

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229 (MFW); Adv. Case No. 09-50934

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In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- - - - -x

WASHINGTON MUTUAL, INC. and

WMI INVESTMENT CORP.,

Plaintiffs,

-against-

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,

Defendant.

- - - - -x

U.S. Bankruptcy Court

824 North Market Street

Wilmington, Delaware

March 12, 2010

12:25 PM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

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HEARING re Motion of the Federal Deposit Insurance Corporation,
as Receiver for Washington Mutual Bank, for an Order Modifying
the Automatic Stay [Docket No. 1834; filed 11/4/09]

HEARING re Motion of Plaintiffs Washington Mutual, Inc. and WMI
Investment Corp. for Summary Judgment [Adversary Docket No. 14;
filed 5/19/09]

Transcribed By: Clara Rubin

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A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP
Attorneys for the Debtors
767 Fifth Avenue
New York, NY 10153

BY: BRIAN S. ROSEN, ESQ.

ELLIOTT GREENLEAF
Attorneys for the Debtors
1105 Market Street
Suite 1700
Wilmington, DE 19801

BY: NEIL R. LAPINSKI, ESQ.

RICHARDS, LAYTON & FINGER, P.A.
Attorneys for the Debtors
One Rodney Square
920 North King Street
Wilmington, DE 19801

BY: MARK D. COLLINS, ESQ.

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AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for the Official Committee of Unsecured
Creditors

One Bryant Park
New York, NY 10036

BY: FRED S. HODARA, ESQ.

ROBERT A. JOHNSON, ESQ.

ASHBY & GEDDES, P.A.

Attorneys for the Equity Committee
500 Delaware Avenue
Wilmington, DE 19899

BY: WILLIAM P. BOWDEN, ESQ.

DLA PIPER

Attorneys for FDIC, Receiver
1251 Avenue of the Americas
New York, NY 10020

BY: JOHN J. CLARKE, JR., ESQ.

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FOX ROTHSCHILD LLP

Attorneys for the WMI Noteholders Group

Citizens Bank Center

919 North Market Street

Suite 1300

Wilmington, DE 19899

BY: JEFFREY M. SCHLERF, ESQ.

LANDIS RATH & COBB LLP

Attorneys for JPMorgan Chase

919 Market Street, Suite 1800

Wilmington, DE 19899

BY: ADAM LANDIS, ESQ.

PEPPER HAMILTON LLP

Attorneys for the Official Committee of Unsecured

Creditors

Hercules Plaza

1313 Market Street, Suite 5100

Wilmington, DE 19899

BY: DAVID M. FOURNIER, ESQ.

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PEPPER HAMILTON LLP

Attorneys for the Official Committee of Unsecured
Creditors

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

BY: LAURENCE Z. SHIEKMAN, ESQ.

POTTER ANDERSON & CORROON LLP

Attorneys for the Group of Bondholders of WMB
Hercules Plaza
1313 N. Market Street, 6th Floor
Wilmington, DE 19899

BY: THERESA (TERRI) V. BROWN-EDWARDS, ESQ.

SULLIVAN & CROMWELL LLP

Attorneys for JPMorgan Chase
1888 Century Park East
Los Angeles, CA 90067

BY: ROBERT A. SACKS, ESQ.

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SULLIVAN & CROMWELL LLP

Attorneys for JPMorgan Chase

125 Broad Street

New York, NY 10004

BY: STACEY R. FRIEDMAN, ESQ.

VENABLE LLP

Attorneys for the Equity Committee

Rockefeller Center

1270 Avenue of the Americas

Twenty-Fifth Floor

New York, NY 10020

BY: JORIAN L. ROSE, ESQ.

WHITE & CASE LLP

Attorneys for the WMI Noteholders Group

1155 Avenue of the Americas

New York, NY 10036

BY: KATERHINE MONAHAN, ESQ.

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YOUNG CONAWAY STARGATT & TAYLOR, LLP
Attorneys for FDIC, Receiver
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801

BY: M. BLAKE CLEARY, ESQ.

U.S. DEPARTMENT OF JUSTICE
Office of the United States Trustee
844 King Street
Suite 2207
Wilmington, DE 19801

BY: JOSEPH J. MCMAHON, JR., ESQ.

1 T E L E P H O N I C A P P E A R A N C E S :

2 QUINN EMANUEL URQUHART & SULLIVAN LLP

3 For the Debtors

4 51 Madison Avenue

5 22nd Floor

6 New York, NY 10010

7

8 BY: ADAM M. ABENSOHN, ESQ.

9 EVAN D. PARNES, ESQ.

10

11

12 AKIN GUMP STRAUSS HAUER & FELD LLP

13 Attorneys for the Official Committee of Unsecured
14 Creditors

15 Robert S. Strauss Building

16 1333 New Hampshire Avenue, N.W.

17 Washington, DC 20036-1564

18

19 BY: SCOTT L. ALBERINO, ESQ.

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AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for the Official Committee of Unsecured
Creditors

2029 Century Park East

Suite 2400

Los Angeles, CA 90067-3010

BY: PETER J. GURFEIN, ESQ.

BRIAN M. ROTHSCHILD, ESQ.

DAVID P. SIMONDS, ESQ.

ARENT FOX LLP

Attorneys for Creditor, Wilmington Trust

BY: JEFFREY N. ROTHLEDER, ESQ.

BAKER & MCKENZIE

Attorneys for Creditor, Black Horse Capital

BY: ANDREW P.R. MCDERMOTT, ESQ.

BRACEWELL & GUILIANI - CONNECTICUT

Attorneys for the WMB Noteholders

BY: MARK E. DENDINGER, ESQ.

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LOEB & LOEB, LLP

Attorneys for Creditor, Wells Fargo, N.A.

BY: WALTER H. CURCHACK, ESQ.

VADIM J. RUBENSTEIN, ESQ.

LOWENSTEIN SANDLER PC

Attorneys for Plaintiff, Ontario Teachers' Pension Plan

BY: IRA LEVEE, ESQ.

MILBANK, TWEED, HADLEY & MCCLOY

Attorneys for the Bondholders

BY: DAVID CLAYTON, ESQ.

PATTERSON BELKNAP WEBB & TYLER LLP

Attorneys for Creditor, Law Debenture Trust Company of

New York

BY: BRIAN P. GUINEY, ESQ.

PILLSBURY WINTHROP SHAW PITTMAN LLP

Attorneys for Creditor, Bank of New York Mellon

BY: LEO T. CROWLEY, ESQ.

MARGOT P. ERLICH, ESQ.

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STUTMAN TREISTER & GLATT

Attorneys for Elliott Management

BY: WHITMAN L. HOLT, ESQ.

K. JOHN SHAFFER, ESQ.

SULLIVAN & CROMWELL LLP

Attorneys for JPMorgan Chase, N.A.

BY: HYDEE R. FELDSTEIN, ESQ.

BRUCE CLARK, ESQ.

JOSHUA FRITSCH, ESQ.

WILMER CUTLER PICKERING HALE & DORR

Attorneys for the Bank Bondholders

BY: LISA EWART, ESQ.

NANCY MANZER, ESQ.

ANGELO, GORDON & COMPANY

Creditor

BY: EDWARD KRESSLER

1

2 ALVAREZ & MARSAL

3 Interested Party

4 BY: MICHAEL ARKO

5 JOHN MACIAL

6 CHRIS WELLS

7

8 APPALOSSA MANAGEMENT

9 BY: JIM BOLIN

10

11 AURELIUS CAPITAL

12 Interested Party

13 BY: ELEANOR CHAN

14

15 BANK OF AMERICA SECURITIES

16 Creditor

17 BY: ALEXANDER KLIPPER

18

19 BARCLAYS CAPITAL, INC.

20 Interested Party

21 BY: JAMES RUSSO

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23 CANDLEWOOD CAPITAL

24 Creditor

25 BY: RITA ARAMBURO

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CENTERBRIDGE PARTNERS

Interested Party

BY: STANISLAV FEDORENKO

CRT CAPITAL GROUP, LLC

Creditor

BY: KEVIN STARKE

DEBTWIRE

BY: TIBITA P. KANEENE, IN PROPRIA PERSONA

DEUTSCHE BANK

Party-in-Interest

BY: JAMES MACINNIS

ESOPUS CREEK ADVISORS LLC

Member of Official Committee of Equityholders

BY: ANDREW SOLE

GRUSS & COMPANY, LLC

For Creditor, Gruss Asset Management

BY: JAMES JACOBS, ESQ.

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FARALLON CAPITAL MANGEMENT

Creditor

BY: MICHAEL LINN

JPMORGAN CHASE & CO.

Creditor

BY: TRAVIS EPES

LAWRENCE N. CHANEN

MACQUARIE BANK

Interested Party

BY: CHRIS WARREN

MILLER TABACK SECURITIES

Interested Party

BY: MATTHEW DUNDON

MORGAN STANLEY

Creditor

BY: JIM F. FARNER

THE SEAPORT GROUP

Interested Party

BY: GEORGE BRICKFIELD

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SILVER POINT CAPITAL

Creditor

BY: MATTHEW EHMER

TUDOR INVESTMENT

Creditor

BY: MITCHELL E. SUSSMAN

UBS SECURITIES LLC

Interested Party

BY: ARIN J. WOLFSON

WASHINGTON MUTUAL, INC.

Debtor

BY: DOREEN LOGAN

ROBERT WILLIAMS

GAVASKAR BALASINGAM

For Creditor, Davidson Kempner

DAN BULLOCK

In Propria Persona

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ANNA KALENCHITS

Interested Party

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P R O C E E D I N G S

THE CLERK: All rise. Please be seated.

THE COURT: Good afternoon.

MR. ROSEN: Good afternoon, Your Honor. Brian Rosen, Weil, Gotshal & Manges, on behalf of the debtors. And with me today is Mr. Mark Collins from Richards, Layton & Finger.

Your Honor, there are two items on the agenda today: One is the motion of the FDIC for relief from the automatic stay so they can assert rights pursuant to the purchase agreement between the FDIC and JPMorgan Chase, and the other is the debtors' motion for summary judgment in connection with the turnover of our deposit accounts and the ruling to be rendered in that regard.

Your Honor, when we were here last week, we talked about momentum being gained in connection with resolution of the matter. And I am happy to report today that we have a three-way understanding between the debtors, JPMorgan Chase and the FDIC with respect to all matters. And as a result, Your Honor, subject to documentation of course, but as a result, Your Honor, we would ask the Court, then, to not go forward with respect to the 9.5 motion and not render a decision with respect to the summary judgment motion at this time, to allow us to document that understanding. I would however, Your Honor, like to read into the record what the salient provisions are of that understanding.

1 THE COURT: Okay.

2 MR. ROSEN: With respect to the deposit accounts,
3 those deposit accounts -- JPMorgan will pay over the deposits
4 less what is JPMorgan's share of a tax refund associated with
5 what we refer to as the first refund, Your Honor, which will
6 be -- JPMorgan's share of that will be seventy percent of that
7 refund. And a result, to the extent that the debtors have
8 received certain tax refunds during the bankruptcy case,
9 JPMorgan would retain seventy percent of those refunds, to the
10 extent that they are already in those accounts, Your Honor. So
11 the entire account would come to us, minus seventy percent of
12 those refunds already received.

13 With respect to the trust-preferred securities, which
14 have been a focal point of the litigation, the debtors will
15 take such action as is necessary to provide that those trust
16 preferred-securities will be turned over to JPMorgan Chase free
17 and clear of any liens, claims and encumbrances. At the same
18 time, JPMorgan will enter into a separate agreement with
19 respect to any individual holders of trust-preferred
20 securities, providing for a recovery of fifty million dollars
21 in cash or stock of JPMorgan, having a value of fifty million
22 dollars on the effective date of a plan.

23 As I indicated before, Your Honor, there would be a
24 tax split of the refunds -- excuse me, a refund of -- a split
25 of the refunds associated with the first refund and what we

1 also refer to as a second refund. With respect to the first
2 refund, that will be split seventy percent to JPMorgan Chase,
3 thirty percent to WMI. With respect to the second refund, that
4 will be split 59.6 percent to the FDIC or such other parties as
5 the FDIC should tell us, and we are working out those
6 mechanics, and 40.4 percent of that second refund will go to
7 WMI.

8 With respect to the WMI medical plan, JPMC will assume
9 all liabilities associated with the medical plan, including
10 OPEB liabilities, and WMI will sign over to JPMorgan Chase
11 rebate checks, associated with a post-petition period, that we
12 have not cashed. To the extent that WMI has cashed those,
13 however, WMI will pay to JPMorgan the amount of money that was
14 included in those rebate checks that were cashed.

15 With respect to rabbi trusts and BOLI/COLI policies,
16 Your Honor, the parties have agreed to split based upon what
17 the representative ownership was between WMI and WMB, with the
18 WMB assets going to JPMorgan Chase with an assumption of
19 liabilities associated with that.

20 With respect to the qualified pension plan, WMI will
21 transfer the sponsorship of that plan to JPMorgan Chase, and
22 JPMorgan Chase will assume the liabilities associated with that
23 plan.

24 There is one piece of litigation that is outstanding
25 with respect to that plan, Your Honor, and the debtors can

1 announce that we have resolved that litigation, subject to
2 documentation. And that of course, Your Honor, is a most --
3 and that is also before the Court; that has been adjourned from
4 time to time. It's been referred to as the Busse (ph.)
5 litigation. And we are happy to announce that that litigation
6 is resolved.

7 With respect to something referred to as ATIS (ph.)
8 Loan Corp., JPM will transfer its ownership percentage in that
9 to WMI.

10 With respect to goodwill litigation, there are two
11 litigations, Your Honor, one the Court remembers; it was the
12 American Savings litigation and it was the subject of a motion
13 with respect to the IRS, and we deposited approximately fifty-
14 five million dollars into the registry of the Court. JPMorgan
15 has agreed as part of this transaction that the debtors will
16 have full ownership of the American Savings litigation for
17 future damages that may come from that ongoing litigation. And
18 with respect to the fifty-five million that is in the registry
19 of the Court, that will be turned over to the debtors' estates.

20 With respect to the litigation that's referred to as
21 the Anchor Savings goodwill Litigation, that will be turned
22 over to JPM, and the debtors will convey all of their interest
23 in that litigation to JPMorgan.

24 With respect to vendor claims, JPMorgan will waive any
25 claims that it has against the estate for the payment of any

1 pre-petition vendor payables. And JPMorgan has agreed to pay
2 any remaining pre-petition vendor payables in an amount not to
3 exceed fifty million dollars.

4 With respect to the Visa shares, JPMorgan shall
5 purchase the Visa shares from the debtors for fifty million
6 dollars. The debtors will retain any dividends that they have
7 already received with respect to those Visa shares up to the
8 date of the effectiveness of a plan.

9 With respect to Winpower, the debtors have agreed to
10 transfer ownership of Winpower to JPMorgan Chase.

11 With respect to intercompany issues, JPMorgan shall
12 repay the four intercompany loans to Washington Mutual,
13 including interest, which as of, I believe, January of this
14 year was in the approximate amount of 179 million dollars, and
15 that all other intercompany claims shall be forgiven.

16 As to intellectual property, WMI shall transfer
17 certain intellectual property to JPMorgan Chase, excluding,
18 however, certain domain names, including those associated with
19 TIMCOR and 1031 Exchange.

20 With respect to loan servicing, there are a few
21 agreements outstanding, and JPMorgan will continue to service
22 these loans for the benefit of the WMI estate.

23 As to something referred to as BKK litigation, which
24 there are approximately seven claims against the estate, Your
25 Honor, JPMorgan shall assume all liability associated with that

1 litigation and not assert claims back against WMI.

2 As to surety bonds, JPMorgan shall take over the
3 surety bond program with Safeco and certain other bonding
4 companies and assume the liability with that.

5 As to releases, the debtors, the FDIC in its capacity
6 as receiver and as corporate capacity, shall exchange mutual
7 releases, subject to certain indemnity obligations that I'll
8 get to in a moment.

9 Litigations shall be dismissed and proofs of claim
10 withdrawn with prejudice, among the parties.

11 With respect to something called the Texas litigation,
12 Your Honor, or now it's maybe referred to as the
13 ANICO/Washington D.C. litigation, the parties will do their
14 best to establish that whatever claims remain in that
15 litigation are property of the estate, they're derivative in
16 nature, and seek to use their reasonable best efforts to have
17 that litigation dismissed with prejudice.

18 With respect to -- Your Honor, I talked about the tax
19 refund earlier, and I just want to be clear so that there's no
20 confusion, and I know a lot of people follow what's going on in
21 Court today. The debtors, JPMorgan, we estimate that the
22 second refund is in the approximate amount of 2.6 billion
23 dollars and that it will be split, as I said before Your Honor,
24 59.6 and 40.4. JPMorgan will not receive any portion of this
25 refund.

1 With respect to indemnity claims that JPMorgan may
2 have, Your Honor, against the receivership and against the FDIC
3 itself, pursuant to its purchase agreement that it entered into
4 on September 25 of 2008, JPMorgan has agreed to give up its
5 indemnity claims back against FDIC corporate, and it has
6 agreed, and the FDIC has agreed, that JPMorgan will cap its
7 liability against the FDI (sic) receivership in the amount of
8 1.4 billion dollars, and that JPMorgan shall have a first-
9 priority claim against receivership assets on account of that
10 first-priority claim, the 1.4 billion dollars. That claim
11 shall not be sub to any other offset or claim by any other
12 party.

13 JPMorgan, the debtors, the FDI receiver, we shall
14 cooperate with each other and attempt to document this in a
15 settlement agreement among the parties, and it shall be
16 included in a Chapter 11 plan that will be filed with the Court
17 by March 26, which is the expiration of the eighteen-month
18 exclusivity period. This agreement, Your Honor, is of course
19 subject to many conditions. Of course, it would be -- the WMI
20 board of directors would have to approve this transaction, as
21 would the JPM board, as well as the FDIC board of directors.

22 We hope, Your Honor, that this transaction will gain
23 some traction with other parties-in-interest, specifically the
24 creditors who have been very vocal in this Chapter 11 case, and
25 by that I mean the WMB bondholders. And we hope, Your Honor,

1 that the WMB bondholders come on board by the time that we file
2 this with the Court. But if they don't, Your Honor, we are
3 still prepared to go forward with this transaction provided
4 that the claims of the WMB bondholders are disallowed in their
5 entirety. If not, Your Honor, this transaction will not go
6 forward.

7 Your Honor, I believe that those are the salient
8 economic terms of this transaction, and they are, as I said,
9 subject to documentation of the parties. We hope that we will
10 be before this Court on a hearing to approve a disclosure
11 statement in the near future.

12 We intend to file this transaction with the Court. We
13 know that there are many people who may want to express their
14 own view of this at the appropriate time when we file the
15 motion under the Bankruptcy Rules to approve the compromise and
16 settlement among the parties, as well as the plan and
17 disclosure statement, but at this time, Your Honor, all we're
18 asking for the Court to do is to adjourn the matter which is
19 currently before the Court, until we ask the Court to reset
20 that, if we're unsuccessful in documenting this transaction.

21 I would include, Your Honor, that the debtors,
22 throughout this process, have been working hand in hand with
23 the creditors' committee and major creditor constituencies so
24 that they are fully apprised of this transaction and the
25 economic results that will come from this transaction.

1 Thank you.

2 THE COURT: Thank you.

3 Anybody else wish to be heard?

4 MR. HODARA: Good morning, Your Honor. Fred Hodara,
5 Akin Gump Strauss Hauer & Feld, for the official committee of
6 unsecured creditors, rising, Your Honor, simply to state that
7 Mr. Rosen, in our view, has fairly stated the terms, that we've
8 been a party to the discussions amongst these various parties,
9 and we believe that the terms, as stated, fairly reflect the
10 discussions of the parties.

11 THE COURT: Thank you.

12 MR. ROSE: Good afternoon, Your Honor. Jorian Rose on
13 behalf of the equity committee. Just -- really just a
14 clarification question for the debtors on the timing. This is
15 the first we've heard of the settlement and, obviously,
16 unfortunately so. But one thing I'd heard, it was going to be
17 done in connection with a plan and then, I heard,
18 documentation. And so I'm just curious if it's a 9019
19 settlement or is it going to be a plan, or is --

20 MR. ROSEN: Your Honor, it will be both: It'll be,
21 hand in glove, working with each other. The settlement
22 agreement will be a 9019, and the concepts will be folded into
23 the plan at the same time.

24 MR. ROSE: Okay, that was the timing? At the same
25 time?

1 MR. ROSEN: Yes.

2 MR. ROSE: Thank you, Your Honor.

3 THE COURT: All right.

4 Well, what date do you want me to continue this to?
5 When do we anticipate all -- are you anticipating that the 9019
6 will be heard on --

7 MR. ROSEN: No, Your Honor, the 9019, as far as we
8 know, will be heard at the same time as plan confirmation.

9 THE COURT: Okay. All right.

10 MR. ROSEN: So we expect to file the plan and
11 disclosure statement by the 26th, asking for a disclosure
12 statement hearing, Your Honor, I believe it was, in the
13 beginning of May, to give everybody an opportunity to look at
14 this approximately forty-five days out, Your Honor, rather than
15 what might be thirty or twenty. We want everyone to see this
16 and let it be fully vetted by everyone. And then asking for
17 confirmation upon approval of the disclosure statement.

18 THE COURT: All right, thank you.

19 I'm sorry, anybody else wish to be heard?

20 (No response)

21 THE COURT: All right. Well, I thank the parties for
22 their efforts. And I will continue this to the next omnibus
23 hearing just so you can keep me apprised as to efforts to
24 document it.

25 MR. ROSEN: I think the next omnibus is actually next

1 week, Your Honor.

2 THE COURT: Oh.

3 MR. ROSEN: We are --

4 THE COURT: Never mind.

5 MR. ROSEN: No, but I would say that we're actually
6 very, very far along in the documentation of this transaction.
7 And I hope -- and I don't foresee any issues on getting this
8 filed by the 26th.

9 THE COURT: All right.

10 MR. ROSEN: Thank you.

11 THE COURT: Thank you. We'll stand adjourned.

12 (Proceedings concluded at 12:41 PM)

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

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

Clara Rubin

AAERT Certified Electronic Transcriber (CET**D-491)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: March 13, 2010