Are they a contingent fee?

19 MR. DIXON: Your Honor, this is --

20 MR. ROSEN: Your Honor, I apologize.

21 MR. DIXON: -- Steve Dixon on behalf of --

22 MR. ROSEN: I don't remember specifically. They are  
23 involved in connection with the -- the collection of tax  
24 refunds or litigation with respect to getting tax refunds for  
25 the benefit of the estate. I do not recall whether they get a



1 contingent fee based upon the amount collected though.

2 MR. DIXON: Your Honor, this is Steve Dixon from  
3 Miller & Chevalier.

4 THE COURT: Yes.

5 MR. DIXON: We are not billing on -- we have no  
6 contingent fee arrangement.

7 THE COURT: All right. Those were my only questions  
8 then, and I'll reserve until final determination as to the  
9 overall reasonableness of fees.

10 MR. ROSEN: Your Honor, just one note. We did find  
11 out subsequently that the cover sheets that had been filed by  
12 both Bingham and Sherman & Sterling had an error in  
13 computation. It was slightly lower than what was in the body  
14 of the application itself. We just want to bring that to the  
15 Court's attention.

16 THE COURT: Okay.

17 MR. ROSEN: I don't know if anyone from Bingham or  
18 Sherman is on the line.

19 MR. OTERO: Your Honor, Kevin Otero from Bingham,  
20 McCutchens is on the line. I think Mr. Rosen described it  
21 correctly. It was a computational error, and we recently filed  
22 a certification replacing the cover page on the notice with the  
23 correct amounts that are reflected in the body of the -- of the  
24 application, the notice of the application.

25 THE COURT: Okay.

1 MS. PIKE: Your Honor, this is Elizabeth Pike at  
2 Sherman & Sterling. We're in -- we're in the same boat as  
3 Bingham & McCutchens, and we -- we filed a corrected copy of  
4 the front page, and I think our -- I think the situation was  
5 described correctly.

6 THE COURT: Okay.

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

8 THE COURT: You may.

9 MR. ROSEN: Your Honor, I believe that concludes this  
10 morning's agenda then.

11 THE COURT: All right. We'll stand adjourned then.  
12 Thank you.

13 MR. ROSEN: Thank you very much.

14 (Court Adjourned)

15 \* \* \* \* \*

16 C E R T I F I C A T I O N

17 I, Maureen Emmons, court approved transcriber,  
18 certify that the foregoing is a correct transcript from the  
19 official electronic sound recording of the proceedings in the  
20 above-entitled matter.

21

22 \_\_\_\_\_ Date:

23 MAUREEN EMMONS

24 DIANA DOMAN TRANSCRIBING

**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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Clerk of Court

Date: 12/30/09

(ntc)

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### Recipients of Notice of Electronic Filing:

ust	United States Trustee	USTPREGION03.WL.ECF@USDOJ.GOV
aty	Andrew C. Irgens	irgens@rlf.com, rbgroup@rlf.com
aty	Andrew C. Irgens	irgens@rlf.com, rbgroup@rlf.com
aty	Andrew C. Irgens	irgens@rlf.com, rbgroup@rlf.com
aty	Chun I. Jang	jang@rlf.com, rbgroup@rlf.com
aty	Lee E. Kaufman	kaufman@rlf.com, rbgroup@rlf.com
aty	Lee E. Kaufman	kaufman@rlf.com, rbgroup@rlf.com
aty	Theodore Allan Kittila	tak@elliottgreenleaf.com

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### Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Washington Mutual, Inc.	1301 Second Avenue	Seattle, WA 98101	
aty	Andrew C. Irgens	Richards, Layton & Finger	920 N. King Street	Wilmington, DE 19801
aty	Chun I Jang	Richards, Layton & Finger, P.A.	920 North King Street	P.O. Box
	551	Wilmington, DE 19899		
aty	Chun I. Jang	Richards, Layton & Finger, P.A.	920 North King Street	P.O. Box
	551	Wilmington, DE 19899		
aty	Cory D. Kandestin	Richards, Layton & Finger, P.A.	920 North King Street, One Rodney	
	Square	Wilmington, DE 19801		
aty	Lee E. Kaufman	Richards, Layton & Finger, P.A.	920 North King Street	One Rodney
	Square	Wilmington, DE 19801		
aty	Lee E. Kaufman	Richards, Layton & Finger, P.A.	920 North King Street	One Rodney
	Square	Wilmington, DE 19801		
aty	Mark D. Collins	Richards Layton & Finger	One Rodney Square	PO Box 551 Wilmington, DE
	19899			
aty	Neil Raymond Lapinski	1105 North Market Street	Suite 1700	P.O. Box
	2327	Wilmington DE, 19899 U.S.A.		
aty	Rafael Xavier Zahralddin-Aravena	Elliott Greenleaf	1105 North Market Street	Suite
	1700	P.O. Box 2327	Wilmington, DE 19801	

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